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# HUMAN RIGHTS WATCH

## WOMEN'S RIGHTS PROJECT

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### A MATTER OF POWER

## STATE CONTROL OF WOMEN'S VIRGINITY IN TURKEY

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## I. INTRODUCTION

This problem had become horrifying. Virginity exams were often done by police taking women to forensic medicine or state hospitals. This practice is contrary to universal laws of humanity and to medical ethics. We have let doctors know that they are not required to perform this exam. But we know some doctors still do it, just as some doctors take a prisoner's heartbeat during torture.<sup>1</sup>

In separate incidents in the spring of 1992, two female high school students killed themselves after school authorities ordered them, along with several other female students, to submit to virginity control exams.<sup>2</sup> In one incident, on April 27 in the town of Kutahya, four girls were taken by school authorities and family members to Simav State Hospital to have their hymens examined after being spotted picnicking in the woods with boys. In a separate incident in May 1992, a girl ran away from home in Mugla-Ula upon learning that the director of her school had urged her father to take her for a virginity exam. She was found dead several days later. Her father had a virginity exam performed upon his dead daughter.<sup>3</sup>

Press reports of the deaths briefly caught the attention of the Turkish public.<sup>4</sup> Women's groups in Ankara responded to reports of the girls' deaths by holding a press conference denouncing the practice of forcibly examining girls and women in order to establish their virginity.<sup>5</sup> Some government officials condemned the involvement of the school directors in the forced exams. Turkan Akyol, Minister of Women's Affairs, was quoted as saying, "I find this very ugly, very humiliating. I'm going to do everything I can on this subject. ...With precautions, we can avoid the repetition of these kinds of incidents. All of the officials who dare to create these incidents will be punished."<sup>6</sup>

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<sup>1</sup> Interview, Dr. Nesrin Cobanoglu, M.D., Ankara, July 12, 1993.

<sup>2</sup> The terms "virginity control" and "virginity control exam" are used to refer to gynecological examinations undertaken to determine the status of the hymen. According to Prof. Dr. Ozdemir Kulusayin, M.D., Director of Istanbul Forensic Medicine, the purpose of such examinations is to establish whether the hymen was broken as a result of sexual intercourse and when the hymen was broken. Some exams are performed upon women accused or suspected of prostitution for the purpose not only of determining whether they are virgins but also whether they have had recent sexual intercourse. In such cases, a ruptured hymen and evidence of recent sexual activity are both potential evidence of prostitution.

Dr. Kulusayin specified that it is important to have virginity exams performed by specialists because only they are familiar with the many possible appearances of the hymen. He also acknowledged that there are "technical problems involved" in assessing the status of the hymen because it is very soft tissue that usually heals itself within seven to ten days. Interview, Istanbul, July 9, 1993. Other gynecologists indicate that an examination of the hymen should not be considered conclusive evidence of lost virginity. Interview, Dr. Nahid Toubia, M.D., New York, January 1994.

The terms "vaginal" or "gynecological" exams are used to refer to the general medical procedure whether undertaken for health or other reasons.

<sup>3</sup> "Olduren bekaret," *Cumhuriyet*, (Turkey) May 9, 1992.

<sup>4</sup> See, e.g. Nadire Mater, "Sexual Control on Girl Students Leads to Suicide," Interpress Service Third World News Agency, May 15, 1992; "Bekaret kontrolune bir intihar daha," *Cumhuriyet*, (Turkey) May 8, 1992; "Hepimiz Guzide'nin atladigi yerdeyiz," *Cumhuriyet*, (Turkey) May 1, 1992; "Bir engizisyon cinayeti," *Aktuel* (Turkey).

<sup>5</sup> The women's section of the Ankara Human Rights Association held a press conference in front of the Ministry of Education because school officials were involved in forcing the girls to submit to virginity exams. The statement included a demand for action against the involved school officials.

<sup>6</sup> "Minister Akyol: 'Those who check virginity are going to be punished,'" *Cumhuriyet*, May 12, 1992. Vali Lale Aytaman, the female governor of the Mugla province, also spoke out against virginity exams in a newspaper interview. "Kadin Vali kendini de sucladi," *Sayfa*, (Turkey) May 13, 1992.

Despite Minister Akyol's commitment to do everything she can on this subject, the Turkish government has failed adequately both to prohibit the use of forcible virginity control exams, including by its police, or to punish those state agents who engage in it. The Mugla school director was suspended, but he reportedly was reinstated to his post in August 1992, just three months after his suspension and in time for the start of the next school year.<sup>7</sup>

In a mission to Turkey in July 1993, Human Rights Watch (HRW) investigated the prevalence of forcible virginity control exams and the role of the government in conducting or tolerating such exams. Although the actual extent of the abuse is unknown, interviews with doctors, lawyers and local women's and human rights activists revealed that the threat of such exams follows women through their lives. We found that virginity exams are forced by law enforcement officials upon female political detainees and common criminal suspects charged with "immodest" behavior or alleged prostitution.<sup>8</sup> We also found evidence of such exams being performed on hospital patients, state dormitory residents and women applying for government jobs. Families also subject their female children to virginity exams, often at the hands of state medical professionals.

This report focuses on the role of the Turkish government in committing and tolerating forcible virginity control exams. It documents the direct imposition of such exams by police on women in their custody and by government employees on women in other state institutions. It also exposes the involvement of state officials in virginity control exams instigated by private individuals.

At the root of the pervasive imposition of virginity control exams in Turkey, whether at the hands of the state or private individuals, is the presumption that female virginity is a legitimate interest of the family, the community and, ultimately, the state. As a result, forcible examinations to verify female virginity are not only deemed justifiable, but also are seen as legitimately overriding the individual rights of women to bodily integrity, privacy and equality before the law.

HRW can foresee a situation in which a voluntary gynecological exam at the state's behest might be legitimate, for example, in order to collect evidence relating to a rape charge. We, however, find no legitimate rationale whatsoever for forcible virginity exams. We conclude that the state's use of force in conducting such exams is unjustified, that the emphasis on female virginity is itself inherently discriminatory and that, in any case, virginity is irrelevant as evidence. The Turkish authorities' involvement in or tolerance of compulsory virginity control exams violates not only Turkey's obligations to guarantee its citizens equal protection under law, but also its duty to protect their bodily integrity and privacy.

In denouncing forcible virginity control exams, HRW does not take issue with Turkey's authority to determine what constitutes acceptable public conduct *per se*. Rather, we oppose any such determination that involves or results in the denial of fundamental human rights. HRW calls on Turkey to denounce forced virginity exams as a human rights abuse and, in particular, to end the involvement of the police and other state agents in the practice. Allegations of forced virginity exams should be investigated and those responsible held to account.

## II. BACKGROUND

This is a way for men to control women. Why do men want women to be untouched? It is a matter of power.

-- Canan Arin, Istanbul attorney and activist

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<sup>7</sup> Interview with F., Human Rights Association, Ankara, July 13, 1993.

<sup>8</sup>The Turkish police, or Security Department, is divided into divisions with different responsibilities. The first division is the Anti-Terror Department which monitors illegal political activities. The second division is the Public Order Department which is responsible for policing prostitution and offenses described by the Turkish criminal code and the police duty and authority law as violating public order.

This report focuses primarily on the imposition of virginity control exams on women by police and other state agents. However, in order to understand the state's use of forcible virginity exams, it is necessary to examine the social and legal context that the state's regulation of female virginity both reflects and perpetuates.

### Social Context

The focus on female virginity is not exclusive to Turkey. In societies as diverse as China and Italy, female virginity is emphasized as an important social norm that operates as a means of controlling women's behavior. Women who compromise their reputations as virgins may be regarded as unmarriageable or may be reviled by their family members. The threat of such consequences compels women to conform to the behavioral standards deemed honorable in their community.<sup>9</sup>

In many communities in Turkey, as elsewhere, women are expected to be virgins, or "girls," until they marry. A doctor who has been asked repeatedly to perform virginity exams stated: "It is very common if a woman doesn't bleed on her wedding night for her to be taken for virginity control."<sup>10</sup> A woman's virginity is understood to represent her and her family's honor.<sup>11</sup> If an unmarried woman is believed not to be a virgin, she has compromised her family's reputation and irrevocably damaged her own honor.

A counselor who staffs Turkey's only independent shelter for battered women told us the story of a former resident of the shelter who was raped when she was in her early teens. She told her family of the crime, and they took her for a virginity exam. After she was found not to be a virgin, her family denied her food and beat her for damaging the family honor. According to the counselor, the young woman ran away to Istanbul, but had no money and no hope of marrying because of her lack of virginity. She began working as a prostitute. Later she married and had four children, but throughout the marriage her husband beat her and taunted her for not being a virgin at the time of their marriage.<sup>12</sup>

For many women, damaged honor virtually ends any possibility of marriage. The behavior of unmarried women therefore is guarded closely in order to protect them from even the suggestion of inappropriate sexual activity. In addition, any physical rupture of the hymen, regardless of its connection to sexual activity, is considered evidence of lost virginity. "Hymens are sacred.

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<sup>9</sup> See Victoria Goddard, "Honour and shame: the control of women's sexuality and group identity in Naples," in Pat Caplan, ed., *The Cultural Construction of Sexuality* (New York: Tavistock Publications, 1987); Xiao Zhou, "Virginity and Premarital Sex in Contemporary China," *Feminist Studies* 15, no.2, 279-288 (Summer 1989).

<sup>10</sup> Interview, Dr. Selma Gungor, M.D., Ankara, July 12, 1993.

<sup>11</sup> Turkey is not alone in associating a woman's honor, as well as her family's honor, with her chastity. In Andalusian Spain, for example, the honor of a man rests upon the sexual purity of his mother, sisters, wife and daughters and his ability to defend their virtue. The Spanish penal code criminalizes offenses against honor and recognizes the defense of honor as justifying certain criminal conduct. Julian Pitt-Rivers, *The Fate of Shechem or The Politics of Sex: Essays in the Anthropology of the Mediterranean* (London: Cambridge University Press, 1977), 23-24. In Brazil, "social norms allow that a man can legitimately kill his allegedly adulterous wife on the grounds of honor." Women's Rights Project/Americas Watch, *Criminal Injustice: Violence Against Women in Brazil* (New York: Human Rights Watch, 1991), p. 24. Juries continue to apply the honor defense and to acquit men of wife-murder even though Brazil's highest court has rejected the honor defense. In Algeria, women may be required to "prove" their virginity prior to obtaining a marriage license. A woman's parents request a doctor's certification of virginity and place the document in the wedding basket. Presentation of Malika Ben Baraka, Conference on Sexual Coercion and Women's Reproductive Health, New York, Nov. 22-23, 1993. In China, too, loss of a woman's virginity is considered a dishonor to her family. Zhou, "Virginity and Premarital Sex in Contemporary China." Less documented is the role of the state in enforcing or tolerating these biased and abusive social norms and practices.

<sup>12</sup> Interview at the Purple Roof Foundation, Istanbul, July 9, 1993. Another counselor at the center stated that during divorce proceedings, her husband argued that she should not have custody of their children and used against her the fact that she was not a virgin when they married. The court did not accept his argument.

If she has a torn hymen, that's what matters, regardless of how she got that way."<sup>13</sup> Doctors examining women at the direction of the police prepare reports in which they equate signs of a ruptured hymen -- regardless of its cause -- with loss of virginity. Medical reports obtained by HRW indicate that where signs of old breaks in the hymen, the cause of which could not be determined, were found, women being examined were labeled by the doctor: "not a virgin."<sup>14</sup>

Families act to protect the honor of their female members, and girls and women are expected to preserve both their physical virginity (i.e. an intact hymen) and their reputation for chastity. No such emphasis is placed on male virginity. Nor does family honor in any way rest on the preservation of male virginity prior to marriage. The application of these different standards to men and women results in women's behavior being assessed for its sexual implications by family members when men's behavior is not so scrutinized. This assumes its most extreme form as a forced virginity exam.

Social norms encourage families to act in defense of their honor, and legal norms protect their ability to do so. Turkish law, for example, reduces the penalty for murder if it is committed "against a newly born child with the purpose of protecting the dignity and reputation of the offender or of his wife, mother, daughter, grandchild, adopted daughter or sister."<sup>15</sup> Similarly, the punishment for the crime of leaving children unattended is reduced when committed "against an illegitimate child with the intention of preserving one's reputation for chastity, or that of one's wife, mother, descendant or sister."<sup>16</sup>

As the language of these laws suggests, both female and male honor are linked to the maintenance of female chastity, although not to male chastity. Thus female sexual conduct comes within the "legitimate" purview of male control. Paramount importance is placed on female virginity.

The link between the concept of honor sanctioned by the state and the discriminatory control of women's virginity establishes a context in which a woman's right to bodily integrity and privacy, and therefore not to be subjected to a forcible and invasive bodily exam, is subordinate to the family's interest in maintaining its honor. Thus, at the request of family members, state and private physicians perform virginity exams on women, whether they are adults or minors. In many instances, parents believe their actions protect their daughters' reputations either by (1) providing tangible "proof" that the girl or woman remains a virgin despite allegations to the contrary, or (2) establishing with medical evidence that the girl or woman's hymen was ruptured in an accident and not as a result of extramarital sexual activity.<sup>17</sup> If, for example, an unmarried woman's honor is challenged by members of the community on her wedding night, a previous virginity exam provides evidence establishing her virginity.

Where adult women are concerned, family monitoring of women's modesty is so prevalent in Turkish society that they rarely exercise their right to refuse virginity exams. According to a doctor who has performed numerous virginity exams at the behest of both state agents and family members, "Women accused of not being virgins, they have no choice but to consent [to virginity exams] because otherwise it is understood to mean that she is admitting that she is not a virgin. There is no real consent because of family and police pressures."<sup>18</sup>

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<sup>13</sup> Interview, Dr. Sebnem Fincanci, M.D., Istanbul, July 8, 1993.

<sup>14</sup> HRW has on file copies of medical reports prepared after a raid by the Urla Security Department on an Izmir hotel in July 1991. In the raid, several women were detained by the police for suspected prostitution. The women were taken to a state hospital and forced to undergo vaginal exams to determine their virginity and whether they had had recent sexual intercourse.

<sup>15</sup> Turkish Criminal Code, Article 453.

<sup>16</sup> Turkish Criminal Code, Article 475.

<sup>17</sup> "People believe this [virginity control] is done for the good of the girl. It is not, and this should be made clear." Interview, Dr. Selma Gungor, M.D., Ankara, July 12, 1993.

<sup>18</sup> Interview, Dr. Umit Biger, M.D., Istanbul, July 9, 1993.

Thus, a woman may be deterred from exercising her right to refuse because she sees it as a choice between vindicating her reputation by agreeing to the exam or tacitly admitting her loss of "honor" by refusing. In many instances, according to local activists, the woman may not be aware that she has a right to refuse. Even doctors are not assured of being allowed to respect a woman's right to refuse an exam, particularly when the exam is being conducted at the instigation of the state. In one instance,

In the summer of 1992, I was working at Cubuk State Hospital. A woman had run away from her village with her lover. She was arrested by the gendarmes and sent, with a letter from the section commander, to me for a virginity exam. I asked for her consent, and she refused the exam. So I wrote a report stating that I did not perform an exam because the woman refused. Thirty minutes later, I received a phone call from the section commander, who said, "What is this? Your refusal to perform a virginity exam is unheard of."<sup>19</sup>

To our knowledge, only limited efforts by individual doctors have been made to ensure that women are aware of their right to refuse virginity exams and are able to assert that right.

Where minor girls are concerned, Turkish law and custom defer to parents to determine whether it is in the best interest of their daughters to undergo virginity exams.<sup>20</sup> Thus, for example, parents have the power to file criminal charges on behalf of minor daughters that usually result in virginity exams or to take their daughters for virginity exams in other contexts when they deem it necessary. Although we support Turkish efforts to investigate and prosecute allegations of statutory rape, we emphasize that exams conducted for the purpose of determining virginity *per se* do not constitute pertinent evidence in such cases. Although international law does not clearly address parental initiation of virginity exams, HRW is concerned that the exams are not only invasive and degrading, but also irrelevant as evidence. The extent to which women are affected by the degradation inherent in forced virginity exams is demonstrated by the suicides of the high school girls following and in anticipation of such exams. Moreover, gynecologists indicate that the status of the hymen is not conclusive with regard to establishing virginity. Finally, while physical evidence of forced sexual activity, e.g. tears in vaginal tissue, bruises or the presence of semen, may prove relevant to a charge of seduction or other sexual offense, virginity *per se* is not relevant.

Given the invasive, degrading and ultimately irrelevant character of virginity control exams and the fact that, particularly where adult women are concerned, they often are conducted without the woman's consent, HRW strongly urges the Turkish government to discourage actively the use of virginity exams by parents as a means of overseeing their daughters' behavior. At a minimum, we call on Prime Minister Tansu Ciller to ensure that state doctors do not perform such exams.

### Legal Context

Rather than challenging the discriminatory and irrelevant emphasis on female virginity, Turkish criminal law and, ultimately, state practice reinforce it. Turkish criminal law makes female honor the state's business.<sup>21</sup> Many sex crimes are defined by Turkey's criminal code in terms of their impact on women's virginity and honor. In fact, sexual assaults against women are classified by law as "Felonies Against Public Decency and Family Order." In contrast, other forms of battery are considered "Felonies Against Individuals."

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<sup>19</sup> Interview, Dr. Murat Cobanoglu, M.D., Ankara, July 12, 1993.

<sup>20</sup> Interview, Canan Arin, Istanbul, July 7, 1993.

<sup>21</sup> The Turkish criminal code is based on the Italian criminal code of 1889, which was adopted by Turkey in 1926. The code has been greatly amended and over half of its articles changed. In addition to the criminal code, there are numerous penal statutes which pertain to specific crimes and regulate special fields of criminal law. Dr. Feyyaz Golcuklu, "Criminal Law," in *An Introduction to Turkish Law*, Tugrul Ansary and Don Wallace, Jr., eds. (Deventer, Netherlands: Kluwer Law and Taxation Publishers, 1987).

Crimes against public decency and family order include rape,<sup>22</sup> acting "indecently in public" or engaging in sexual intercourse in public,<sup>23</sup> removing "the virginity of a girl who has completed fifteen years of age, with a promise of marriage,"<sup>24</sup> and abducting an adult woman through force, violence, threats or fraud and "under lascivious feelings or with the intent of marriage."<sup>25</sup> The statutes defining many of these crimes explicitly refer to the virginity of the victim. For example, causing a woman or girl to lose her virginity after promising to marry her is a felony. Medically documented loss of virginity is considered evidence of the crimes of seduction, statutory rape and removing virginity with a promise of marriage.

A man charged with any of these crimes can escape criminal liability by marrying the woman bringing charges.<sup>26</sup> If family members suspect or know that a woman has had sexual intercourse, they may attempt to force a marriage between a daughter and her sexual partner by filing criminal charges with the police who then take her for an exam. Thus, if statutory rape or "removal of virginity" is charged by family members, a girl may be required to submit to a vaginal exam, in order to establish whether and when she lost her virginity.

The designation of sex crimes as violations of community or family morality has two consequences. First, it identifies the community and not the individual woman as the party that suffers harm consequent to the crime. Second, it defines the harm done in terms of a woman's honor rather than her physical integrity. The investigation and prosecution of sex crimes thus stress not the physical harm to the woman but rather whether her honor and thus public decency and family order have been compromised.<sup>27</sup> Consequently, sex crimes committed against non-virgins are perceived to be less serious offenses than those committed against virgins because the potential damage to family order is less grave. Until the late 1980s, for example, Article 438 of the Turkish Criminal Code provided reduced penalties for men convicted of rape and abduction where the victim was proved to be a prostitute.<sup>28</sup> The emphasis on public decency and family order in codifying sex crimes lays the groundwork for women's honor -- rather than the physical harm suffered -- to be the central question at issue in such investigations.

Virginity or lack thereof is not relevant to and does not determine the legitimacy of a claim of sexual abuse or assault. Nonetheless, prosecutors and judges may unfairly deem evidence of a woman's virginity to be relevant to any charge of sexual assault. Local doctors who conduct forensic exams in cases involving sexual assault told us that women charging rape often are examined for the purpose of determining, among other things, whether the rape caused the loss of their virginity, even though loss of virginity is not an element of the crime of rape.<sup>29</sup> Thus, women alleging sexual assault are judged in light of the invidious notion that a woman's sexuality, as indicated by her mode of dress, lifestyle or status as a virgin, implies consent to sexual relations or a lack of credibility. Assessing a woman's credibility as a witness in light of her reputation for modesty, or lack thereof, reinforces the different standards by which men and women's behavior are judged. Sexual behavior is considered normal for men, but reflects

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<sup>22</sup> Turkish Criminal Code, Article 416.

<sup>23</sup> Turkish Criminal Code, Article 419.

<sup>24</sup> Turkish Criminal Code, Article 423.

<sup>25</sup> Turkish Criminal Code, Article 429.

<sup>26</sup> Turkish Criminal Code, Articles 423 and 434.

<sup>27</sup> The law even provides a remedy for the perceived harm of lost honor by creating an incentive -- suspension of criminal prosecution -- for a man charged with certain of these crimes to marry his "victim" and thus minimize the consequences of her loss of honor.

<sup>28</sup> Article 438 was challenged in Turkey's constitutional court as violatory of the Constitution, but the court rejected the claim on the grounds that dishonest women, i.e. prostitutes, should not be treated the same as honest women. After much public debate, the Turkish parliament repealed the provision in 1988/89. Canan Arin, Report on Women's Status in Turkish Law [unpublished paper], September 27, 1991.

<sup>29</sup> Interview, Istanbul, July 8, 1993.

poorly on women, even casting doubt upon their honesty. Because the purpose of such exams should be to determine whether a woman was assaulted and not whether she is or was a virgin, any inquiry into the status of a woman's virginity is discriminatory and irrelevant to investigations of rape or sexual assault.

Nonetheless, gynecological exams are performed in the course of investigating most sex crimes<sup>30</sup> and are conducted in part for the purpose of determining whether the woman involved is a virgin. This not only invites discrimination in the adjudication of such crimes, but also is inconsistent with the Turkish criminal code. Local doctors, activists and lawyers concur that vaginal exams may be performed at the state's behest only (1) consequent to the filing of criminal charges and then only with the woman's willing participation in collecting evidence to support her charge, or (2) as a part of regular health checks for working prostitutes pursuant to Turkey's present law on prostitution. Moreover, gynecological exams pursuant to criminal charges may be performed only at the request of a prosecutor or judge.<sup>31</sup> Despite such regulations, state officials compel women to submit to vaginal exams without their consent and when no criminal charges have been filed alleging a sex crime.

The majority of forced virginity exams in Turkey appear to involve private individuals, as distinct from state agents, in a variety of situations, including those pertaining to sex crimes. In these cases, the state may or may not be directly involved. As noted, HRW calls on the Turkish authorities to discourage this practice by private individuals and to prohibit state officials from participating in it in any way. However, the primary focus of this report is the direct imposition of forced virginity exams by state agents on women either in police custody or in other state institutions. Section IV of this report documents several cases of political detainees held under the Anti-Terror law and women in state hospitals who were forced to undergo virginity control exams on the specious grounds that such exams protect the women from sexual abuse. The section also documents cases justified as legitimate enforcement of Turkey's prostitution and public morality laws. Whether against political detainees, common criminal suspects or women in other state institutions, the state's involvement in conducting such exams constitutes a clear violation of Turkey's obligations under both domestic and international law.

### III. DOMESTIC AND INTERNATIONAL PROTECTIONS

Turkish officials' participation in and failure to punish forcible or otherwise illegitimate virginity exams violate rights protected under both international and domestic law. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment protect individuals from cruel, inhuman and degrading treatment, establish the right to privacy, and require states party to protect these rights without discrimination of any kind.<sup>32</sup> Virginity exams committed in custody constitute cruel and inhuman treatment and clear violations of women's physical integrity. These exams are painful, degrading and frightening. At the behest of their jailers, women are compelled -- often under the threat of physical force -- to

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<sup>30</sup> When a woman files a criminal complaint alleging a sex crime, the court or prosecutor may direct that an examination be conducted for the purpose of gathering forensic evidence. The doctors responsible for performing gynecological exams in such cases are forensic physicians employed by the ministry of justice to act as court consultants. The police, however, have no independent authority to send women to forensic medicine for gynecological exams. A doctor asked by the police to perform such an exam is required to send the case back for authorization from a judge or prosecutor. Interview, Prof. Dr. Ozdemir Kulusayin, Director of Istanbul Forensic Medicine, Istanbul, July 9, 1993. Doctors referred to in this report as forensic physicians are employees of the ministry of justice.

<sup>31</sup> Interview, Dr. Ozdemir Kulusayin, Director of Istanbul Forensic Medicine, Istanbul, July 9, 1993.

<sup>32</sup> Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms prohibit cruel, inhuman or degrading treatment. Article 16 of the Torture Convention requires States Party to prevent cruel, inhuman or degrading treatment or punishment when committed by or with the acquiescence of a public official. The convention further obliges states to take specific steps -- education, monitoring, complaint procedures, investigations -- to prevent such treatment.

subject themselves to the probing hands and instruments of unknown doctors. Women victims attest that being forced to undress and undergo exams is degrading and intimidating both as a physical violation and for the threatened consequences.

Forced virginity exams also violate women's right to privacy as protected by the Turkish Constitution.<sup>33</sup> Both the Universal Declaration of Human Rights and the European Convention on Human Rights protect individuals against arbitrary interference with their right to privacy.<sup>34</sup> Sexual intercourse between consenting adults is not illegal in Turkey, thus the consensual sexual conduct of unmarried women is protected against the unwanted scrutiny of police and other state officials. Police have no legal justification for harassing women in their homes or on the street for suspected sexual conduct. Such scrutiny violates women's right to be free from arbitrary interference with their privacy and homes. The exams themselves violate the right to privacy by subjecting women's bodies to unwarranted and invasive searches.

The infliction of virginity exams also violates guarantees of freedom from discrimination found in the Universal Declaration on Human Rights, the European Convention on Human Rights, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>35</sup> -- all of which Turkey has ratified and which thus have the force of domestic law.<sup>36</sup> Under CEDAW, states party must, among other things, "repeal all national penal provisions which constitute discrimination against women."<sup>37</sup> Turkey's own constitution guarantees women freedom from discrimination.<sup>38</sup>

As the testimonies below demonstrate, the state discriminates against women by acting to control women's private, sexual practices with the threat or imposition of abuse to which men are not subjected.<sup>39</sup> Thus, although both men and women suffer torture or cruel and degrading treatment while in police custody or may be detained for improper behavior, only women are subject to degrading and abusive treatment pertaining to their sexual conduct. Moreover, the bias that maintains the legitimacy of the state's interest in women's sexuality is imbedded in laws and state practices that attempt to monitor women's, and not men's, sexual conduct. For example, if an unmarried couple staying in a hotel is detained for suspected prostitution, it is the woman who is questioned about her sexual conduct and examined for her virginity. In other words, her virginity or lack thereof may be

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<sup>33</sup> Article 17 of the Turkish Constitution provides, "The physical integrity of the individual shall not be violated except under medical necessity and in cases prescribed by law." The Turkish Constitution also specifically protects individuals' privacy. Article 20 states that "[e]veryone has the right to demand respect for his private and family life. Privacy of individual and family life cannot be violated. Exceptions necessitated by judiciary investigation and prosecution are reserved."

<sup>34</sup> Article 12 of the Universal Declaration and Article 8 of the European Convention protect the right to privacy. The Universal Declaration does not delimit the right to privacy. The European Convention, however, does specify that public authorities may not interfere with the right to privacy except under specific circumstances, including "for the protection of public health or morals."

<sup>35</sup> Universal Declaration of Human Rights, Article 7; European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 14; Convention on the Elimination of All Forms of Discrimination against Women, Article 2.

<sup>36</sup> Article 90 of the Turkish Constitution provides that international treaties ratified by the Turkish government have the force of domestic law.

<sup>37</sup> Convention on the Elimination of All Forms of Discrimination against Women, Article 2(g).

<sup>38</sup> Article 10 of the Turkish Constitution provides that "[a]ll individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such consideration."

<sup>39</sup> Although it may be argued that the status of men's virginity cannot be ascertained with a medical examination, neither can the status of women's virginity be determined conclusively with a gynecological examination. Yet only women are questioned about their virginity and selected as targets for invasive and degrading exams. Interview, Dr. Nahid Toubia, M.D., January 13, 1994. As a Turkish doctor told HRW, the fact that a woman's hymen is torn or damaged "is not necessarily evidence of sexual intercourse." Nonetheless, "if her hymen is ruptured, then she is not a virgin. Hymens are thought to be sacred. If the hymen is torn, this is what matters, no matter how it happened." Interview, Dr. Sebnem Korur Fincana, M.D., Istanbul, July 8, 1993.

considered evidence in an investigation of illegal prostitution whereas his sexual practices (or potential for spreading disease) are not considered relevant to the investigation. Nor is he threatened with or subjected to comparable invasions of his privacy and physical integrity.

The detention of women for suspected illegal prostitution and their subjection to virginity exams also raise questions regarding due process. The ICCPR states that "[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."<sup>40</sup> The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) provides a number of due process protections relevant to the arbitrary detention of Turkish women accused of illegal prostitution. First, it specifies that no one shall be detained without an effective and prompt opportunity to appear before a judicial or other authority and an opportunity to defend herself. A detained person has the right to know why she is being detained as well as the terms of her detention. Further, detained persons should not be denied the opportunity to communicate with family and counsel. Finally, the Body of Principles mandates that detainees be treated humanely and with respect for their dignity. "No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment."<sup>41</sup>

Turkish officials operate in flagrant violation of these principles. Evidence indicates that police detain women for suspected illegal prostitution or immoral activity without justification and without first conducting any kind of investigation to support their accusations. These women are not charged with the crime of practicing prostitution illegally. Nor are they brought before a prosecutor or judge. Instead, they are held without charge and forced to submit to gynecological exams. Some women are then held against their will and forced to undergo treatment if they are diagnosed with a sexually transmitted disease.

#### IV. ABUSE OF WOMEN IN CUSTODY

Despite obstacles to reporting incidents of forced virginity exams, the cases reported here, the testimony of doctors who have performed countless virginity exams and the work of Turkish women's rights activists support the assertion that women regularly are being compelled to submit to virginity examinations in a variety of circumstances. According to one psychiatrist who works primarily with victims of domestic violence and torture, "Virginity control does happen. It's just hard to get information because no one reports it."<sup>42</sup>

Powerful disincentives to reporting forced virginity exams help the state to hide its role in the continuing use of virginity control. Women fear social stigma, rejection by their families and the consequences of reporting to abusive or uninterested police or other authorities. Women do not come forward with testimony of abuse, so the state claims that no evidence exists to support general allegations of virginity control.

Press reports from 1986 through 1992 recount instances in which: (1) a fifteen-year-old girl detained by gendarmes in Diyarbakir was sent to a state hospital with a letter from the police requiring a virginity examination;<sup>43</sup> (2) Mete Altan, the head of the Security Department in the city of Adana, defended the practice of sending female political detainees for virginity exams and stated that police send "militant girls" for virginity exams to avoid future accusations of police abuse during interrogation;<sup>44</sup>

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<sup>40</sup> International Covenant on Civil and Political Rights, Article 9.

<sup>41</sup> Principles 1, 6, 11, 12, 13, 15 of *Body Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, U.N. General Assembly Resolution 43/173 of 9 December 1988.

<sup>42</sup> Interview, Dr. Sahika Yuksel, M.D., Istanbul, July 8, 1993.

<sup>43</sup> "15 yasindaki kiza bekaret kontrolu," *Ozgur Gundem*, (Turkey) June 20, 1992.

<sup>44</sup> Tekin, "Kiz militanlara bekaret kontrolu," *Cumhuriyet*, June 24, 1992.

(3) the director of a girls' dormitory attempted to force residents to undergo virginity exams;<sup>45</sup> and (4) police searching for the husband of a Kurdish woman forced her to undergo a vaginal exam ostensibly to determine whether she had had recent sexual relations with her husband.<sup>46</sup>

Turkish women's activists are convinced that reported cases are but a small number of the exams actually conducted under state authority.<sup>47</sup> However, collecting more evidence is exceedingly difficult. First, social pressures encourage women not to reveal such treatment. Women do not want their families to know that they were subjected to an invasive and humiliating vaginal exam, that their "honor," as represented by their reputation for chastity, has been challenged.<sup>48</sup> If a woman's family knows that she has been examined, they guard the information from other members of the community. If the exam provides "proof" that a woman is no longer a "girl,"<sup>49</sup> her family may ostracize her or take extreme measures to conceal what is perceived to be her and, by extension, their shame. Among the extreme measures may be surgery: "In the family situation, a woman will be isolated, humiliated. Sometimes families have the hymen repaired and keep the case a secret," said one doctor interviewed by Human Rights Watch.<sup>50</sup>

Second, women are not likely to report abusive, compulsory examinations to the authorities who, in many instances, are responsible for their mistreatment. Police or other officials who participate in abuse are likely to suppress reports of abuse and subject the complainant to further harassment. Other officials may dismiss claims of abuse as unimportant, thus demonstrating the state's apparent acceptance of the legitimacy of virginity exams.

Recently adopted legal reforms -- the Criminal Trials Procedure Law (CMUK) -- require physical examinations of detainees prior to and following interrogation so that doctors may examine detainees and report signs of torture.<sup>51</sup> Although the CMUK does not require virginity exams, police assert that women checked for their virginity will be protected against sexual assault in the same way that they are protected against other forms of torture or cruel treatment by a general physical examination. The fact that the state does not recognize that the exams themselves constitute cruel treatment testifies to the degree that this particular violation of women's rights is condoned by the state.

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<sup>45</sup> "Urperten Diyalog," *Gunaydin*, (Turkey) March 16, 1989; "kizlara cirkin soru," *Gunaydin*, March 15, 1992.

<sup>46</sup> "Kocasi aranan kadina cinsel temas kontrolu," *Cumhuriyet*, Sept. 3, 1986.

<sup>47</sup> In Ankara, the women's division of the Human Rights Association as well as a group of doctors opposed to virginity control staged campaigns to combat virginity control. As part of their efforts they established support groups for women to discuss their experiences of forced virginity exams and attempted to use their contacts to document the extent of the problem. Although women frequently spoke of past experiences or their knowledge of forced exams being performed on others, they consistently refused to reveal specific information about their own experiences. Interviews, Fevziye Sayilan, Human Rights Association, Ankara, July 13, 1993 and Dr. Nesrin Cobagnolu, M.D., Ankara, July 12, 1993.

<sup>48</sup> H., who was forced by security police to undergo virginity exams prior to and following her interrogation, stated that her family knew she had been detained but she would not tell them that she had been examined forcibly to determine her virginity. "I didn't want to tell my mother about this because she is of a mind that says a woman's virginity is sacred and private. She would have gone crazy if she had known. Kurdish women won't talk about this because it is a matter of honor." Interview, Istanbul, July 8, 1993.

<sup>49</sup> In Turkey, the terms "girl" and "virgin" are synonymous.

<sup>50</sup> Interview, Dr. Sahika Yuksel, M.D., Istanbul, July 8, 1993.

<sup>51</sup> Adopted in November 1992, the Criminal Trials Procedure Law (CMUK) purports to enhance protection of detainees from torture, incommunicado detention and arbitrary arrest. CMUK does not apply to individuals detained under the Anti-Terror Law. Among other things, CMUK requires that detainees be examined by physicians before and after interrogation in order to identify where torture occurs.

Moreover, even if one accepted that the exam might, in theory, have some protective value, in practice that has not proven to be the case. For example, the testimonies of victims of custodial abuse,<sup>52</sup> as well as doctors' allegations,<sup>53</sup> indicate that, in order to mask the abuse of detainees, police often force doctors to prepare false reports stating that they detect no signs of torture or mistreatment. In other cases, doctors working for the state agree to falsify their medical reports. Medical exams thus provide no incentive for police to refrain from rape or other forms of torture.

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<sup>52</sup> See, e.g., Helsinki Watch, *Broken Promises: Torture and Killings Continue in Turkey* (New York: Human Rights Watch, 1992).

<sup>53</sup> Interview, Dr. Mahmut Ortakaya, M.D., Diyarbakir Doctors' Association, Diyarbakir, July 15, 1993.

## Political Detainees

Turkish women and men are subject to torture and gross violations of their human rights while in custody whether for political or ordinary crimes.<sup>54</sup> In August 1992, twenty-six-year-old G. was picnicking in Adana with a group of people when the Anti-Terror Police detained her:

I told them I was pregnant. They took me into a dark room and told me to undress. I refused. About ten of them undressed me. They covered me with ice, all over, even my head. They attached electric wires to my hand and my nipples. They stood on my abdomen and pressed. I had been silent until then, but I screamed, "You are child murderers!" When I felt frozen, they took me out and kicked me to make my legs move. Then they gave me pressured water.<sup>55</sup>

Both men and women are raped while in custody.<sup>56</sup> Z., a twenty-five-year-old journalist for *Mucadele* (Struggle), a left-wing journal, was detained on June 21, 1993 during a raid on the journal's offices. After three days of interrogation and physical abuse, the police took her to the "torture room."

After they beat me, they undressed the lower half of my body. There were three of them. Two of them opened my legs and third did what he wanted with his sexual organ and his hand. Then the second person did this with my vagina and then from behind. I could not resist physically, and I couldn't chant slogans, so I screamed at them. They beat me a little more and then sent me to my cell.<sup>57</sup>

For women detainees, threats of rape often are compounded by police taunts that rape will deprive women of their virginity and their honor, prevent them from marrying and cause them to be ostracized by their families and communities. Detained by village guards<sup>58</sup> on June 29, 1993 and accused of supporting the Workers' Party of Kurdistan (PKK), S. was taunted by her captors that rape would rob her of her virginity and leave her unmarriageable.

When they took us to the local station, they put each of us in separate rooms. Then they told me that we shouldn't help the PKK; that they would kill us and rip us apart if we kept the PKK. When they were asking me questions they said, "If you don't talk, we'll rape you. Now you're engaged, but after we rape you no one will marry you." Then they took me to the torture place. They took off my clothes and put me in a tire and rolled it around the room. Then they gave me pressured water. I was blindfolded and naked. After that, one of them made me lie down. For four or five minutes he got on top of me. I felt pain and I was bleeding. Then he told me to get dressed. All I saw was that he was wearing soldier's pants. He didn't say anything, and he covered my mouth.

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<sup>54</sup> See, e.g., Helsinki Watch, *Broken Promises*; Helsinki Watch, *The Kurds of Turkey: Killings, Disappearances and Torture*, (New York: Human Rights Watch, 1993). On November 18, 1993, the UN Committee Against Torture released a report condemning the government of Turkey for "widespread, habitual, deliberate" and "systematic" torture. The U.N. report followed a similar condemnation of the Turkish government by the European Committee to Prevent Torture in December 1992.

<sup>55</sup> Interview, Istanbul, July 10, 1993. Police torture techniques include attacking detainees with highly-pressurized cold water.

<sup>56</sup> A Helsinki Watch report documenting torture of persons in custody cited incidents of rape of both men and women. Helsinki Watch, *Broken Promises*.

<sup>57</sup> Interview, Istanbul, July 10, 1993.

<sup>58</sup> The village guard system forces villagers to choose between acting as armed guards in service of the security forces, thus becoming targets for the PKK, or abandoning their villages. See Helsinki Watch, *The Kurds of Turkey*.

S. was released after three days. "They took me to a hill, and the village guard who took me said not to tell anyone what happened because they would kill me, and it would be bad for me if anyone knew."<sup>59</sup>

A., a young female member of Ozgur-Der, an extremist political party that advocates political violence, told HRW that during each of the eleven times she has been detained since 1990, she has been threatened with rape, stripped and sexually abused. She stated that police repeatedly harassed her about whether she was a virgin, and, on one occasion, threatened to tell her brother, also in custody, that they had raped her. On July 12, 1991, the Anti-Terror Police raided the Istanbul office of Ozgur-Der and detained sixty-one people including A. On the second day of her detention, A. stated that she was blindfolded and dragged by her hair from her cell to an interrogation room.

I think there were ten to fifteen of them. They pushed me from man to man. I think they were standing in a circle. They said, "While we are fucking her we will close our eyes because she is so ugly. You are an old maid." They told me to take off my clothes and asked, "Are you still a girl? We will make you lose your virginity. We'll stick our fingers in you, and you won't be a virgin anymore. Don't worry if we take your virginity, then we'll fuck you and marry you or give you to the prostitutes where you can get fucked all you want." I was naked. They tried to kiss me and touched my body. Then they suspended me. They put me on a stick between two filing cabinets like a crucifix. They were touching all over my body. They were touching my body with a truncheon and said they would stick it inside my vagina. One said, "OK, boy, take your clothes off so you can fuck her." I tried to resist, but what could I do. They put a wire on my nipple, one on each of my hands, and one on my toes. They were saying, "Her body is really pretty. Her cunt is really pretty. Let's not give electricity. Let's rape her." Then they started the electricity.<sup>60</sup>

In another case, N. was detained in June 1993 by the Anti-Terror Police in Istanbul with eighteen others in a raid on the offices of the journal *Mucadele*. She was taunted about her virginity by police who declared their intent to rape her in order to destroy her honor. The police, according to N.,

took three or so of us to the interrogation room and said, "We heard that your honor is not between your legs but in your tongues, so we're going to rape you." The next day, they took me to an interrogation room. "One of them said, "I am going to fuck her, so undress her." I was blindfolded. They tried to suspend me and bent my arms back. One of them pushed his penis against me from behind. I was suspended for an hour or so. When they took me down, they opened my shirt and started squeezing my breasts. Then they carried me to my cell, and one of them played with my vagina."<sup>61</sup>

Police emphasis on virginity in the harassment and abuse of female detainees also has led them to use the threat or performance of forced virginity exams to humiliate, intimidate and frighten female detainees. Women detained for alleged political activity, for allegedly violating Turkish standards of public conduct, or as suspected illegal prostitutes are forced by police to submit to virginity exams.

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<sup>59</sup> After her release, S. filed a complaint with the prosecutor's office. A gynecological examination conducted after she filed her complaint revealed evidence of rape. Interview, Diyarbakir, July 15, 1993.

<sup>60</sup> After her interrogation, A. was taken by the police to a state forensic physician who issued her a "ten-day report." Such reports are known by the number of days the doctor authorizes a patient to take off from work due to physical injury or illness. Interview, Istanbul, July 10, 1993.

<sup>61</sup> Interview, Istanbul, July 10, 1993.

H.,<sup>62</sup> a twenty-one-year-old journalist, was traveling in southeastern Turkey with her colleague, also a young, female journalist, and working as a stringer for a Turkish newspaper. Both women were detained by the Mus Bulanak Security office on January 23, 1993. After being held overnight and before being questioned, H. and her friend were taken by the police to the back door of the Mus State Hospital. There,

the doctor took me into his office to the table where women give birth. I was shocked, and I turned to leave, but the doctor was standing between me and the door. I realized that they were going to do virginity control. I said that I wanted to see a lawyer, that I was detained for no reason. Then the Anti-Terror Police stood up and said, "Why don't you want virginity control? We do this to all of the women we detain to protect ourselves. Why do you refuse? Are you not sure of yourself?" Then the doctor said, "You better do this or they will force your legs apart for you." He pulled me apart and looked. He opened me with his fingers and looked with a tool in his hand.

H. identified the doctor as Alper Gumesalan. She asserts that he also forcibly examined her companion.

The police questioned H. and her companion for two days about their presence in Mus and whether they had connections to the PKK. After their interrogations, the women were taken again to the state hospital for virginity exams. Again they protested and begged the doctor not to perform the exam. H. even offered to sign a statement that she was not tortured in order to avoid the exam. But both H. and her colleague were forced to undergo a second examination.

In October 1993, *Ozgur Gundem*, a left-wing, pro-Kurdish newspaper, reported that Nilufer Koc was detained in Sirnak on September 29, 1993 while working as a translator for a German delegation investigating the situation in the emergency zone region. A state of emergency applies in much of southeastern Turkey. The emergency provisions allow the police to detain persons suspected of "terrorist" activity for thirty days without being charged or presented to the prosecutor. Koc alleges that she was detained, immediately taken to the health center in Sirnak and subjected to a forcible virginity examination. Police then returned her to the offices of the Sirnak Security Directorate where, she states, they interrogated and tortured her for six days.<sup>63</sup>

An attorney in Diyarbakir, a major city in southeastern Turkey, provided HRW with documentation of several other cases of female political detainees subjected to virginity control exams.<sup>64</sup> According to this attorney, her clients were detained as PKK members and taken for virginity exams by the police. *Gendarmes*<sup>65</sup> commanders ordered state forensic medical doctors to examine the detained women to determine whether they were virgins; the directives are attached to this report as appendices. The exams occurred before the women were charged and presented to the prosecutor. Appendix A, dated July 11, 1992, is a signed directive from T. Fatih Bayar, a police commander in Siirt, requiring that K., born in 1973, and N.<sup>66</sup> be examined to determine whether their hymens have been ruptured. The examining doctor, Dr. Lutfi Karabulut, notes at the bottom of the page: "In the examination of the above-mentioned individuals, it has been concluded that both of them are not girls [virgins]."

In Appendix B, dated July 27, 1993, Siirt Police Commissioner Hikmet Karanfil requests the same examination for B. and M.. The examining physician, again Karabulut, notes on the page: "In the exam of the above-mentioned people, it has been concluded that both are not girls." The last set of documents (Appendix C) indicates that S., a nurse born in 1968 and detained

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<sup>62</sup> Interview, Istanbul, July 8, 1993. H. asked HRW not to identify her by name lest her family discover that she was subjected to a virginity control exam during her detention. She also asked us not to identify her traveling companion by name.

<sup>63</sup> This case was reported by the Human Rights Foundation of Turkey on October 9, 1993 in a report citing *Ozgur Gundem*.

<sup>64</sup> The names of the attorney and her clients are on file with HRW.

<sup>65</sup> Gendarmes perform police duties in rural areas.

<sup>66</sup> The document indicates that N. was born in 1985. The attorney stated that this is a typographical error, and that N.K. is a young woman and not an eight-year-old girl.

for aiding the PKK, was sent prior to her interrogation by Mehmet Gocmen, of the Mardin gendarmes, to be examined for her virginity and for bodily injury on January 15, 1992. The doctor's note indicates that there are no signs of force upon her body and that the virginity exam should be performed by an expert physician. The note by the second doctor, also dated January 15, 1992, states that S.'s hymen is intact.

Police in some instances use the findings of virginity exams to harass women. If an exam "establishes" that a woman is not a virgin, "this is used to taunt her, humiliate her."<sup>67</sup> If, on the other hand, the exam shows that a woman is a virgin, police may threaten to rape her and destroy her "honor." On August 5, 1992, a forty-three-year-old Kurdish woman and her nineteen-year-old daughter were attending a funeral in Diyarbakir when they were detained by Anti-Terror police. According to the mother:

They asked us why did you go to that funeral? How did you know him? When they heard our family name, they began to harass us. They were twisting my nipples and my lips. Boys my son's age. I was embarrassed and tried to cover my head with my scarf, but they pulled it away.<sup>68</sup>

The daughter stated that, "They constantly threatened to take me for virginity control and then to rape me when and if they found I wasn't a virgin."<sup>69</sup>

In April of 1992, thirty-two-year-old N. was in Trabzon for the funerals of Sinan Kukul and Ayse Gulen Uzunhasanoglu.<sup>70</sup> A number of people attending the funerals were taken into custody by the Anti-Terror Police. Late in the day,

the interrogation officer brought this yellow piece of paper with a statement typed on it. He told me to sign so they could take me to forensic medicine. I asked to read the paper and was shocked. It said I was raped and wanted virginity control. They took me to the local precinct. Again they told me to sign. I refused.<sup>71</sup>

Forced virginity exams also have been used by police in some cases as punishment. A lawyer working with the Istanbul Human Rights Association who has a number of clients currently incarcerated in Nevsehir Prison told HRW that, in April 1993, eight women prisoners were discovered attempting to dig a tunnel with male prisoners. The prison director ordered the women to be taken for virginity control exams. The women resisted, but were examined nonetheless. The women called the press to protest their treatment. According to the attorney, despite calls for action from these women and the Human Rights Association, no investigation into the women's allegations has been initiated.<sup>72</sup>

Police and other government officials claim that virginity exams, abusive in themselves, protect women from being abused while in police custody. This argument maintains that forcible virginity examinations before and after interrogation act as a deterrent against sexual assault of detainees by police.

Police also argue that forced virginity exams before and after interrogation are necessary to defend police against subsequent claims of custodial rape. Police assert that an exam that finds that a woman is not a virgin is evidence against a claim of rape because it establishes that she is sexually active and that her "loss of honor" is not attributable to custodial rape. This

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<sup>67</sup> Interview, Dr. Sahika Yuksel, M.D., Istanbul, July 8, 1993.

<sup>68</sup> Interview, Diyarbakir, July 15, 1993.

<sup>69</sup> Interview, Diyarbakir, July 15, 1993.

<sup>70</sup> Both individuals were alleged members of Ozgur-Der.

<sup>71</sup> Interview, Istanbul, July 10, 1993.

<sup>72</sup> Interview, Eren Keskin, attorney and branch secretary of Istanbul Human Rights Association, Istanbul, July 8, 1993.

argument rests on the assumption that only women who can prove their virginity prior to an alleged incidence of rape can successfully bring rape charges against the police. One woman forced to undergo a virginity control exam told HRW that the police told her that they regularly submit women to such treatment: "We do it to everyone, even if they are detained only for two hours. We do it two times -- when we detain women and again before we release them -- in order to protect ourselves. We do it so that you won't say we raped you."<sup>73</sup> As a matter of law, however, as noted above, gathering forensic evidence by means of a gynecological examination is permissible under Turkish and international law only when criminal charges already have been filed, and, even then, a woman always has the right to refuse an exam. Moreover, the finding that a female detainee is not a virgin in no way negates the validity of the accusation that she was raped while in custody and thus should offer no protection to police against such charges.

### **Police Duty and Prostitution Detainees**

The use of forced virginity control exams is not limited to political detainees, but extends to those detained under police duty and prostitution laws as well. Turkish police not only abuse their power to enforce the criminal law, but also arbitrarily interpret Turkish regulations regarding public conduct and morality to allow for virginity control exams.<sup>74</sup> The police duty law requires Turkish police to protect life, chastity or honor and property.<sup>75</sup> This law explicitly authorizes police to detain those who act against public morality and rules of modesty, those who do "shameful actions," and those who act in ways "not approved by the social order."<sup>76</sup> The law, however, does not define which actions qualify as violations of public order. Interpretations of this provision vary, thus creating arbitrary and inconsistent standards for judging women's public conduct. Police can and do interpret the proscriptions of immoral public conduct as providing a means to ensure that women's behavior does not violate an individual policeman's standards of appropriate, modest conduct.

The police duty law does not provide for virginity control exams as a means of enforcement. Nonetheless, police interpret the power to monitor public behavior as allowing them to threaten and use virginity exams against women. Women can be, and are, stopped at any time and taken to the prosecutor for violating an individual policeman's standards of morality. Turkish women have been stopped by police for driving cars alone late at night,<sup>77</sup> and threatened with virginity control for sitting on a city park bench after dark with male friends.<sup>78</sup>

Police also rely on their authority to regulate prostitution to detain women and subject them to virginity exams. Prostitution is legal in Turkey, but to work legally as a prostitute, an individual (man or woman) must be registered and carry an identity card indicating the dates of his or her health checks. Legal prostitutes are required to undergo frequent exams to check for sexually transmitted diseases. Police are authorized to check the cards of registered prostitutes to determine whether they have been examined regularly and to take them to the health authorities for an exam if they have not gone on their own. Police also have the power to raid places of illegal prostitution and to detain women working illegally as prostitutes.<sup>79</sup> This law does not grant police the power to subject detained women to virginity exams.

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<sup>73</sup> Interview, H., Istanbul, July 8, 1993.

<sup>74</sup> Polis Vazife Ve Selahiyet Kanunu, Law No. 2559 (Turkey), [Laws on the Duties and Authority of the Police] [hereinafter Police Duty Law].

<sup>75</sup> Police Duty Law, Article 2(B)(II).

<sup>76</sup> Police Duty Law, Article 11.

<sup>77</sup> Interview, New York, June 10, 1993.

<sup>78</sup> Interview, Istanbul, July 11, 1993.

<sup>79</sup> Genel Kadınlar Ve Genelevlerin Tabi Olacakları Hukuklar Ve Fuhus Yuzunden Bulasan Zuhrevi Hastalıklarla Mucadele Tuzugu [Regulation Pertaining to Public Women and Whorehouses and on Fighting Venereal Diseases Transmitted through Prostitution] art. 96 (Turkey) [hereinafter Regulation on Prostitution].

In applying the prostitution laws as well as the police duty law, police often do not distinguish between different kinds of activity. Instead, women detained for public immodesty are subjected to the same treatment as are suspected prostitutes and are forcibly examined for evidence of virginity or recent sexual activity. In many instances, the line between immoral public behavior and suspected prostitution blurs so that the rationale for detention is not always clear. For example, women dining alone may be seen as immodest and be detained as suspected illegal prostitutes. The director of state forensic medicine in Ankara told HRW that state doctors perform virginity exams at the request of the police when women are accused of prostitution or of "abnormal" behavior in parks.<sup>80</sup> Moreover, if police suspect a woman of prostitution for any reason, and she has no certificate of registration, they detain her and bring her to forensic medicine to check for recent sexual intercourse.

The enforcement of Turkish prostitution regulations by the police is highly arbitrary. According to the prostitution law, legally registered prostitutes agree to undergo regular medical examinations in order to diagnose and treat sexually transmitted diseases. When the police suspect that illegal prostitution is being practiced, they must first conduct an investigation. If they gather evidence sufficient to establish prostitution, the police then must submit their report to the commission charged with monitoring prostitution, and the commission then takes action based on the report.

Instead of adhering to these procedures, however, police and state health care providers arbitrarily detain women without conducting a preliminary investigation to support allegations of illegal prostitution and then force them to undergo gynecological exams.<sup>81</sup> While the exams are not designed to establish virginity necessarily, they are compulsory and utterly unwarranted.

When a woman is detained as an illegal prostitute, she is often taken to a state hospital for a gynecological examination. Although the stated purpose of such exams is to check prostitutes for sexually transmitted diseases, doctors examine women not only for signs of disease but also for evidence of virginity and/or recent sexual activity. The latter evidence is taken as evidence of prostitution by both doctors and police, even though neither a ruptured hymen nor evidence of sexual activity in itself constitutes evidence of prostitution.

In a widely reported incident on July 23, 1991, several Turkish women and a German tourist, Angelika Wittwer, were detained in a raid by the local Security Department on a hotel in the city of Urla in the southwestern province of Kutahya. The police accused the women of prostitution, took them to the state hospital and demanded that the doctors examine them to determine whether they were prostitutes. The women were examined by state doctors, who reported their medical findings on one in the following terms:

Old breaks in various parts of her hymen were found. She is not a virgin. In her vaginal exam, no live or dead sperm were found. ...The concrete evidence of prostitution -- the presence of sperm -- was not found.<sup>82</sup>

According to press reports, Angelika was detained for fifteen hours. Shortly after this incident, the ministry of tourism reportedly expressed regret that a foreigner had been ill-treated. But, instead of investigating the police abuse of authority and punishing those responsible, the authorities merely transferred two of the police officers involved in taking the women for exams.

Women who claim that they are not prostitutes and refuse to undergo exams have been held at the state hospital until they undergo an exam, because, according to Dr. Ozdem Gerikalmaz, director of the Istanbul Hospital of Venereal Diseases, "Maybe

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<sup>80</sup> Interview, Dr. Esen Kaynak, M.D., State Medical Forensic, Ankara Group Director, Ankara, July 12, 1993.

<sup>81</sup> Further, a dermatologist specializing in venereal diseases and who has worked extensively with prostitutes, states that even the regular health checks are done roughly and in ways intended to punish and humiliate the women for working as prostitutes. Interview, Dr. Turkan Saylan, M.D., Istanbul, July 17, 1993,

<sup>82</sup> Urla, Devlet Hastanesi, Tek Tabib Raporu (report of the doctor at the state hospital in Urla), July 24, 1991.

they don't want it at first, but they come the next day and agree to the exam. If a woman said no, I would tell her to solve her problem with the police. The police know who is a prostitute."<sup>83</sup>

On August 28, 1992, a Friday, Hatice Seckin, a thirty-nine-year-old grandmother and manicure salon owner, was dining with two of her friends in the Camlica Restaurant in Istanbul.<sup>84</sup> While the women were eating, police entered and conducted an identity check of everyone in the restaurant. The police took the six women in the restaurant, including Seckin, her eating companions and three others, into custody.

All six women were held overnight at the Umraniye Central precinct. The police repeatedly asked them questions about whether they were working for the owner of the restaurant and if they were "working illegally," i.e. as prostitutes. The women later stated that, when they asked to call their families, the police responded, "You sleep with someone different every night. Tonight why not sleep here? Do you want to call your pimp to come here in his big Mercedes?"

On Monday, the police took Seckin and her friends to the Istanbul Venereal Diseases Hospital, where they were compelled to undergo vaginal exams. The examining doctors told the women that the exams were required because they were suspected of working illegally in the restaurant. The women were kept, allegedly for purposes of treatment, against their will in the hospital for one week. Hospital officials allowed Seckin to phone her family and lawyer from the hospital. The lawyer came to the hospital and spoke to the doctors, but Seckin did not see him. Seckin's daughter contacted a member of parliament for help. After the parliamentarian's call to the director of the hospital, and after six nights and seven days in the hospital, the women were released. Although the women believe they were detained under the authority of the law against prostitution, they were held for ten days without charge, which is not authorized by that law.

The Contemporary Lawyers' Association filed a complaint with the prosecutor's office alleging police abuse of authority on the women's behalf. Because, however, the complaint was against government employees, the prosecutor was obliged first to inform the relevant administrative unit and allow it to conduct an internal investigation.<sup>85</sup> In this case, the Istanbul Governor's Office conducted the administrative investigation and informed the prosecutor -- without providing a rationale for its conclusions -- that there was no need to bring any action against the police.<sup>86</sup> The women have petitioned the governor to reconsider his decision.

Police also arbitrarily harass unmarried couples and unmarried women, accusing them of prostitution.<sup>87</sup> For example, no laws or regulations prohibit unmarried couples from sharing a hotel room. Couples registering in hotels are not required by law to present their marriage certificates. In practice, however, hotel staff do require couples to present marriage certificates and refuse to provide accommodation to unmarried couples or, in some instances, notify the police that unmarried couples are using the hotel for prostitution. Hotel staff and police violate the privacy of female hotel guests by making unwarranted accusations of prostitution, entering hotel rooms, detaining women and demanding that they submit to virginity exams. Further, such treatment discriminates against women by enforcing laws regulating prostitution against unmarried, female hotel guests.<sup>88</sup> Single male guests with female companions are not accused of prostitution.

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<sup>83</sup> Interview, Dr. Ozdem Gerikalmaç, M.D., Director, Istanbul Hospital of Venereal Diseases, July 10, 1993.

<sup>84</sup> Interview, November 1993.

<sup>85</sup> Mamura Muhakemet Kanunu [Law on Suing Civil Servants].

<sup>86</sup> Interview, Ali Riza Dizdar, attorney with Contemporary Lawyers' Association in Istanbul, November 1993.

<sup>87</sup> Interview, Filiz Kocali, journalist with *Kim*, a Turkish magazine, Istanbul, July 7, 1993.

<sup>88</sup> Article 96 of the law regulating prostitution prohibits "public women" from practicing their profession in "hotels, motels and lodges" in a manner "inconsistent with the purpose of such places." Regulation on Prostitution, Article 96. Article 15 defines "public woman" as "a woman who has the profession of satisfying the sexual pleasures of others in return for privileges and who contacts various men for these purposes. These women can work freely in warehouses or in their own residences."

On May 6, 1984, an unmarried couple on vacation together in the town of Kusadasi, on the Aegean coast in western Turkey, checked into a hotel.

We had been at the hotel for a few hours when, late at night, several police and two gendarmes banged on the door. They took us downstairs and forced us into a police car. They took us to the police station and said they were going to take me for virginity control. I refused, and eventually they let us go.<sup>89</sup>

Women walking on the streets alone or with men have been stopped and questioned by police. Women who live alone have been denounced as prostitutes by neighbors and then harassed by the police. According to attorneys interviewed by HRW, police come to women's houses and apartments upon receiving even a single complaint from a neighbor that too many male visitors have been seen visiting the apartment. In one such case from 1988, the police came to the apartment of a young female lawyer living on her own in Istanbul and, relying on a neighbor's complaint that prostitution was taking place in her apartment, demanded that she accompany them to have a virginity exam. She refused. This woman did not report the police harassment to any authorities because she did not want her family to know that she had been accused of prostitution, however unfounded the allegation.<sup>90</sup>

Turkish authorities argue that public health interests in monitoring prostitutes for sexually transmitted diseases and providing them with treatment in order to check the spread of such diseases justify forced gynecological or virginity exams. This argument is contrary to international laws that set forth standards for determining when human rights and fundamental freedoms may be restricted by the need to protect public health. Limits on privacy, freedom of movement, or individual liberty -- all of which are implicated by the detention of women and their subjection to forced exams -- cannot be justified simply by the state's claim that such exams are required for public health.

Governments may derogate from fundamental human rights in order to protect health only where three stringent conditions are met. According to a report on AIDS and human rights prepared by the U.N. Center for Human Rights and the World Health Organization, there must be "a specific law which is accessible and which contains foreseeable standards as opposed to administrative policy or individual discretion not based on legal rules." The law must be shown to be strictly required to serve a legitimate purpose of society for which there is a pressing need. And the measures adopted must be the least intrusive available and strictly proportional to the urgent purpose they are designed to serve.<sup>91</sup> Forced virginity or vaginal exams fail to meet any of these conditions.

The police practice of detaining women and submitting them to exams serves no legitimate, societal purpose that supersedes women's rights not to be arbitrarily detained and subjected to cruel and degrading treatment. The World Health Organization has declared that mandatory testing for HIV/AIDS is incompatible with international human rights protections.<sup>92</sup> Similarly, mandatory testing of Turkish women for any sexually transmitted disease cannot be justified where it violates the fundamental rights of the women being examined.

Moreover, the exams are often conducted with no discernible public health purpose. Vaginal exams performed on women accused of prostitution have been performed not for the exclusive purpose of determining the state of a woman's health but for the purpose of establishing prostitution. State doctors examine women detained for even minor instances of "public immodesty"

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<sup>89</sup> Interview, Ankara, July 12, 1993.

<sup>90</sup> Interview, Istanbul, July 10, 1993.

<sup>91</sup> UN Center for Human Rights and World Health Organization (WHO), *Report of an International Consultation on AIDS and Human Rights*, Geneva, July 26-28, 1989 (UN: New York, 1991). For a discussion of this, see Asia Watch/Women's Rights Project, *A Modern Form of Slavery: Trafficking of Burmese Women and Girls into Brothels in Thailand*, (New York: Human Rights Watch, 1993).

<sup>92</sup> WHO, *Report on AIDS and Human Rights*.

to determine not whether they have sexually transmitted diseases but whether they are virgins or have engaged in recent sexual intercourse. The doctors' findings regarding virginity or sexual activity are used by police as evidence of prostitution.

Simply stated, there is no legitimate, legal justification for forcing women suspected of prostitution to undergo invasive medical procedures. Even if such exams were defensible on urgent public health grounds, the requirement that they be unintrusive and strictly proportional would mean that only women proven to be, and not just suspected of, working as prostitutes could be required to undergo testing for sexually transmitted diseases. Under no circumstances would concern for public health legitimate forcible exams undertaken for the purpose of determining whether a woman is a virgin or has had recent sexual intercourse.

## V. ABUSE BY OTHER STATE AGENCIES

According to lawyers involved in the campaign against virginity control exams, other state officials, such as directors of state-run dormitories for female university students and state orphanages, require virginity exams of women when they enter the facility initially and after nights spent elsewhere.<sup>93</sup> A psychologist told HRW that, in 1976, while she was a student at the Eskisehir Suleyman Cakir Girls' Teacher School, girls who stayed out late regularly were subjected to virginity exams. She asserted that the practice of forcing women and girls living in orphanages and state-run dormitories to submit to such exams continues to be widespread.<sup>94</sup>

Women also have complained that the State Cartography Department, a division of the Department of Defense, has required virginity exams of women applying for civil service jobs.<sup>95</sup> In addition, a psychiatrist in Istanbul who works with victims of torture and domestic violence told HRW that some state hospitals have written rules permitting them to examine all female patients for their virginity upon their entry to the hospital.<sup>96</sup>

In one widely reported incident, the Istanbul provincial health director, his assistant and two gynecologists arrived at Bakirkoy Mental Hospital, a state hospital in Istanbul, on May 10, 1991, to investigate allegations of staff sexual misconduct with female patients. The doctors went directly to the ward from which the complaint had emanated, interrupted a group therapy session with female patients, separated the unmarried from the married women, and began subjecting the unmarried women to gynecological exams without their consent.<sup>97</sup>

At least one patient, a medical student,<sup>98</sup> refused to submit to an exam. The doctors ignored her protests and compelled her to be examined in front of the other people in the room.<sup>99</sup> The student told a journalist interviewed by HRW that the doctors

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<sup>93</sup> Interview, Fahrinnisa Akbatur Ekren, attorney, Ankara, July 13, 1993.

<sup>94</sup> Interview, Nurhayat Kemerli, Ankara, July 13, 1993.

<sup>95</sup> "Memuriyete giriste kizlik muayenesi," *Ikibine Dogru*, (Turkey) 25 December 1988. This incident, which occurred in 1988, was widely reported in the press after the women involved made anonymous complaints. According to a journalist who investigated the reports, these women refused to come forward or take legal action for fear of revealing their identities. Interview, Filiz Kocali, Istanbul, July 7, 1993

<sup>96</sup> Interview, Dr. Sahika Yuksel, M.D., Istanbul, July 8, 1993.

<sup>97</sup> Interview, Istanbul, July 1993. HRW interviewed a doctor familiar with the details of this case who spoke on the condition of anonymity. This information also was reported in the Turkish press.

<sup>98</sup> The name of the student is on file with HRW.

<sup>99</sup> The student complained to her aunt about the exam. The aunt then made a public complaint with the prosecutor's office denouncing the doctors and identifying the Istanbul provincial health director and his assistant as among those responsible.

forced her onto a table and spread her legs apart. She claimed that the first doctor forced his hand inside her, and then called another doctor over. The second doctor reportedly examined her roughly, causing her pain, and then inserted his finger so forcefully in her rectum that she screamed. He pronounced her a virgin.<sup>100</sup>

The Istanbul Doctors' Chamber, a professional medical association and the regional chapter of the Turkish Medical Association, responded to the allegations by initiating an investigation into the ethics of the medical professionals involved in the incident.<sup>101</sup> No other government inquiry was conducted. The findings of the Istanbul Chamber, which have not been released, were challenged by the medical professionals involved and, currently, the ethics council of the Turkish Medical Association is reviewing the findings of the Istanbul Chamber's investigation. If the Turkish Medical Association finds the accused medical professionals guilty, the maximum punishment for their ethical breach will be six months suspension from the profession.

The rationale for virginity exams performed on hospital patients is a variation of the protection defense offered by the police: that compulsory virginity exams are justified because they serve the victim's interest in being protected from rape and sexual abuse. In this instance, doctors justify the exams as necessary to establish the veracity of allegations of staff sexual misconduct. The argument that the exams are justified by the protective function they serve is no more legitimate under these circumstances than it is when applied to police practices. It is inconsistent with both domestic law and international standards for state actors, whether police, hospital administrators or school authorities, to subject women to nonconsensual and discriminatory virginity exams to search for possible evidence of sexual activity or abuse.

Further, as is the case with exams compelled by police, virginity exams in this context do not serve their alleged purpose of protecting women from and gathering evidence of sexual assault. Because the hymen and surrounding tissue heal quickly, an exam conducted days or weeks after an assault would not offer evidence of rape in the form of either tears of the inner vaginal tissue or sperm that could be used to identify the assailant.<sup>102</sup> The exams thus are meaningless as a deterrent.

## VI. STATE PARTICIPATION IN FAMILY-INITIATED VIRGINITY EXAMS

Evidence of the imposition by families of virginity exams is difficult to gather, both because the women are reluctant to come forward and because the exams are often conducted by private physicians. Family initiation of virginity exams clearly contributes to the widespread nature of the problem. Our interviews with both private and government doctors and local activists suggest that the use of such exams is not uncommon. The main emphasis of this report is state participation in virginity exams. Given, however, the invasive and degrading character of the exams and the fact that, where adult women are concerned, exams often are conducted without their consent, we are concerned that the government has not acted to discourage private individuals from initiating virginity exams or to stop state doctors from participating in the practice.

According to doctors interviewed by HRW and as noted in the background section above, family members bring both adult and minor daughters directly to state or private doctors for virginity exams to obtain proof of virginity, or take their daughters to the police to file criminal charges alleging illicit sexual activity with the intent of using evidence of sexual activity to pressure a woman's sexual partner to marry her. A forensic physician who performed his obligatory medical service in Kars recalled performing over twenty virginity exams, most of them consequent to kidnapping claims, during the two years of his service in the mid-1980s.<sup>103</sup> According to a forensic medical specialist:

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<sup>100</sup> Interview, Filiz Kocali, Istanbul, July 7, 1993.

<sup>101</sup> Interview, Istanbul Doctors' Chamber, Istanbul, July 10, 1993.

<sup>102</sup> Interview, Dr. Ozdemir Kulusayin, M.D., Istanbul, July 9, 1993.

<sup>103</sup> Interview, Dr. Umit Biger, M.D., Istanbul, July 9, 1993. Upon completing their studies, all doctors are required to spend two years practicing medicine wherever they are sent by the government. During this time, they are employees of the state.

Families have the power to bring daughters for virginity exams because under the penal code, they [the parents] can claim the girls were raped and that an investigation is required. I know there is a problem here because from time to time, prosecutors delegate their authority to the police. So the police act on behalf of the prosecutor and often make very different decisions than a prosecutor would. The police are much more likely just to order virginity control.<sup>104</sup>

One physician reported that, while doing his obligatory medical service in Turkoglu, he was presented with a girl under age eighteen who had run away with a man against her family's wishes.<sup>105</sup> The family filed a complaint with the gendarmes, who then arrested the couple and, after obtaining authorization from a prosecutor, brought the girl to the local health clinic for a virginity exam. Although the girl admitted to having sex, the doctor told her that he was required either to perform the exam in order to determine whether her male companion had committed a crime or to prepare a report saying that no exam had been performed because she refused. The doctor then performed the virginity exam. In another incident in Nevsehir Derinkuyu in 1990, gendarmes brought an eighteen-year-old woman for a virginity exam to the office of a doctor doing her obligatory medical service.<sup>106</sup> The police stated that the woman had been kidnapped and that the exam was required as evidence of the crime.

In both of these cases, a gynecological exam might constitute a legitimate means of gathering evidence to establish sexual assault. For a gynecological exam performed on an adult woman to be justifiable, however, it should be conducted only with her informed consent and pursuant to the basic requirements of due process. In the case of the minor girl, the parents may deem it in her "best interest" to pursue such an allegation through mandating a virginity exam. HRW does not dispute the parental authority to act in the "best interest" of the child and supports state efforts to investigate allegations of statutory rape. But, to the degree that parental decisions made on behalf of minors conflict with minors' fundamental right to bodily integrity, such decisions should be carefully scrutinized. In HRW's view, virginity control exams are invasive and degrading. Moreover, it should be emphasized that virginity *per se* is not relevant to a finding of sexual assault nor is it, according to many gynecologists, medically verifiable.

In Istanbul, a doctor and professor of forensic medicine told HRW that families frequently bring women and girls to the state forensic medical department for virginity exams:

It is a matter of tradition. A family may convince a woman that she has been kidnapped with the promise of marriage so that she is willing to be examined. Although it does happen that women do not consent. If a girl refuses an exam, the doctor should bring her family in to discuss the matter. But it is rare that a woman asserts her right to refuse an exam.<sup>107</sup>

This doctor stated that during her residency in forensic medicine, at least one woman was brought for a virginity exam every time that she worked the nightshift. Many of these women allegedly were attempting to force men to marry them. The doctor recalled two cases of women over eighteen who, when asked for their consent, refused to undergo an exam. In both instances, the women's families agreed not to pursue a virginity exam. This underscores the fact that doctors who respect women's right to refuse virginity exams can effectively prevent this abuse from occurring.

## VII. ROLE OF THE GOVERNMENT AND MEDICAL PROFESSION

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<sup>104</sup> Interview, Dr. Ozdemir Kulusayin, M.D., Istanbul, July 9, 1993.

<sup>105</sup> Interview, Dr. Umit Erkol, M.D., Ankara, July 12, 1993. Dr. Erkol further stated that during his obligatory service, numerous women and girls were brought by their families to him and his colleagues for virginity exams.

<sup>106</sup> Interview, Ankara, July 12, 1993.

<sup>107</sup> Interview, Dr. Sebnem Financi, M.D., Istanbul, July 8, 1993.

As the above cases illustrate, the Turkish government participates in and tolerates the subjection of women to unwanted virginity exams. Following the suicides of girls forced to undergo virginity control in Kutahya and Mugla-Ula in the spring of 1992, Minister of Women's Affairs Turkan Akyol denounced virginity control and vowed to punish officials responsible for such abuse. Yet the only action taken against officials responsible for the girls' virginity exams was the temporary suspension of a single school director. To our knowledge, the Turkish government has taken no steps to stop the performance of virginity control by state actors. Nor has it investigated allegations of such abuse by police and state health care providers. Turkish officials deny their participation in this abusive practice and claim that, where virginity control exams are performed, they are not compulsory.

Many state officials interviewed by HRW either flatly denied government involvement in or toleration of virginity control or defended the practice as acceptable under certain circumstances. Police officials in Istanbul, Ankara and Diyarbakir told HRW that police do not force women to undergo invasive, vaginal exams against their will. The assistant director of Istanbul's anti-terror division of the police force acknowledged that persons detained and interrogated are taken for physical examinations before and after interrogation and that detainees are sent for such exams "in order to counter claims she might make about our treatment." He denied, however, that the health checks include compulsory virginity exams and specified that women detainees have a gynecological exam only if they request one.<sup>108</sup> Although HRW obtained no testimony of women forced by the Istanbul anti-terror police to undergo virginity exams, evidence from Diyarbakir, Mus, and Sirnak indicates that anti-terror police do engage in this abuse.

Turkey's minister of human rights, Mehmet Kahraman, responded initially to reports of forced virginity exams by denying government involvement in such violations and pledging that any specific complaint about virginity exams would be investigated. Nonetheless, the minister argued in an interview with HRW that, in certain cases, virginity exams might serve a protective function and thus would be legitimate. He asserted that medical evidence of rape may be required either to help the victim obtain evidence against her attacker or to establish the truth of her claim: "In some cases, in order to bring forth the specifics of certain claims, the authorities may take certain precautions. With regard to virginity, it is possible to determine when it is lost. In the face of claims that will come afterward, it is possible to bring medical reports to respond to these claims."<sup>109</sup>

Although it is accurate to note that medical evidence is important to corroborate reports of sexual assault, this provides no justification for *compulsory* virginity exams. Nor, as noted above, does virginity *per se* have any relevance to a finding of sexual assault.

The government's denial of reports of nonconsensual virginity control is inconsistent with testimony of abuse gathered for this report including the statements of female political detainees, women held as suspected illegal prostitutes, female hospital patients and women taken to state hospitals by family members. While we appreciate the Turkish government's stated commitment to stopping such abuse, evidence shows that virginity control exams continue to be forced on women, and the government must take much more concerted and aggressive action to eliminate the practice.

The participation of medical professionals -- whether state or private -- in forced virginity exams is also of concern to HRW because it violates basic tenets of medical ethics. The Principles of Medical Ethics adopted by the U.N. General Assembly state:

It is a gross contravention of medical ethics as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation

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<sup>108</sup> Interview, Assistant Director, Anti-Terror Division, Istanbul, July 9, 1993.

<sup>109</sup> Interview, Ankara, July 14, 1993.

in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.<sup>110</sup>

Medical practitioners must do no harm without the expectation of compensating benefit to the patient. "Thus, medical intervention is ethical only when expected benefits outweigh the harm, pain, and risks attendant upon the procedure." Medical intervention also should have the informed consent of the patient. "The patient, except when he or she is reasonably presumed to be mentally incapacitated, determines the applicability of harm and risk and decides whether the expected benefits are worthwhile."<sup>111</sup>

Forensic medical practitioners are taking some steps to end the participation of state and private doctors in impermissible virginity exams. The state department of forensic medicine plans to increase the number of forensic specialists throughout the country. These doctors would be thoroughly trained in their field as well as educated specifically about where and when to perform gynecological exams. The forensic specialists also hope to conduct training seminars for local medical practitioners to improve the quality of services delivered.

Many Turkish doctors do oppose virginity exams and refuse to perform any gynecological examination without women's informed consent. Some doctors, appalled by the widespread and frequent use of virginity exams, have organized campaigns to stop the practice. An Ankara doctor who coordinates one such campaign stated:

This problem had become horrifying. Virginity exams were often done by police taking women to forensic medicine or state hospitals. This practice is contrary to universal laws of humanity and to medical ethics. We have let doctors know that they are not required to perform this exam. But we know some doctors still do it, just as some doctors take a prisoner's heartbeat during torture.<sup>112</sup>

Nonetheless, many doctors, both state and private, do not know that they can themselves refuse to perform virginity exams or that they must obtain a woman's consent before performing the exam. According to one doctor now very outspoken in his condemnation of virginity exams,

I practiced two years as a doctor without knowing that women have a right to say no to virginity control. Some doctors tell women they have the right to say no, others do not. During my obligatory medical service, I performed ten virginity control exams, two or three were women who had been raped. I didn't like doing it, but I didn't know the rules.<sup>113</sup>

Evidence indicates that, despite growing awareness of virginity exams as an illegitimate practice, doctors participate in exams, fail to ask women for their consent, and even use the threat of force to compel women to submit.

The Turkish government bears the responsibility for the actions of its agents and for its failure to act against forced virginity exams conducted by non-state actors. Instead of denouncing virginity exams as abuse, however, the government denies

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<sup>110</sup> Principle 2, Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment; adopted by the U.N. General Assembly, 18 December 1982. Principle 4 further provides:

It is a contravention of medical ethics for health personnel, particularly physicians:

(b) ...to participate in any way the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments.

<sup>111</sup> Albert R. Jonsen and Leonard A. Sagan, "Torture and the Ethics of Medicine," in Stover and Nightingale, eds., *The Breaking of Bodies and Minds: Torture, Psychiatric Abuse, and the Health Professions* (New York: W.H. Freeman and Company, 1985), p. 36.

<sup>112</sup> Interview, Dr. Nesrin Cobanoglu, M.D., Ankara, July 12, 1993.

<sup>113</sup> Interview, Istanbul, July 8, 1993.

or dismisses the problem. Even when government and medical officials acknowledge such abuse, they often blame families for the problem and attribute the abusive practice to traditional cultural norms.

## VIII. CONCLUSIONS AND RECOMMENDATIONS

### The Turkish Government

1. The Turkish police must cease immediately all abuse and mistreatment of political and common criminal detainees, including forcing women and girls to undergo virginity exams against their will. Allegations of police abuse should be investigated, and police officers responsible should be punished. Complainants should be protected against ill treatment or intimidation consequent to their complaints.
2. Although women in custody should never be forced to submit to vaginal examinations, women in custody who complain of rape or sexual abuse should be granted an immediate medical examination by the physician of their choice. As stated above, such exams should be voluntary and conducted for the purpose of gathering evidence of sexual assault and not as a means of determining a woman's virginity. These exams must be conducted in compliance with procedures governing the investigation of all crimes of sexual assault and pursuant to the authorization of a judge or prosecutor.
3. The police should adhere to statutory requirements by conducting investigations and obtaining evidence before detaining women for illegal prostitution. Women accused of working illegally as prostitutes should be subject to appropriate sanctions only where it is proved that they have violated the law. Women accused of illegal prostitution have not given their consent to undergo gynecological exams for any purpose and should never be forced to undergo vaginal exams.
4. Police acting under authority of the police duty law must afford due process to detainees. Under no circumstances should women detained under the authority of the police duty law be subjected to virginity control exams.
5. Police enforcing Turkey's police duty law must stop the discriminatory practice of applying different standards of acceptable public conduct to women and men and of detaining women for behavior for which men would not be similarly detained.
6. Turkish officials should publicly denounce the forced imposition of virginity exams under any circumstances as a grave and intolerable human rights abuse and as a violation of domestic and international law. The government should direct all state-employed doctors not to perform exams on adult women or minor girls for the purpose of determining their virginity.
7. Explicit prohibitions against compulsory virginity control exams should be included in all training materials provided to law enforcement personnel, health care providers, public officials and others involved in the custody, interrogation and treatment of detainees. Such materials should make clear that the state will not tolerate this form of abuse and will punish those who engage in it.
8. Turkish legislators should examine the content and application of criminal, prostitution and police duty laws and should institute reforms to ensure that women are protected against both arbitrary violations of their physical integrity and discriminatory treatment. To this end, we recommend the following substantive and procedural legal reforms:

Substantive Legal Reform:

-- Articles of the criminal code which refer to virginity should be reformed to delete any such reference or repealed as constituting discrimination against women that is inconsistent with Turkish constitutional norms and international guarantees.

-- The statutory authority conveyed upon police by the police duty law to question and detain individuals has been abused by police using their discretionary powers to harass and intimidate women. In order to remove the potential for abuse, the authority of individual police under the police duty law should be limited and clarified so that no more discretion rests with individual police officers than is necessary. It should not be within the discretionary power of individual police to determine what acts constitute immoral public conduct.

#### Procedural Law Reform:

-- Women who complain of sexual assault should be subjected to gynecological exams only with their informed consent and with the authorization of a prosecutor or judge.

-- In no instance should forensic medical exams conducted in the course of a criminal investigation be performed for the purpose of determining or make findings regarding virginity. Such findings are irrelevant to evidence of sexual assault.

-- Women accused of illegal prostitution must be afforded due process. When detained, they must be informed of the charges against them, be formally charged and be allowed to contact family members and counsel. Under no circumstances should they be forced to submit to gynecological exams.

### Health Care Professionals

1. Many Turkish health care professionals have taken the lead in denouncing and refusing to perform virginity exams. We urge all medical schools and health care organizations to educate health care professionals of their rights and responsibilities and to take a public stand against forcing women and girls to undergo compulsory, invasive and degrading procedures. All health care professionals must be made aware of their right to refuse to perform virginity exams, and of their obligation to secure a woman's consent before performing such exams.
2. Doctors should refuse to perform virginity exams and should perform only those gynecological exams necessary to gather evidence of crime and where they have secured the consent of the woman to be examined and followed appropriate legal procedures.
3. Doctors should refuse to perform mandatory gynecological exams ordered by police for the purpose of diagnosing and treating sexually transmitted diseases in women detained for alleged illegal prostitution or "immoral" conduct.

### The United States Government

Human Rights Watch urges the U.S. government to condemn publicly state participation in forced virginity control exams and to emphasize respect for women's human rights as an important component of efforts to improve Turkey's human rights record.

The U.S. government recognized forced virginity exams as a violation of privacy in the 1992 human rights *Country Report on Turkey*.<sup>114</sup> Despite the continuing problem, the U.S. dropped any reference to virginity exams from its 1993 *Country Report*.<sup>115</sup>

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<sup>114</sup>U.S. Department of State, *Country Reports on Human Rights Practices for 1992* (Washington: U.S. Government Printing Office, 1993), p. 937.

<sup>115</sup>U.S. Department of State, *Country Reports on Human Rights Practices for 1993* (Washington: U.S. Government Printing Office, 1994), 1086-1107.

Furthermore, to our knowledge, the U.S. has not raised virginity control as a human rights issue in any statement or meeting with Turkish government officials.

Turkey is one of the U.S. government's largest aid recipients. In fiscal year 1995, the U.S. is seeking to make available over \$580 million in military and security assistance to Turkey. The U.S. also continues to provide anti-terrorism training to Turkish police. During the July 1993 mission, HRW met with a police officer trained in the U.S. That officer works in a division of the police in which political detainees are routinely tortured and subjected to cruel and inhuman treatment. HRW opposes U.S. participation in the training of Turkish police and urges the U.S to cease such training programs as long as evidence establishes the involvement of Turkish police in torture and cruel and inhuman treatment, including virginity control exams.

The Clinton administration is supportive of Turkey's first female prime minister, Tansu Ciller, but should examine her stated support for womens' human rights for evidence of steps to abolish forced virginity control exams.

### **The European Union**

HRW calls on the European Union troika to initiate a delegation to Turkey in order to meet with Turkish officials and to raise its concern regarding reports of ongoing torture and cruel and inhuman treatment, including forced virginity exams, by Turkish police. We also urge the European Union, through its office in Ankara, immediately to express to Turkish officials deep concern about reports of forced virginity exams and to ask for clarification as to what steps the Turkish government is taking to end its involvement in this abuse.

### **The Council of Europe**

HRW urges the European Committee for the Prevention of Torture to give due attention to state participation in forcible virginity exams, to pursue the matter in further human rights investigations in Turkey and to raise this issue in its meetings with Turkish officials.











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*Human Rights Watch Women's Rights Project*

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director; Juan E. Méndez is general counsel; and Susan Osnos is the communications director. Robert L. Bernstein is the chair of the executive committee and Adrian W. DeWind is vice chair. Its Women's Rights Project was established in 1990 to monitor violence against women and gender discrimination throughout the world. Dorothy Q. Thomas is the director; Regan Ralph is staff attorney; Sarah Lai is research associate; and Evelyn Miah is associate. Kathleen Peratis is chair of the advisory committee; Nahid Toubia is vice chair.