

OMCT
SOS-Torture Network

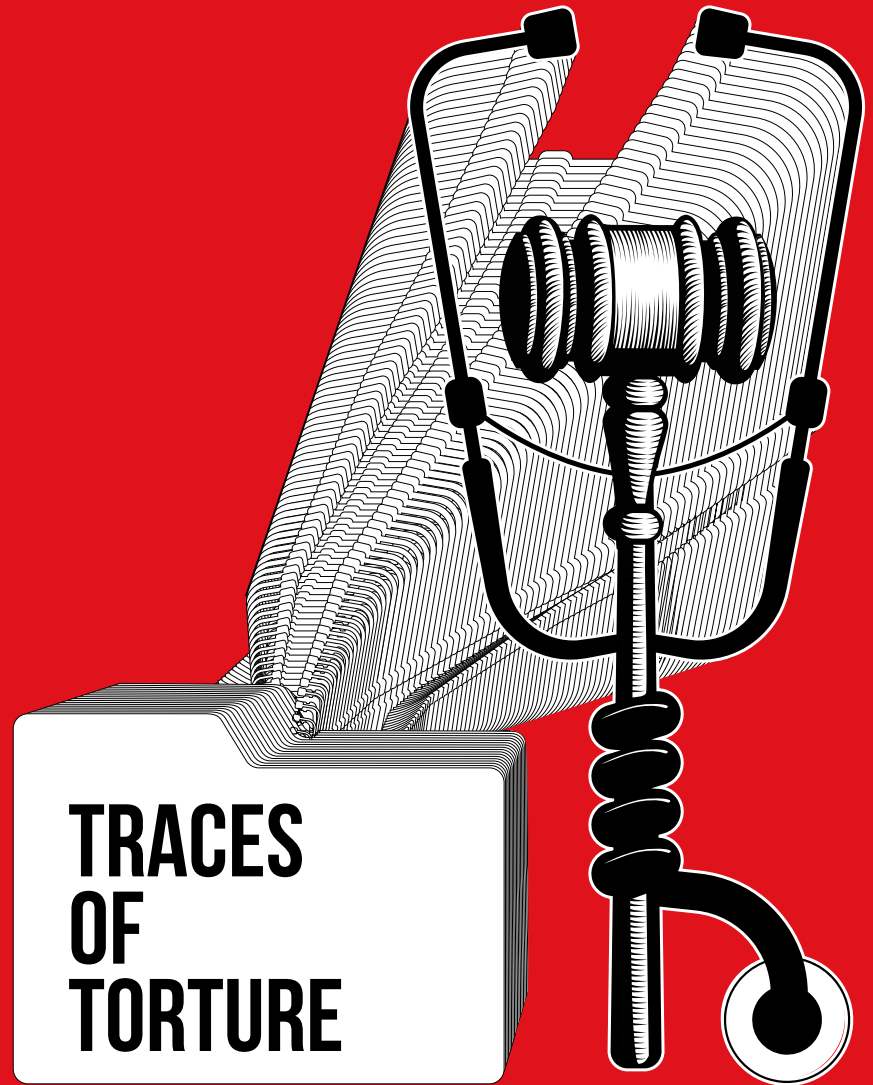
السنڨ
SABAO
مركز لوجوه - OMCT
Centre de Conseil

**MEDICAL
AND FORENSIC
INVESTIGATION
AND DOCUMENTATION**

**OF ALLEGATIONS
OF TORTURE AND OTHER
ILL-TREATMENT IN TUNISIA**

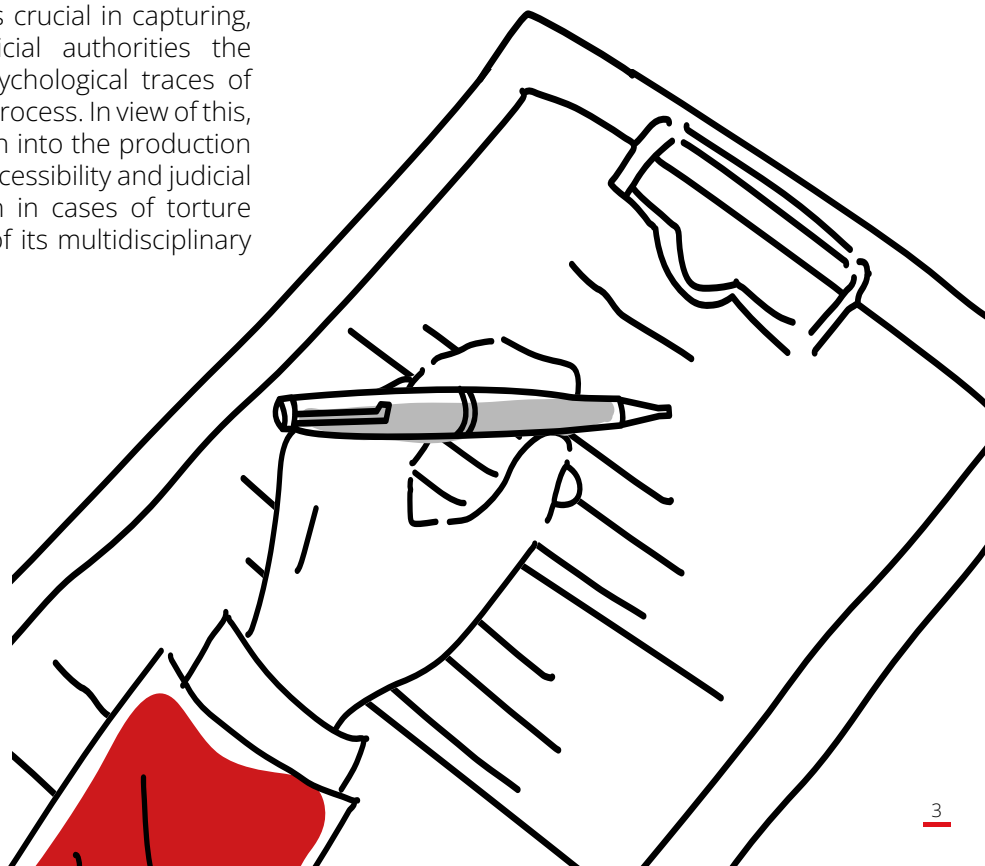
IN SHORT

**TRACES
OF
TORTURE**



ANALYSIS OF TRACES OF TORTURE AT A GLANCE

Tunis, February 13, 2024 - Medical and forensic documentation plays a crucial role in the fight against torture and ill-treatment. The work of health and legal professionals is crucial in capturing, documenting and presenting to the judicial authorities the immediate and permanent physical and psychological traces of torture, to be used as evidence in the judicial process. In view of this, the OMCT has decided to undertake research into the production (quality, promptness, rigor, independence), accessibility and judicial use of medical and forensic documentation in cases of torture and ill-treatment, based on the experience of its multidisciplinary assistance program SANAD.





The OMCT's report **«TRACES OF TORTURE - The medical and forensic investigation and documentation of cases of alleged torture and other ill-treatment in Tunisia»** is the result of analysis and reflection carried out with professionals from all specialties. This study provides a general overview of the procedural and structural obstacles that victims of violence face in practice, and that have a negative impact on the quality of medical and forensic documentation, its accessibility and its use during legal proceedings. The reality of the production, retrieval and use of each document is examined in the light of Tunisian law and international standards. The report considers a broad range of causes of the obstacles identified, such as the limited number of prison doctors available to document the state of health of detainees who have been victims of violence, the poor training of emergency physicians in forensic medicine which affects in turn their ability to issue good quality initial medical certificates, the pressure sometimes exerted by security agents on front-line doctors and the inadequacies characterizing certain forensic expertise orders.

The obstacles identified in this report are like bricks piling up to build a wall of impunity. For the most part, however, they are not specific to medical and forensic evidence alone, and affect other aspects of a victim's quest for justice. Some of the difficulties in obtaining prompt and satisfactory forensic evidence are linked to the victim's lack of prerogatives at the judicial investigation stage, which generally hinders his or her ability to have magistrates carry out certain investigative acts necessary to establish the truth.

Other obstacles to obtaining or recovering an initial medical certificate or a medical examination report issued to a person placed under police custody relate to threats or pressure exerted by the police on medical personnel. The pressure exerted by the security apparatus has an impact on other aspects of the judicial process, and is reflected in the obstruction of the delivery of other types of evidence (video recordings, attendance registers, etc.) and the frequent absence of accused police officers from their trials.

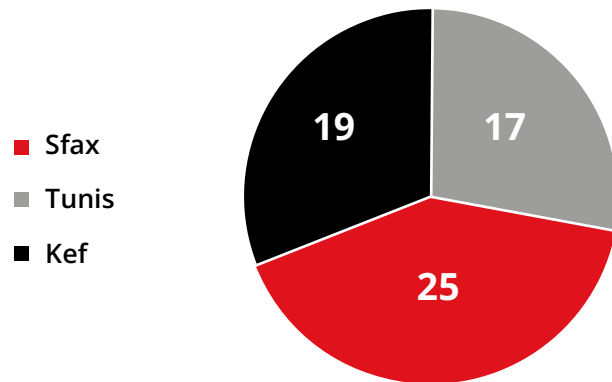
Similarly, structural obstacles such as lack of staff and financial resources in public hospitals, and the limited availability of specialised training cycles targeting medical staff affect the quality of medical and forensic documentation of violence and aggression. Similar obstacles also affect the judicial authorities.

In this sense, the report suggests that the Tunisian state should ensure that the normative framework and institutional safeguards are in place to prevent violations and guarantee accountability and redress.

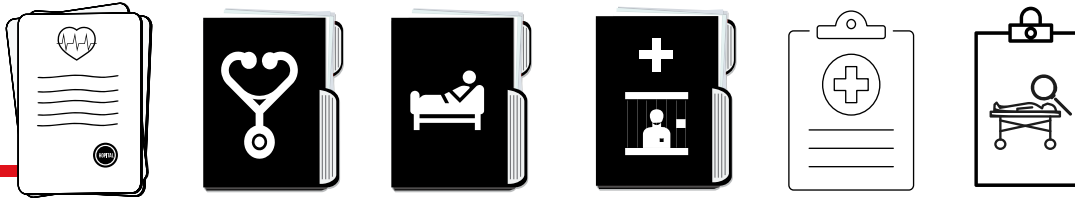
This report is part of a systematic effort carried out by SANAD to improve and strengthen the quality of medical and forensic evidence produced in the cases of SANAD beneficiaries, thereby promoting their access to justice and to reparation. This initial analysis has already given rise to interdisciplinary exchanges between health and legal professionals, with a view to identifying the reforms needed to resolve the obstacles jointly identified through the research. The OMCT wishes to contribute to the continuation of these exchanges, with the active involvement of the relevant administrative authorities.

Pending the implementation of far-reaching procedural and structural reforms, SANAD Elhaq and its network of lawyers are continuously working on the development of best practices to help victims of torture and ill-treatment gain access to quality medical and forensic evidence, and to ensure that this evidence is properly used by magistrates at all stages of the judicial process.

METHODOLOGY



- **10 years** of documentation and legal aid (comprehensive assistance)
- **15 months of research** and documentation on the topic
- **61 case** files of torture and ill treatment analyzed



122 medical and forensic documents analyzed

- **More than 30 semi-structured** interviews with concerned professionals
- **Four internal workshops** with the OMCT legal team (Sanad Elhaq)
- **One training**
- **One multidisciplinary roundtable**

International obligations in terms of medical and forensic investigation and documentation

The UN Convention against Torture, the reports of the UN Special Rapporteur on Torture and Cruel, Inhuman and Degrading Treatment and the revised version of the Istanbul Protocol (updated in 2022), provide useful guidance for examining the efforts of the Tunisian authorities to combat impunity through prompt and effective investigation and quality documentation.

The fundamental principles of any viable investigation into incidents of torture are :

- **Promptness:** Forensic institutions and state health agencies should ensure that medical and forensic assessments of allegations of torture and ill-treatment are carried out promptly.
- **Thoroughness:** Medical and forensic reports must be of sufficient quality, using standardized medical and forensic assessment report forms in line with Istanbul Protocol guidelines. The examination must include an assessment of needs in terms of treatment of injuries and illnesses, psychological assistance, counseling and follow-up. A psychological assessment of the alleged torture victim is always necessary and may form part of the physical examination or, in the absence of physical signs, be carried out on its own.
- **Competence:** The person providing the medical or forensic opinion must be an expert. The expert must possess certain qualifications to guarantee an informed conclusion. All healthcare professionals are morally bound by the ethical standards established by their professional bodies, and can be found guilty of professional misconduct if they deviate from professional standards without reasonable justification.

- **Impartiality / Independence:** An impartial examination requires a competent body, independent of the alleged perpetrator, with full investigative powers to obtain evidence and establish the facts. The police or other agents of the state may not interfere with the work or independence of the forensic scientist; medical professionals must be guaranteed full access to all relevant documents, including medical records, legal documents, the crime scene, witnesses and interrogation records.

Other important principles

- Victims of torture must be examined in private. Medical experts involved in the investigation of torture or ill-treatment must obtain the victim's informed consent prior to any examination. Access to a lawyer must be guaranteed at the time of the medical examination.
- The presence of police, prison officers or other law enforcement officials in the examination room may be grounds for invalidating a medical report.
- The judicial authority must respect the right of alleged victims of torture or ill-treatment and their family members to request an independent clinical assessment and report at any time.

TERMINOLOGY



Initial Medical Certificate (CMI)



Medical file or report



Hospitalization record/ Summary of hospitalization records



Medical file resulting from the medical exam conducted in police custody



Medical report resulting from the medical exam conducted upon admission to prison



Medical file of the detainee



Forensic expertise

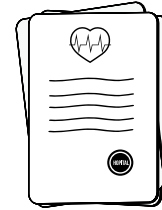


Autopsy

STAGES OF MEDICAL AND FORENSIC DOCUMENTATION AND INVESTIGATION IN TUNISIA

INITIAL MEDICAL CERTIFICATE (CMI) - directly after the episode of violence (normally at the time when the complaint for torture is filed)

The CMI will note and describe the initial injuries and establish the number of “days of rest” which usually indicates the level of total temporary disability (ITT). A good CMI should also mention the circumstances of the assault as alleged by the victim. It should be used to determine an initial correlation and consistency between the immediate physical and psychological trauma and the victim’s account. It should refer to additional exploratory diagnostic tests and reports.



FIRST FORENSIC EXPERTISE - directly after the initial injuries (normally in the investigation or inquiry phase)

The first forensic report aims to describe the sequelae and determine the correlation between the circumstances and nature of the assault (date, object used, description of the accounts of the victims compared to the sequelae) and the initial injuries/consequences of the torture as indicated in the CMI. In the conclusive opinion, the forensic expert should determine whether the injuries are consistent with the allegations and provide an indication of the percentage of permanent disability (IPP).

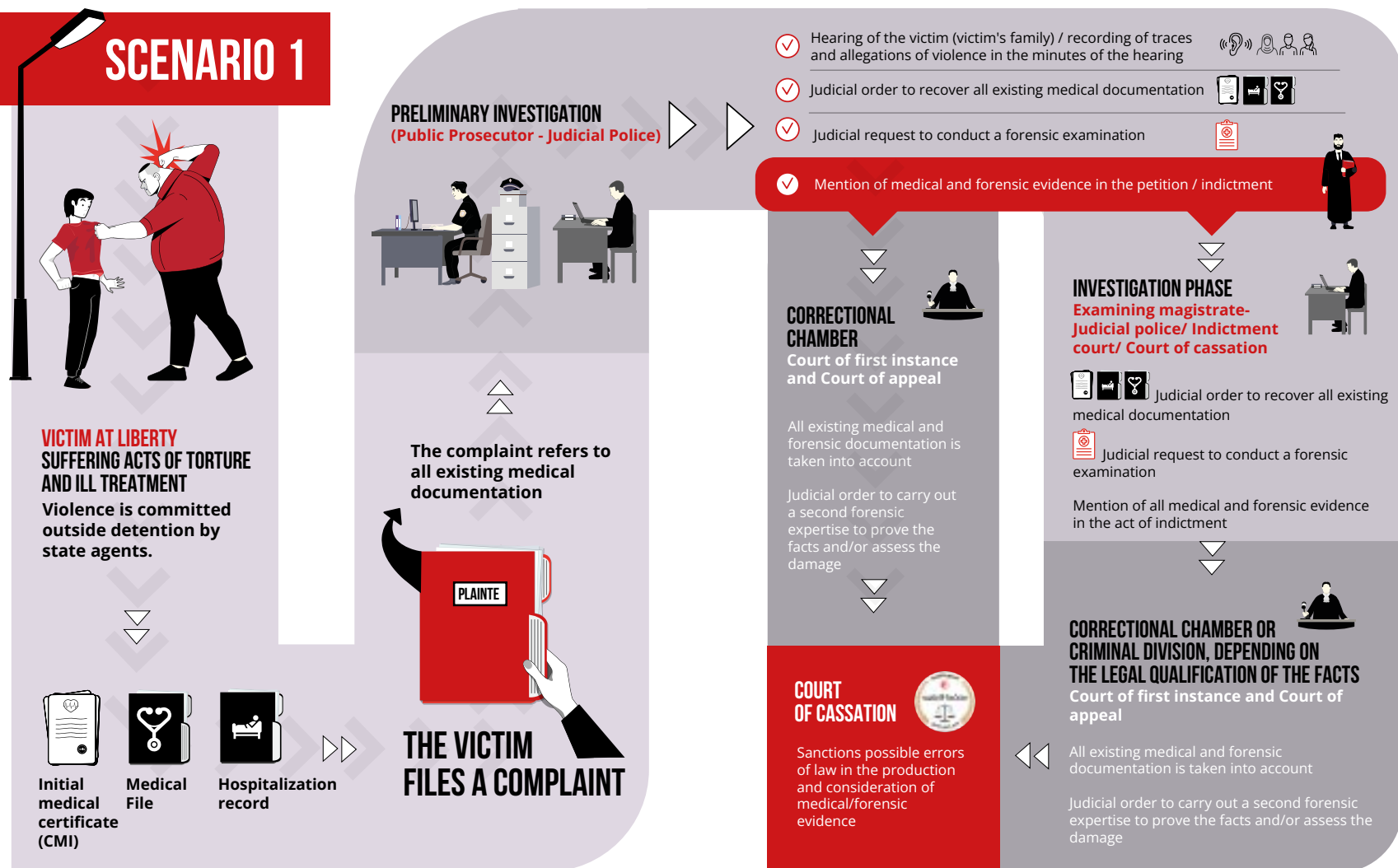
SECOND FORENSIC EXPERTISE - at the stage of consolidation of permanent after-effects (normally during the trial phase)

A second forensic expertise usually occurs in the trial phase and aims to determine the permanent physical and psychological sequelae and the percentage of permanent disability (IPP). This second expertise informs the decision of the judge related to the reparation measures to the victim of torture, to the level and type of penalties for the perpetrator and to assess State liability.



THE THEORY: SCENARIO 1

The path to justice for a victim who files a complaint for torture and/or ill-treatment s/he suffered at liberty



THE REALITY: Mohammed's story

Mohammed, 65, was beaten up by a policeman in plainclothes on December 28, 2019, after refusing to give him the right of way in a queue at a gas station. The blows were so severe that he lost consciousness and had to be transferred to hospital. The next day, he tried to obtain his initial medical certificate (CMI) but was unsuccessful. An acquaintance who works at the hospital told him that the alleged perpetrator had made sure he didn't get the CMI. Mohammed went to see a private doctor two days after he suffered the attack. The doctor found several bruises. A subsequent X-ray revealed a fractured nose. Mohammed lodged a complaint on January 1, 2020. Two weeks later, he finally obtained the CMI at the hospital thanks to a requisition he procured from the judicial police. He also received an order for a forensic medical examination. The forensic examination was carried out on January 23, 2020, and confirmed the after-effects of the attack, namely a graze wound and a fractured nose. It should be noted that the forensic expertise made no reference to the CMI or the private medical report. Two years later, Mohammed's aggressor was sentenced in absentia to six months' imprisonment and 1,000 TND for moral damages.

Obstacles to medical and forensic documentation for victims at liberty

Immediate medical documentation

- Victims of violence are sometimes unable to obtain initial medical certificates (CMIs) due to the pressure exerted on emergency doctors by police officers. However, CMIs issued by private doctors are not considered evidence in legal proceedings.
- Health authorities often state that victims need a «requisition» to access a CMI. Victims of violence are unaware of the fact that they have the right to request the CMI and all other associated medical examination results, without any procedural conditions.
- CMIs are often incomplete, with little or no description of the circumstances of the attack, too brief a description of the injuries, and no mention of psychological trauma or the degree of correlation between the circumstances of the attack and the after-effects observed. This often has an impact on the classification of the offence and on the amount and nature of the reparation measures.

Forensic documentation

- Delays in carrying out forensic examinations are often due to a lack of responsiveness on the part of the magistrate, who is slow to order them, but also to the limited number of forensic experts.
- Deficiencies in the quality of expert reports are due in particular to the incomplete drafting of court orders, which often do not indicate in sufficient detail the scope of the issues to be dealt with by the expert and do not provide sufficient details of the alleged crime and of the investigation to be carried out.
- Most forensic reports make no reference to the psychological effects of the assault on the victim, and do not include a detailed description of the circumstances of the alleged assault, as reported by the victim/patient.

THE THEORY: SCENARIO 2

The path to justice for a victim who files a complaint about an assault suffered in police custody

SCENARIO 2



VICTIM IN POLICE CUSTODY

SUFFERING ACTS OF TORTURE AND ILL TREATMENT



Medical file from medical exam during police custody



Initial medical certificate (CMI)



Hospitalization record



THE PROSECUTOR OR THE INVESTIGATING JUDGE in an inquiry against a detainee

PRELIMINARY INVESTIGATION (Public Prosecutor - Judicial Police)



IF THE PUBLIC PROSECUTOR DOES NOT AUTOMATICALLY OPEN AN INVESTIGATION, THE VICTIM FILES A COMPLAINT.

The complaint makes reference to all existing medical and forensic documentation



If the victim is placed under pretrial detention:

Medical exam conducted upon admission to prison



Takes note of the allegations of violence and its traces:

- ✓ Requests
 - An initial medical certificate (CMI)
 - A forensic expertise
- ✓ Denounces the facts to the public prosecutor to open an investigation into the violence

- ✓ Hearing of the victim (victim's family) / recording of traces and allegations of violence in the minutes of the hearing
- ✓ Judicial order to recover all existing medical documentation
- ✓ Judicial request to conduct a forensic examination
- ✓ Mention of medical and forensic evidence in the petition / indictment

CORRECTIONAL CHAMBER Court of first instance and Court of appeal



All existing medical and forensic documentation is taken into account

Judicial order to carry out a second forensic expertise to prove the facts and/or assess the damage



COURT OF CASSATION



Sanctions possible errors of law in the production and consideration of medical/forensic evidence

INVESTIGATION PHASE Examining magistrate- Judicial police/ Indictment court/ Court of cassation



Judicial order to recover all existing medical documentation

Judicial request to conduct a forensic examination

Mention of all medical and forensic evidence in the act of indictment



CORRECTIONAL CHAMBER OR CRIMINAL DIVISION, DEPENDING ON THE LEGAL QUALIFICATION OF THE FACTS Court of first instance and Court of appeal



All existing medical and forensic documentation is taken into account

Judicial order to carry out a second forensic expertise to prove the facts and/or assess the damage

THE REALITY: Ashref's story

Achref, 24, was arrested without an arrest warrant in the middle of the night while he was at his friends' home. Suspected of breaking into a car and stealing glasses, he was placed under police custody at a police station near Tunis. According to him, he was tortured in the cellar of the station. The officers allegedly beat him with sticks, fists and feet, sprayed him with tear gas and tied him to the wall in tight handcuffs until he lost consciousness. His family found him in hospital the next day, in a coma. According to the doctor, his prognosis was life-threatening. He had wounds around the wrists, on the cheek and on the arm. The police claimed that Achref had been hospitalized because of an overdose. Before lodging a complaint, his family tried to obtain the hospital report showing the traces of Achref's violent attack. The doctor who treated him refused to give them a report, and requested his family to present an authorization issued by the public prosecutor. At the time of writing, the family had only been able to obtain a medical document that Achref received by one of the doctors at La Rabta hospital and allegedly addressed to a doctor specialized in orthopedics. The medical report states that Achref had been admitted to the hospital in a state of toxic coma, suffering from a superficial tear and swelling in his wrists, as well as suppuration.

Obstacles to immediate medical documentation for victims in police custody

- Detainees have difficulty accessing a medical examination, either because they are not notified of their right to be submitted to an examination, or because they are not provided with such a possibility even if they request it. This is mainly due to limited availability of transport facilities between places of detention and the hospitals.
- When patients/victims are detained, the hospital keeps a copy of the initial medical certificate (CMI) and provides one to the police or prison officer. Detained patients/victims do not have access to the document.
- The results of the medical examination carried out on a person in police custody, in the form of a «medical form» or a CMI, remain in the hands of the police. These documents are not always accessible, even with an official request.
- Whether the person is hospitalized in a custodial state or not, hospital administration generally requires a court order to provide a copy of the hospital record, a summary of the hospital report, an initial medical certificate (CMI), a medical file, whereas such documents should be accessible upon simple request from the patient.
- The system for collecting and storing medical records in Tunisia is weak: health institution archives have not been digitized, and current archiving systems are poorly organized.

« The patient has the right to leave hospital with a copy of all biological or radiological paraclinical tests from the medical consultation. Unfortunately, patients and victims are not aware of their rights. (...) The archiving system in Tunisian hospitals is very weak and therefore it is very difficult to retrieve old medical files. »

Head of emergency service, Public hospital

THE THEORY: SCENARIO 3

The path to justice for a victim who is in detention and files a complaint about events that took place in prison

SCENARIO 3



VICTIM IN PRISON

SUFFERING ACTS OF TORTURE AND ILL TREATMENT COMMITTED BY GUARDS



Initial medical certificate (CMI)



Medical file of the detainee



Medical file from medical exam during police custody



Hospitalization record



Denounce violence to the public prosecutor, who opens an investigation

PENITENTIARY AUTHORITIES OR SENTENCE ENFORCEMENT JUDGE

PRELIMINARY INVESTIGATION (Public Prosecutor - Judicial Police)



IF THE PUBLIC PROSECUTOR DOES NOT AUTOMATICALLY OPEN AN INVESTIGATION, THE VICTIM FILES A COMPLAINT

The complaint makes reference to all existing medical and forensic documentation

✓ Hearing of the victim (victim's family) / recording of traces and allegations of violence in the minutes of the hearing



✓ Judicial order to recover all existing medical documentation



✓ Judicial request to conduct a forensic examination



✓ Mention of medical and forensic evidence in the petition / indictment



CORRECTIONAL CHAMBER

Court of first instance and Court of appeal

All existing medical and forensic documentation is taken into account

Judicial order to carry out a second forensic expertise to prove the facts and/or assess the damage



INVESTIGATION PHASE

Examining magistrate-
Judicial police/ Indictment
court/ Court of cassation



Judicial order to recover all existing medical documentation



Judicial request to conduct a forensic examination

Mention of all medical and forensic evidence in the act of indictment



CORRECTIONAL CHAMBER OR
CRIMINAL DIVISION, DEPENDING ON
THE LEGAL QUALIFICATION OF THE FACTS
Court of first instance and Court of appeal



COURT OF CASSATION



Sanctions possible errors of law in the production and consideration of medical/forensic evidence

All existing medical and forensic documentation is taken into account

Judicial order to carry out a second forensic expertise to prove the facts and/or assess the damage

THE REALITY: Moez's story

In March 2020, while on remand, Moez had a dispute with a guard who placed him in solitary confinement. During the period of solitary confinement, guards allegedly beat him and an officer raped him. He saw the prison doctor shortly afterwards, but didn't dare report the rape for fear of reprisals. A few months later, Moez asked to see the doctor. When the guard refused, he insisted. The guards kicked and punched him all over his body. He spent the night in solitary confinement, handcuffed to the cell door handle he was repeatedly beaten and humiliated. A few days later, his lawyer visited him, noted the marks of the blows and filed a complaint referring to the two episodes of violence, without mentioning the sexual assault of March 2020. The public prosecutor ordered a forensic examination, which was not carried out until a month later, in the presence of prison officers who remained in the room, on the grounds that the detainee was dangerous. The interview was so rushed that Moez did not dare talk about the rape. The conditions under which the report was drawn up make it totally biased and unusable for legal purposes. What's more, the report makes no mention of the psychological after-effects, which are at least as serious as the physical ones.

Obstacles concerning the forensic examination of a prisoner, the medical examination upon entry into prison and the detainee's medical file

Lack of promptness

- Not all new detainees are examined by doctors upon admission to prison.
- When the victim is in prison, transport from prison to the hospital is often difficult to organize, due to limited coordination between detention centers and emergency services.
- Additional examinations requested by the forensic pathologist can only be carried out at the hospital upon presentation of a requisition to the hospital department carrying out the exploration. Prison authorities often fail to provide the necessary requisitions for these examinations, preventing the forensic pathologist from concluding the examination.

Capacity of actors involved / examination conditions

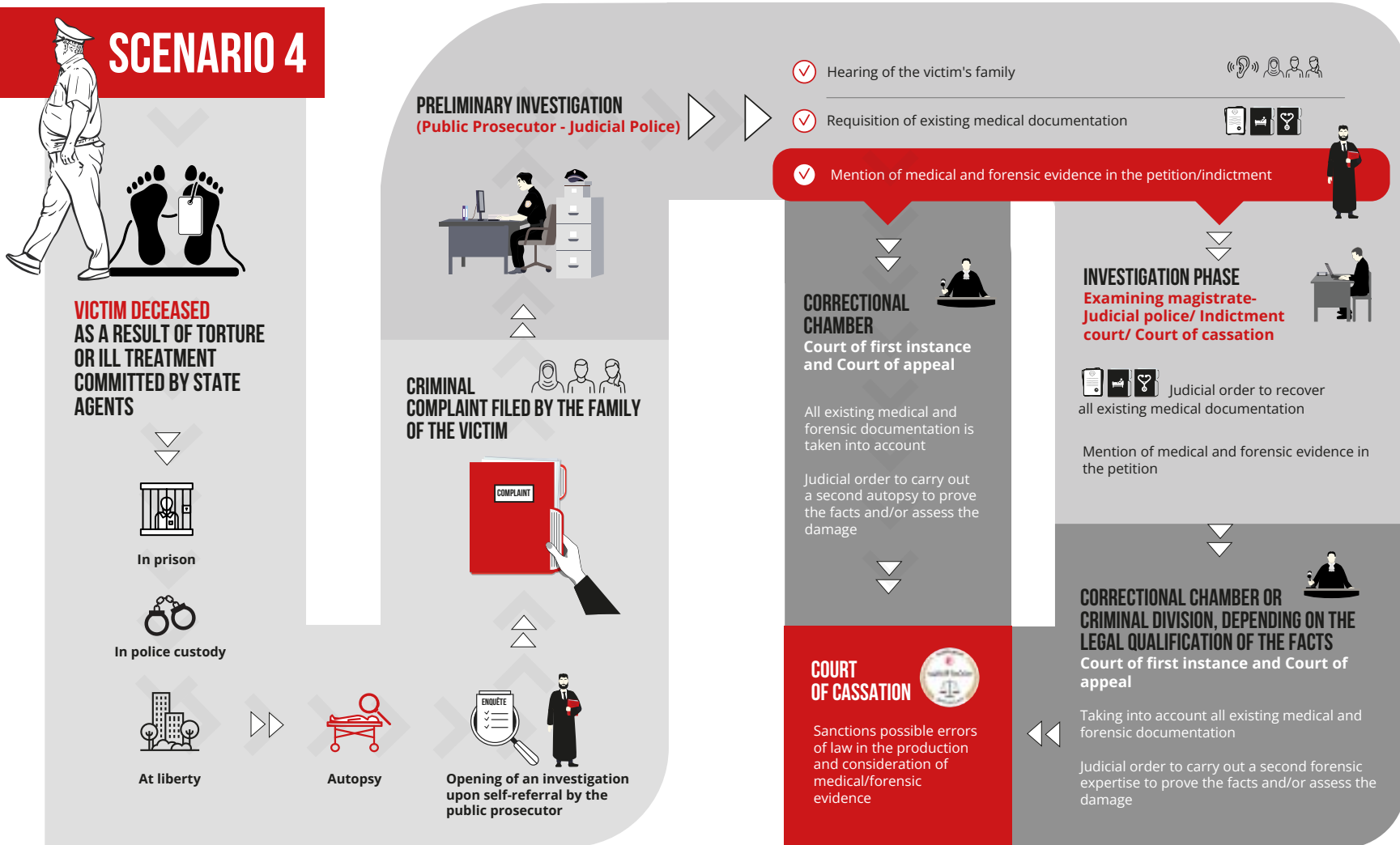
- The number of doctors working in prisons is insufficient and/or prison medical staff are not trained to recognize and document torture and/or ill treatment.
- The medical examination carried out on detainees in prison is sometimes carried out by prison officers with only two or three months' medical training.

Quality of medical examinations in prisons

- The medical examination of a prisoner who claims to have been assaulted by prison officers can lead to a conflict between the duty to care for sick prisoners and considerations relating to prison management and security.
- In some cases, the medical examination upon entry into prison takes place in the presence of prison officers, which has an impact on the quality and independence of the examination.

THE THEORY: SCENARIO 4

The path to justice for a victim who has died as a result of torture or ill-treatment



THE REALITY: Oussama's story

Oussama suffers from a mental illness and sometimes becomes violent. During one of his outbursts, his mother contacted the police station so that officers could help her calm down her son, as they had done several times before. This time, the officers transferred Oussama to Bouchoucha, a police custody center. He was then remanded in detention to the Mornaguia civil prison, where he died under mysterious circumstances the following day. An investigation was opened ex officio. The examining magistrate obtained a copy of the medical examination carried out upon his admission to prison. The medical report indicated that Oussama had not been attacked, but the doctor mentioned the fact that the patient was mute and had bruises and abrasions on his body. No details were given of the injuries that could help identify the date and type of violence.

An autopsy was ordered and the report sent to the courts four months later. The report refers to the medical examination upon admission to prison and confirms the presence of numerous bruises and abrasions on the Oussama's body. The autopsy report considers that these traumatic lesions are superficial and could not have caused death on their own. The expert report concluded that Oussama died as a result of pulmonary edema, the origin of which could not be precisely determined, whereas the autopsy of the corpse showed that there was no edema in the lungs. According to his family, the deceased was not suffering from any physical illness.

The autopsy report does not shed light on the circumstances and causes of death in such a way as to rule out a traumatic death. It provides medical information that should have been used by the examining magistrate to guide his investigation. The judge simply dismissed the case.

Obstacles to autopsy

The final autopsy report is often ready to be sent to the judicial authorities weeks or even months after the victim's death, due to the :

- Delays in carrying out the additional tests needed to establish the cause and circumstances of death. These samples must be forwarded by police officers to the various laboratories, but unfortunately, the police sometimes take weeks or even months before transferring the samples, thus delaying the analysis and the results.
- Toxicology laboratories in Tunisia are scarce (four or five nationwide) and lack specialization in post-mortem analysis.
- Autopsy reports often fail to clarify the circumstances of the death and the correlation between the death and the alleged acts of violence, as the autopsy order does not refer to the elements of the alleged crime and does not specify the questions to be clarified. This leads forensic doctors to limit their assessment to the immediate cause of death.

« The autopsy should tell the story of death beyond the fact that certain organs have ceased to function. For this to happen, it would be necessary to have access to the elements of the crime to to eyewitness accounts. Depending on the questions posed in the judicial order, the expert may decide to meet with the family of the deceased, their lawyer and witnesses. »

Forensic doctor

THE ROLE OF THE LAWYER

STAGE 1 : Production of medical and forensic documentation



Initial Medical Certificate (CMI) : The lawyer will advise his/her client, who has been the victim of an assault, to have a CMI drawn up by hospital authorities.



Initial Medical Certificate (CMI) in police custody or in detention: If the client suffered violence while in police custody or in prison, the lawyer will insist that the relevant authorities (judicial police, prosecutor, examining magistrate, prison management) issue a CMI to him/her; or that the client undergoes or is submitted directly to a forensic examination.



Documentation in the legal file: In the event of police custody, the lawyer will insist that the prosecutor or investigating judge records the allegations and reports any traces of violence in the official minutes of the judicial process.



First forensic expertise: The lawyer must require the public prosecutor to order a forensic examination for his/her client/s, even when they possess immediate medical documentation (such as the CMI, hospitalization report or a report issued by an independent doctor/ treating physician). It is important to insist on this request as early as during the preliminary investigation phase, as it often happens that the case never goes to trial, or that the public prosecutor qualifies the facts as violence and sends the case straight to trial before a correctional chamber. To guide the judge in drafting an order for forensic expertise, the lawyer can specify the elements to be studied by the forensic doctor to ensure that the expertise complies with the requirements of the Istanbul Protocol, and includes a psychological analysis of the effects of violence.

Second forensic report: If the forensic report does not meet the standards set out in the Istanbul Protocol, the lawyer may request a second opinion, in which case he/she must support his/her request with a critical analysis of the forensic report.





STAGE 2: Recovery of medical and forensic documentation:

SANAD's experience shows that prosecutors and investigating judges are often reluctant to request copies of relevant medical documents concerning the victim produced by hospitals and/or prison health authorities. In such cases, the lawyer must try to obtain them by submitting a request to the president of the court of first instance. It is the lawyer's duty to make proper use of medical evidence in the complaint and in various submissions at all stages of legal proceedings. In particular, he/she must use it to support his/her claim for the adequate legal qualification of violence in order to be able to request further investigation if the medical file reveals injuries not mentioned during the investigation phase, and/or to support claims for comprehensive reparation measures.

STAGE 3: Use of medical and forensic documentation:

It is the lawyer's duty to make proper use of the medical evidence in the complaint and in his briefs and submissions at all stages of the proceedings. In particular, he must use it to support a legal qualification, request a further investigation if the medical file reveals injuries not mentioned in the investigation, and make claims for damages.





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