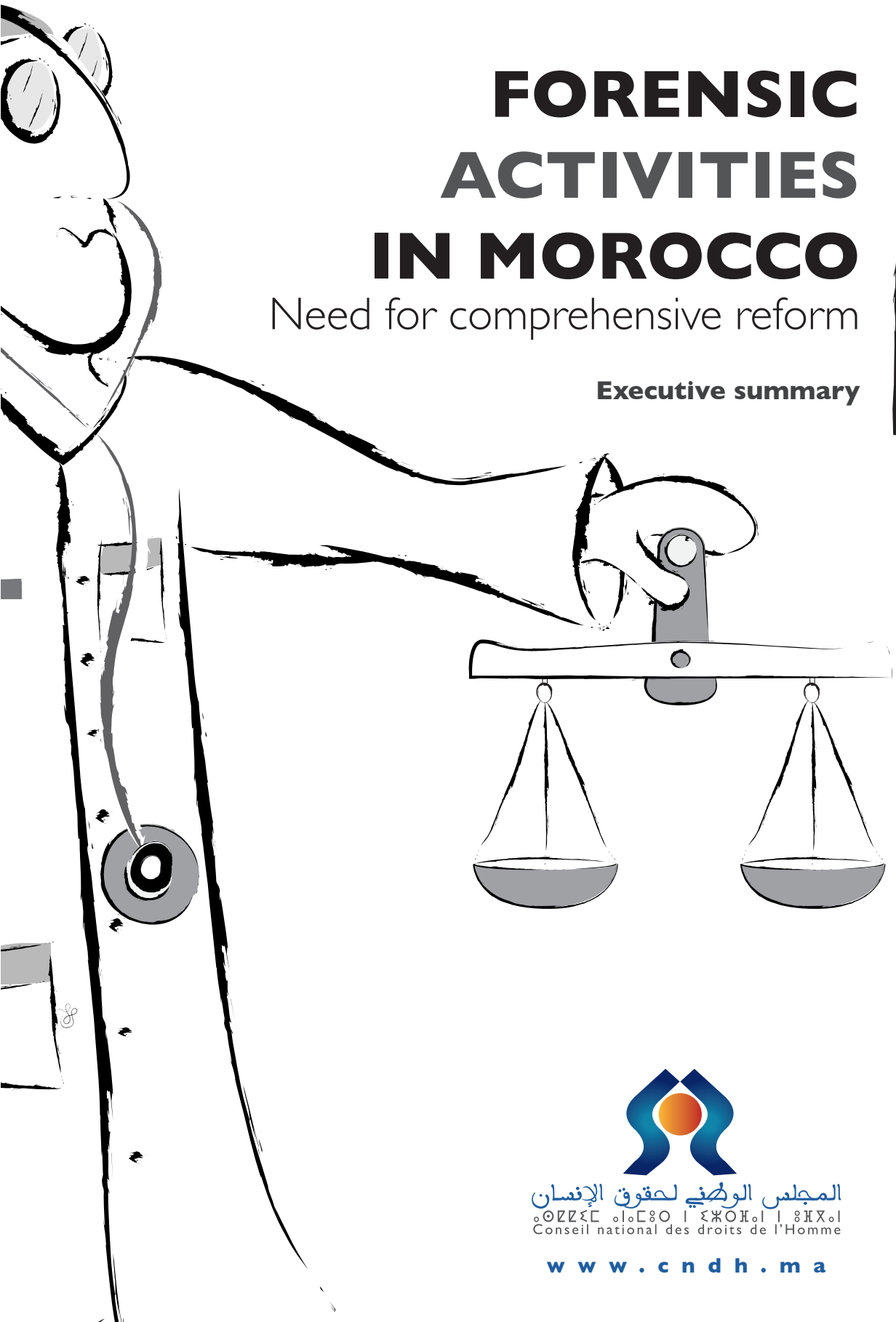
FORENSIC ACTIVITIES IN MOROCCO

Need for comprehensive reform

Executive summary



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I- FORENSIC ACTIVITIES: KEY ISSUE FOR THE PROPER ADMINISTRATION OF JUSTICE

Forensic activity is an important issue for the proper administration of both criminal and civil justice. It plays a decisive role in the criminal investigation of crimes against the life and physical integrity of individuals (carrying out at-the-scene forensic examination or autopsy in case of death, and issuing medico-legal certificates to victims of intentional or unintentional injuries or sexual assault). Forensic findings are crucial in investigating ill-treatment or torture allegations, identifying victims of mass disasters or skeletal remains, and determining the age of both victims and alleged perpetrators. Similarly, medico-legal expertise is fundamental to the assessment of physical injury for the purpose of establishing compensation, the degree of the offender's liability, and the compatibility of a person's physical or psychological state with a restriction or deprivation of liberty, especially during police custody.

II- METHODOLOGY

Aware of the role of forensic medicine in ensuring access to a fair trial that respects the rights of the defense and the victims, and in a bid to contribute to the ongoing large-scale judicial reforms, the National Human Rights Council (CNDH) has commissioned a study of forensic activity to determine the terms of reforming this sector in Morocco.

This mission is consistent with the Equity and Reconciliation Commission's recommendations also highlighted in the 2009 report of the CNDH committee in charge of the follow up and monitoring of the implementation of these recommendations. In its report, the committee stressed the importance of developing forensic medicine services, strengthening human resources in this regard, increasing budgets and reviewing the hierarchical relationship with the ministry concerned with the forensic examinations.

This study was carried out by a multidisciplinary team and covered three areas of forensic medicine: thanatology, which includes autopsy and external postmortem examination, all kinds of medico-legal certificates, including those issued to women and child victims of violence, and finally medico-legal expert reports.

The team conducted a study of all relevant international human rights instruments and their report as well as Moroccan Law, which includes no fewer than 16 relevant reference textes (see appendix).

To better understand the specifics of the situation in Morocco and derive proposals for reform, the team examined forensic medicine in eleven countries, namely Tunisia, Algeria, France, Switzerland, Portugal, the Netherlands, Egypt, Sweden, Spain, Germany and Italy.

Following preliminary information and coordination meetings about visits and documentation with the central departments of the Ministry of Health, the Ministry of Justice and Freedoms and the Ministry of Interior's Directorate General of Local Authorities, the team visited courts of first instance, hospitals and municipal health offices in the following cities: Tangier, El Jadida, Safi, Khouribga, Rabat, Fez and Casablanca. This mission took place from January 18 to February 12, 2013.

The draft report was then discussed at a meeting held on May 21, 2013 with the representatives of the Royal Gendarmerie, the Health Ministry's directorates of litigation and hospitals, the Ministry of Justice and Freedoms' directorates of civil affairs and criminal affairs and pardon, the Interior Ministry's Directorate General of Local Authorities, and the Forensic Police Branch of the Directorate General of National Security. During this meeting, the participants approved the findings of the study and the relevance of the recommendations suggested in the report.

III- CURRENT SITUATION

Morocco has only 13 forensic medical specialists (including two assistant professors and one associate professor) and one academic hospital department in this discipline. Specific training has been provided in certain fields of forensic medicine: about 70 municipal health office doctors and 15 Royal Gendarmerie doctors have been trained in autopsy activities, and some 300 doctors from both the private and public sectors in expert reports.

III-1 Postmortem forensic activities

- These activities are performed either in hospital morgues or in municipal morgues;
- External postmortem examinations are rarely carried out at the scene;
- Most hospital morgues have dilapidated buildings, old cold storage facilities and insufficient or poor autopsy equipments. Municipal morgues are better equipped but are isolated from the hospital environment with its technical platform and multidisciplinary competencies;
- The number of physicians qualified to carry out autopsies is insufficient. With the exception of specialists in forensic medicine, hospital doctors who perform autopsies have no training in this area. Moreover, many physicians of municipal health offices trained in autopsy will retire soon, raising serious fears about succession in the short run;
- The physicians in charge of autopsies are not always informed about the challenges of the investigation. There is no framework for supervising or assessing their work, which contributes to their poor performance in criminal investigations;
- Remuneration for this work, as part of court costs in criminal matters, is very low (e.g. 100 dirhams for an autopsy) and does not cover the costs of structure and provision of premises and equipment by hospitals and municipalities.

III-2 Issuing of medico-legal certificates in hospitals

- This activity is not always structured and there are no premises dedicated to it;
- Counterfoil books are not widely used;
- There is no national reference framework for determining the duration of personal work incapacity and temporary work incapacity, and no definition of permanent disability;
- The public prosecutor has only hypothetical control over the quality of medico-legal certificates issued;
- Many certificates are barely legible, even for a physician. Their content is usually thin in objective findings, giving no basis for the estimated duration of incapacity;
- The use of requisitions to examine the injury is rare and is often limited to examinations for sexual violence. Examination of persons in custody is still a rare practice in Morocco;
- Hospital care units for women and child victims of violence can rarely be identified and lack drugs for emergency contraception or for the prevention and treatment of sexually transmitted infections. Forensic samples are exceptionally taken in cases of sexual assault.

III-3 Medico-legal expert reports

- These are usually assigned to medical practitioners included on the lists of the court of appeal experts, most of whom have no prior training in the examination and assessment of physical injury;
- Public sector medical practitioners, even those trained in forensic medicine – including medical educators and forensic medical examiners – are not permitted to appear on those lists because medico-legal expertise is an income-generating professional activity which cannot be combined with public service;
- Medico-legal experts are sometimes appointed with no account to their specialty, and only handful of experts are always appointed to draft expertise reports;
- Many medico-legal experts are also medical officers of insurance companies involved in the proceedings, which undermines the principle of independence and impartiality;
- Reporting duties are not standardized by the courts. Experts' practices are also uneven, both in terms of procedures and report drafting. The report rarely includes a discussion of the expert's findings, and the injuries are often described in a peremptory manner;
- Remuneration for medico-legal experts is very low (100 to 200 dirhams), especially in the context of legal aid.

IV- RECOMMENDATIONS FOR COMPREHENSIVE REFORM

IV-1 Creating a national institutional framework for forensic activity

The mission recommends setting up a central body responsible for designing and implementing a master plan for forensic medical activity, in the form of a national or higher council of forensic medicine including institutional stakeholders and relevant professionals. In implementing its policies and strategies, this council could be assisted by a national forensics institute placed under the financial, if not functional or statutory, authority of the Ministry of Justice and Freedoms, or endowed with broad administrative and financial autonomy.

IV-2 Establishing a legal and regulatory framework for forensic activities

This new body would be responsible for developing the legal and regulatory framework for forensic activities by taking measures such as:

- defining the qualifications required in order for medical practitioners to perform the different forensic activities;
- identifying the medical examiner's areas of intervention;
- defining the premises qualified to host forensic activities, by specifying their institutional affiliation, the required infrastructure and equipment standards and organizational arrangements;
- establishing norms and standards for the provision of the various forensic services.

IV-3 Placing public hospital service at the heart of forensic activity arrangements

- The integration of forensic medicine in hospitals would promote a comprehensive approach to the discipline, taking into account both pre- and postmortem forensic activity and the examination of victims and alleged perpetrators. In this context, autopsies would naturally be carried out in hospital morgues while clinical work would be conducted in special forensic units close to or inside emergency departments;
- However, municipal morgues in cities could provide support to existing or future hospital forensic departments;
- In other cities where autopsies are usually performed in hospitals, any new morgues created by municipalities should be set up in or near hospitals. Municipal health offices' physicians trained in autopsy practice would incorporate the forensic hospital staff;
- Alleged victims of sexual assault should be referred to the dedicated hospital forensic departments for multidisciplinary care. Victims of violence who have obtained medical certificates fixing a period of work incapacity of more than 20 days or proving permanent disability may also be referred, if necessary, to these departments upon a judicial order.

IV-4 Reviewing the regulations establishing eligibility criteria for inclusion on the lists of medico-legal experts

- Priority should be given to competence, regardless of whether the physician is from the private or public sector;
- The list of court experts should automatically include forensic medical specialists, who have chosen to serve justice through their profession;
- Priority on the list should be given to physicians trained in medico-legal expertise and compensation for injury.

IV-5 Improving training for all stakeholders

The training of all stakeholders should be significantly enhanced by:
- hiring medical educators in forensic medicine;
- creating forensic departments in academic hospitals as a first step;
- consolidating and enhancing supplementary training in certain fields of forensics.

IV-6 Ensuring fair and sustainable funding

- The development of forensic medicine should necessarily be accompanied by adequate funding of its services through legal costs, with a financial contribution to hospitals or municipalities in consideration of overheads;
- The institutionalization of forensic activities (e.g. in hospitals) should lead to the modification of the payment procedure by adopting a total annual allocation based on the volume of forensic activity.

APPENDIX

The following standards and declarations were examined when preparing this report:

INTERNATIONAL STANDARDS

1. The Commission on Human Rights resolution 2000/32 entitled "Human rights and forensic science", April 20, 2000.
2. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by United Nations General Assembly resolution 43/173 of December 9, 1988.
3. United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by UN General Assembly resolution 45/113 of December 14, 1990.
4. Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly on December 4, 2000 (resolution 55/89).
5. The Istanbul Protocol entitled "Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" published by the United Nations High Commissioner for Human Rights in 2005.
6. Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, recommended by the Economic and Social Council in its resolution 1989/65 of May 24, 1989.
7. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by UN General Assembly resolution 40/34 of November 29, 1985.
8. 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, adopted by UN General Assembly resolution 60/147 of December 16, 2005.
9. Declaration of the Rights of Mentally Retarded Persons, adopted by UN General Assembly on December 20, 1971.
10. Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment on his mission to Morocco, presented on February 28, 2013 at the twenty-second session of the Human Rights Council.
11. Recommendation No. R (99) 3 of the Council of Europe Committee of Ministers to Member States on the Harmonization of Medico-Legal Autopsy Rules, adopted on February 2, 1999 at the 658th meeting of Ministers' Deputies.

NATIONAL STANDARDS

1. Dahir (Royal Decree) No. 1-02-255 of October 3, 2002 on the Criminal Procedure Act as amended and supplemented by Acts No. 35-11, 58-11, 37-10, 36-10, 13-10, 24-05, 23-05 and 03-03.
2. Dahir No. 1-74-447 of Ramadan 11, 1394 on the Civil Procedure Act as amended and supplemented.
3. Dahir No. 1-84-177 of Muharram 6, 1405 (October 2, 1984) on compensation for victims of accidents caused by motorized land vehicles.
4. Dahir No. 1-86-238 of Rabia II 28, 1407 (December 31, 1986) promulgating Law No. 23-86 regulating the legal costs in criminal matters.
5. Dahir No. 1-60-223 of Ramadan 12, 1382 (February 6, 1963) amending in the form the Dahir of Dhu al-Hijjah 25, 1345 (June 25, 1927) on compensation for victims of occupational accidents.
6. Dahir of May 31, 1943 (Jumada I 26, 1362) extending the provisions of Dahir of June 25, 1927 to occupational diseases.
7. Decree No. 2-92-182 of Dhu al-Qa'da 22, 1413 (May 14, 1993) establishing the system of studies and examinations for graduation from medical specialty.
8. Decree No. 2-99-651 of Jumada II 25, 1420 (October 6, 1999) on the special status of the interdepartmental body of doctors, pharmacists and dentists.
9. Decree No. 2-84-744 of Rabia II 22, 1405 (January 14, 1985) on the functional scale of disability.
10. Order of the Resident General of June 8, 1953 on medical practitioners' code of ethics.
11. Order of the Director of Communications, Industrial Production and Labor of May 21, 1943 on the indicative scale of disability for use in the determination of permanent disability which may affect victims of occupational accidents.
12. Order of the Minister of Social Development, Solidarity, Employment and Vocational Training No. 919-99 dated Ramadan 14, 1420 (December 23, 1999) amending and supplementing the Order of the Minister of Labor and Social Affairs No. 100-68 of May 20, 1967 implementing Dahir of Jumada I 26, 1362 (May 31, 1943) on the extension of the provisions of Dahir of June 25, 1927 to occupational diseases.
13. Order of the Minister of Health No. 456-11 of Rajab 23, 1431 (July 6, 2010) establishing the standing orders of hospitals.
14. Order of the Minister of Labor and Social Affairs No. 101-68 of May 20, 1967 laying down special rules for the application of the legislation on compensation for occupational diseases in occupational pneumoconiosis.
15. Joint order of the Minister of Health and the Minister of Finance and Privatization No. 10-04 of Safar 3, 1425 (March 25, 2004) fixing the prices of services provided by hospitals and the units of the Ministry of Health, Official Gazette No. 5210 of May 6, 2004.
16. Circular of the Minister of Health No. 162 of December 17, 2010 on the free medico-legal certificates for abused women and children.

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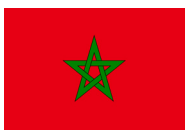

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