

# Virginity Testing in Turkey: A Violation of Women's Human Rights

by Chanté Lasco\*

In February 2002, Turkey issued a decree banning forced virginity testing. This followed an announcement in July 2001 by Turkey's Health Minister, Osman Durmus, that midwife and nursing students were required to be virgins, and that testing would be used to ensure compliance. Although human rights groups and the international community welcomed news of the recent ban on virginity testing, it remains to be seen whether the practice of virginity testing will in fact cease.

As Turkey attempts to improve its human rights record in a bid for European Union membership, its government faces a tension between enduring cultural norms and international human rights standards. The prominence of certain cultural norms can cause conflicting results when the government tries to demonstrate progress by promulgating legislation without instituting additional measures, such as educational campaigns and enforcement mechanisms, to ensure that human rights abuses are not tolerated.

Virginity testing is discriminatory, highly invasive, and often involuntary. These tests involve the physical examination of a woman's hymen for tears to determine whether the woman is still "a girl" (the term Turkish doctors use to refer to a virgin). Underlying the practice of virginity testing are cultural norms, which dictate that women who are not virgins may not be considered eligible for marriage and could bring dishonor to their families. This is especially true in rural areas of predominately Muslim Turkey. Virginity testing is thus used to prove a woman's chastity and make her eligible for marriage. This cultural context creates a presumption that female virginity is a legitimate interest of the family, community, and ultimately, the state. According to Human Rights Watch (HRW), an interview with a Turkish doctor revealed that if a woman does not bleed on her wedding night, she likely will be taken for "virginity control." Although gynecologists maintain the status of the hymen is not determinative of one's virginity, Turkish doctors nonetheless rely on such information when they perform virginity testing, and "passing" the virginity test is based on whether or not the hymen is torn.

Prior to the ban on virginity testing, women were entitled to refuse a virginity test. Doctors who performed virginity testing, however, reported they were unaware that a woman's consent was required. Such misinformation demonstrates that having a law in place is not enough to ensure the protection of women's rights. Rather, a comprehensive educational campaign is needed to ensure the law's requirements are met. Further, in practice women rarely exercise their right to refuse virginity testing because of pressure from family, or the police in cases in which prisoners are tested. Women who refuse virginity testing often are assumed to be non-virgins,



Credit: Shara Abraham

Turkish women in Istanbul. Women in Turkey have been arrested for dining with female friends, an activity that is considered by some to be "immodest behavior."

and it is likely that a Turkish woman would rather undergo virginity testing than risk her reputation.

The extent of the practice is difficult to estimate because most women are very reluctant to admit their virginity has been questioned and thus seldom report being subjected to testing. Despite the lack of statistics, interviews with doctors, lawyers, and local women's and human rights activists reveal that the threat of such exams follows women throughout their lives. Further, it is clear that the Turkish government plays a significant role in conducting, or acquiescing in, virginity testing, especially those exams performed on women in police custody, on students and job applicants, and on rape victims.

## Virginity Testing

Those subjected to virginity testing include women who apply for certain government jobs; girls applying to attend specialized schools, such as nursing school; or women who are arrested for political activism or "immodest behavior," such as dining with female friends. Further, Turkey's history of torture and gross human rights violations against prisoners puts women detainees at risk of serious abuse.

## Prisoners and Detainees

Virginity testing of prisoners and detainees is not carried out in response to complaints of sexual assault or at a prisoner's request; rather, the tests are routine and involuntary. Women in prison are often subjected to virginity testing immediately upon being incarcerated, and again prior to release, under the justification that virginity testing protects female prisoners. Police authorities argue that if a woman is raped in police custody, a virginity test constitutes evidence of the crime. They contend that if an exam reveals that a woman is not a virgin, that evidence demonstrates a woman is sexually active and that the loss of virginity was not due to custodial rape. Therefore, only women who can prove they were virgins prior to being raped can successfully bring a custodial rape charge. Forced virginity exams are thus used to defend against claims of rape while in custody. This situation insinuates that non-virgins who are raped are not violated. Further, because the state fails to recognize that the tests are physically invasive and involuntary, virginity testing constitutes cruel treatment.

Women detained for political offenses also are targeted for virginity testing. In southeastern Turkey, where the Kurdish conflict is particularly volatile, Turkey has instituted a state of emergency, authorizing police to detain anyone suspected of terrorist activity for thirty days without being charged. Anti-terrorism laws restrict a variety of rights, including the right

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to demonstrate, to publish, and to broadcast. In accordance with these anti-terrorism laws, female journalists working for left-wing publications have been detained in southeastern Turkey and subjected to forced virginity testing.

Additionally, police force women to submit to virginity testing under the guise of investigating prostitution. Police often detain and examine women they deem immoral, accusing them of prostitution for acts the police consider immodest. For example, women have been detained as suspected prostitutes and subjected to testing for dining alone or with female friends, staying with female friends in a hotel, staying with a boyfriend in a hotel, walking or driving alone on a street, sitting on a park bench after dark with male friends, or living alone and having male visitors.

Compounding the humiliation and pain associated with the virginity tests, police harass women with the results. If an exam “determines” that a woman is not a virgin, she often faces taunting and verbal abuse by the police. In more egregious cases, if an examiner feels that the test shows a woman is a virgin, police sometimes threaten to rape the woman and destroy her “honor.”

#### *Students, Job Applicants, and Hospital Patients*

Prior to the ban, directors of state-run dormitories for female university students often required virginity exams of women when they first entered the dormitories, and subsequent to any nights they spent elsewhere. Nursing and midwife students also have been subjected to virginity testing. Additionally, applicants for civil service jobs at the State Cartography Department, a division of the Department of Defense, have complained about being tested for virginity. In addition, some hospitals’ rules dictate that female patients are to be examined for virginity before being admitted.

#### *Virginity Testing of Rape Victims*

Although gynecological exams are a legitimate way to gather evidence of sexual assault, in practice these exams often are performed without the victim’s consent or under the guise of conducting a rape investigation. One highly reported incident occurred in May 1991 at Bakirkoy Mental Hospital, a state hospital in Istanbul. The Istanbul provincial health director, along with his assistant and two male gynecologists, responded to reports of staff sexual misconduct with female patients by subjecting patients to forced gynecological exams. Doctors interrupted a group therapy session, and proceeded to separate the married patients from the unmarried ones. The unmarried patients were subjected to gynecological exams without their consent, and the exams were not limited to women who filed complaints of staff sexual misconduct. This procedure suggested that the married patients could not be victims of sexual misconduct. Further, the way in which the tests were performed degraded and abused the already vulnerable psychiatric patients. For instance, one patient who refused to submit to the exam was forcibly and roughly examined in view of other people.

The state’s interest in women’s virginity is evidenced by Turkish legal treatment of the offense of rape. Although other forms of battery are considered “Felonies Against Individuals,” rape is categorized as a “Felony Against Public Decency and Family Order.” This dichotomy suggests sex crimes are violations against a community rather than the

individual victim and emphasizes that loss of honor is the primary offense. Turkey’s criminal statutes 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. This supports a perception that rapes committed against non-virgins are less serious. Turkish law thus puts a victim’s modesty on trial, rather than the perpetrator’s actions. As a result of this legal framework, gynecological exams of rape victims, which should be performed for the sole purpose of obtaining forensic evidence, often include virginity testing. Further, virginity exams can be used as a way to control women’s lives by forcing them to marry to protect family honor. If a woman’s family suspects she has had sexual intercourse, they may attempt to force a marriage between the woman and her sexual partner by filing criminal charges with the police and forcing the woman to undergo a virginity exam. A man charged with the offense of causing a woman to lose her virginity by promising to marry her, seduction, or statutory rape can escape criminal liability if he marries the woman bringing charges.

### **Violation of National and International Law**

#### *National Law*

Under the Turkish criminal code, vaginal exams may be performed at the state’s behest for the following reasons: (1) to collect evidence after criminal charges have been filed for rape, but only if the woman participates willingly; or (2) to conduct a health check for working prostitutes. The law also dictates that vaginal exams conducted as a result of criminal charges being brought must be requested by a judge or prosecutor. Despite these limitations on the authority to examine women, state officials continue to compel examinations without consent, and even in the absence of criminal charges.

#### *International Law*

The degradation, humiliation, and invasion of privacy that accompany virginity testing violate the following international instruments: the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and the Convention concerning Discrimination in respect of Employment and Occupation.

#### *Universal Declaration of Human Rights*

Article 2 of the UDHR states that everyone is entitled to the rights enumerated in the Declaration, without distinction of any kind, including sex. Pursuant to this provision, women have the same human rights as men, including those provided for under Article 5, which states that “[n]o one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.” Being forced to submit to physically invasive virginity exams is cruel and degrading, especially when such exams are performed on women in police custody, and conducted in a manner designed to intimidate and punish. Further, Article 12 of the UDHR prohibits arbitrary interference with privacy and attacks on one’s honor and reputation. Virginity testing is a substantial intrusion upon women’s

privacy and is carried out in the context of questioning women's honor and reputation, clearly violating Article 12. Although the UDHR is not a binding legal instrument, widespread violation of the basic human rights it embodies contravenes the spirit of the document and the widely held values and expectations of the international community.

*International Covenant on Civil and Political Rights*

Article 7 of the ICCPR states that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.” General Comment 20, which further develops the meaning of Article 7, specifically states that the aim of Article 7 is “to protect both the dignity and the physical and mental integrity of the individual.” Article 7 relates not only to acts that cause physical pain, but also to acts that cause mental suffering to the victim. Forced virginity testing compromises the dignity of Turkish girls and women, and violates their physical and mental integrity. The incidence of suicides among young women threatened with virginity testing is evidence of the degree of mental anguish that virginity testing causes. General Comment 20 also imposes on state parties a “duty . . . to afford everyone protection through legislative or other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.” As a state party to the ICCPR, Turkey owes an affirmative duty not only to refrain from practicing virginity testing, but to take necessary action against private parties who perpetrate this abuse. The importance of this provision is reflected in the fact that no limitations, derogation, justifications, or excuses are permitted for violations of Article 7. Notably, General Comment 20 states that “it is not sufficient for the implementation of article 7 to prohibit such treatment or punishment or to make it a crime. States parties should inform the Committee of the legislative, administrative, judicial and other measures they take to prevent and punish acts of torture and cruel, inhuman and degrading treatment in any territory under their jurisdiction.” Although laudable, Turkey's recent decree banning virginity testing is only the first step in upholding its duties under the ICCPR.

*Convention concerning Discrimination in respect of Employment and Occupation*

Because virginity testing has been used to enforce virginity requirements for certain vocational training programs, such as nursing and midwife school, it violates the Convention concerning Discrimination in respect of Employment and Occupation. This Convention proscribes discrimination on the basis of sex that impairs equality of opportunity or treatment in employment or occupation. Signatories of the Convention are not only expected to repeal discriminatory laws and enact appropriate legislation; they also must ensure that the Convention is followed through measures including seeking the cooperation of appropriate organizations. For Turkey, this means the state cannot rely solely on its recent decree outlawing mandatory virginity testing for school applicants. Turkey also must work with schools and employers to ensure female applicants are not discriminated against on the basis of virginity.

*European Convention for the Protection of Human Rights and Fundamental Freedoms*

Turkey also is bound by the ECHR. Article 3 states that “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.” Again, the degrading and involuntary nature of virginity testing, especially in prisons, subjects women to impermissible treatment under international law. Further, Article 14 prohibits discrimination on the basis of sex. Because only women are targeted for virginity testing, the practice is discriminatory.

*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

Article 16 of the CAT requires states to prevent cruel, inhuman, or degrading treatment or punishment that does not amount to torture when committed by, at the instigation of, or with the acquiescence of a public official or other person acting in an official capacity. Although virginity testing may not be construed as torture, it constitutes cruel and degrading treatment and is thus strictly prohibited by the CAT.

The CAT obligates states to take specific steps to prevent such treatment, such as ensuring that education and information regarding the prohibition against cruel, inhuman or degrading treatment or punishment be included fully in the training of law enforcement personnel, medical personnel, public officials, and other persons who may be involved in the custody, interrogation, or treatment of any individual subjected to any form of arrest, detention, or imprisonment. States parties also are obligated to ensure prompt and impartial investigation of violations, and to ensure protection to complainants. Such obligations extend well beyond official decrees banning virginity testing. Turkey must educate doctors, police, and other relevant personnel to ensure that virginity testing is no longer conducted.

*Convention on the Elimination of all Forms of Discrimination against Women*

CEDAW prohibits discrimination against women, which is defined in Article 1 as “any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” Because men are not subjected to virginity testing, the existence of the practice constitutes discrimination. Further, because virginity testing has been used in the context of job and school applicants, women are discriminated against in their pursuit of career and educational goals.

CEDAW calls on states parties to pursue by all appropriate means a policy of eliminating discrimination against women by taking affirmative actions. CEDAW enumerates a host of possible affirmative actions: refraining from engaging in any act or practice of discrimination against women and ensuring that public authorities and institutions shall act in conformity with this obligation; taking all appropriate measures to eliminate discrimination against women by any person, organization, or enterprise; and taking all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs, and practices that constitute discrimination against women. The Committee on the Elimination of Discrimination against Women specifically “noted

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with the gravest concern the practice of forced gynaecological examinations of women in the investigation of allegations of sexual assault, including of women prisoners while in custody. The Committee emphasized that such coercive practices were degrading, discriminatory and unsafe and constituted a violation by state authorities of the bodily integrity, person and dignity of women.” The Committee also expressed concern about the categorization of violence against women as a “crime against public decency and public order,” and stated that such categorization contradicted the spirit of CEDAW. Further, the Committee noted its deep concern that greater penalties were imposed for the rape of a woman who was a virgin.

Although Turkey has taken initial steps in meeting its obligations under CEDAW by abolishing certain discriminatory laws, Turkey remains obligated to eliminate all discriminatory customs and practices, and take all measures necessary to end discrimination against women. CEDAW requires parties not only to refrain from discriminating against women, but also to ensure compliance by authorities and institutions, and to take all necessary measures against any person, organization, or enterprise that engages in discriminatory practices. The recent decree banning virginity testing will be insufficient if sanctions are not levied against those who violate the decree.

### Conclusion

Turkey’s human rights record has been cited consistently as grounds for denying Turkey admission into the European Union. Repealing the virginity testing law is a step in the right direction, but more needs to be done to eradicate the practice. The government must initiate a nationwide campaign

to inform women that the practice has been banned and that they have the right to refuse to comply with virginity testing. Further, doctors must be notified regarding the new law. To fully comply with international human rights standards, Turkey should adhere to the following measures, as recommended by HRW: stop detaining women for illegal prostitution without objective evidence; prohibit police from forcing women suspected of prostitution to undergo gynecological exams without their consent; stop discriminating against women by holding them to subjective standards of modesty to which men are not held; publicly denounce the forced imposition of virginity exams under any circumstances as a grave and intolerable human rights abuse and a violation of domestic and international law; direct state-employed doctors not to perform virginity exams on girls and women; train law enforcement personnel, health care providers, public officials, and others involved in the custody, interrogation, and treatment of detainees that compulsory virginity exams are prohibited, and will result in punishment; and examine rape victims only with their informed consent, the authorization of a prosecutor or judge, and only for the purpose of gathering forensic evidence.

Turkey’s actions in the near future will indicate whether officially banning virginity testing constitutes a real commitment to eradicating this egregious practice or an empty promise designed to improve its reputation. To meet its obligations under international law and truly improve its standing in the international community, Turkey must demonstrate respect for women’s human rights not just on paper, but in practice. 🌍

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cuted and punished in a manner consistent with the treatment of members of the armed forces of the detaining country who violate similar laws.

Regardless of the government’s underlying objectives, setting a standard for selectively applying the provisions of an international treaty poses serious consequences to citizens of all states parties to the agreement. In particular, some have expressed concern over the future treatment of U.S. special forces, who usually do not wear uniforms and therefore could be denied POW status for failing to meet the conditions enumerated in Article (4) (2) of the Third Convention.

### Conclusion

The Geneva Conventions set forth legal standards and procedures for the treatment of all nationals of states parties who fall into enemy custody during an armed conflict. In particular, the Third Convention articulates a duty of a detaining power to convene a competent tribunal to determine the legal status of persons detained in such a conflict. Moreover, where the status of detainees is in doubt, a detaining power is required to accord them the rights and privileges enumerated in the Third Convention until such status is

determined by an objective tribunal. The circumstances of the detention and treatment by the United States of the prisoners currently detained at Guantanamo Bay fail to conform to the Geneva Conventions in several respects. The refusal to recognize the Conventions with respect to prisoners classified as members of *al-Qaeda* violates the text and customary interpretations of the Fourth Convention. The unilateral determination that no prisoner is entitled to POW status violates the Third Convention’s guarantee that such determinations are to be made by competent tribunals. Finally, in light of the likelihood that at least some of the prisoners should be entitled to POW status, the nature of their detention violates the various provisions of the Third Convention, which guarantee privileged treatment to POWs.

As one of the most powerful nations in the world, the U.S. is setting a dangerous precedent for the future application and interpretation of the Geneva Conventions. In the interest of its own credibility, as well as the future safety of its own armed forces, the U.S. government would be well advised to reconsider its position and comply with all of its obligations under the Conventions. 🌍

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