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Statement on virginity testing

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ABSTRACT

Virginity testing (virginity examination) is a gynecological examination that is intended to correlate the status and appearance of the hymen with previous sexual contact to determine whether a female has had or is habituated to sexual intercourse. Virginity examinations are practiced in many countries, often forcibly, including in detention places; on women who allege rape or are accused of prostitution; and as part of public or social policies to control sexuality. The Independent Forensic Expert Group (IFEG) - thirty-five preeminent independent forensic experts from eighteen countries specialized in evaluating and documenting the physical and psychological effects of torture and ill-treatment - released a statement on the practice in December 2014.

In its statement, the IFEG outlines the physical and psychological effects of forcibly conducting virginity examinations on females based on its collective experience. The Group assesses whether, based on the effects, forcibly conducted virginity examinations constitute cruel, inhuman, or degrading treatment or torture. Finally, the IFEG addresses the medical interpretation, relevance, and ethical implications of such examinations.

The IFEG concludes that virginity examinations are medically unreliable and have no clinical or scientific value. These examinations are inherently discriminatory and, in almost all instances, when conducted forcibly, result in significant physical and mental pain and suffering, thereby constituting cruel, inhuman and degrading treatment or torture. When virginity examinations are forcibly conducted and involve vaginal penetration, the examination should be considered as sexual assault and rape. Involvement of health professionals in these examinations violates the basic standards and ethics of the professions.

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1. Introduction

Virginity testing (also referred to as virginity examination) is a gynaecological examination that is intended to correlate the status and appearance of the hymen in females with previous sexual contact to determine whether a female has had or is habituated to

sexual intercourse. The exam is conducted by visual inspection of the hymenal region, and is often combined with a 'two-finger test', which involves the insertion of one or more fingers into the vagina to assess the size of the vaginal opening and to check the degree of vaginal penetrability.^c

Virginity examinations are practiced in many countries, and often forcibly, in a number of contexts, including in detention places; on women who allege rape; on women who are accused by authorities of prostitution; and as part of public or social policies to control sexuality. In other states, the practice is illegal.

The purpose of this medico-legal statement is to provide legal experts, adjudicators, health care professionals and policy makers, among others, with an understanding of the physical and

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^b For full details about the Independent Forensic Expert Group please visit <http://www.irct.org/our-support/medical-and-psychological-case-support/forensic-expert-group.aspx>.

^c Virginity examinations do not include similar examinations conducted for other purposes such as body cavity searches, although the facts and issues addressed in this statement may be applicable to the latter.

psychological effects of forcibly conducting virginity examinations on females^d and to assess whether, based on these effects, forcibly conducted virginity examinations constitute cruel, inhuman, or degrading treatment or torture. This medico-legal statement also addresses the medical interpretation and relevance of such examinations and the ethical implications. This opinion considers an examination to be ‘forcibly conducted’ when it is “committed by force, or by threat of force or coercion, such as caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person incapable of giving genuine consent.”^{e1}

While this opinion concerns itself with the medico-legal implications of forcibly conducted virginity examinations, many of the facts and issues addressed herein are generally applicable to all virginity examinations.

The opinions expressed in this statement are based on international standards and the experiences of members of the Independent Forensic Expert Group (IFEG) in documenting the physical and psychological effects of torture and ill-treatment. Consisting of thirty-five preeminent independent forensic specialists from eighteen countries, the IFEG represents a vast collective experience in the evaluation and documentation of the physical and psychological evidence of torture and ill-treatment.

The IFEG provides technical advice and expertise in cases where allegations of torture and/or ill-treatment are made.^f Its members are global experts on and include several authors of the Istanbul Protocol, the key international standard-setting instrument on the investigation and documentation of torture and ill-treatment.²

IFEG members also hold influential positions in and act as advisors to governments, international bodies, professional health associations, non-governmental organisations, and academic institutions worldwide on forensics in general and more specifically on the investigation and documentation of torture.

2. Background

Virginity examinations are premised on a correlation between the practice of sexual intercourse and immorality or criminal deviancy. By nature, as they can only be conducted on females and are generally only conducted on those who are unmarried, the examinations are discriminatory.

In the justice context, correlating virginity to purity elevates the repugnance of sexual violence against women who are ‘virgins’. Yet, it similarly diminishes the perception of the severity of sexual violence against women who have previously engaged in sexual intercourse; and it has been used to suggest that those women are somehow responsible for the acts perpetrated against them.

Virginity examinations are often conducted forcibly – without the consent of the women or in circumstances where women are not capable of giving genuine consent. This may be presumed to be the case when examinations are conducted on women in detention, sometimes subsequent to allegations of rape by victims or of prostitution by the authorities.

A plethora of jurisprudence has found the practice of virginity examination to violate international human rights standards. In many countries, virginity examinations are explicitly prohibited or criminalised under the overarching national laws against sexual assault and rape. According to the United Nations (UN) Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the “Bangkok Rules”), women have the right not to undergo screening in relation to their reproductive health history.³

The World Health Organization,⁴ the UN Special Rapporteur on Torture and Cruel, Inhuman or Degrading Treatment or Punishment,⁵ and the UN Special Rapporteur on Violence Against Women, Its Causes and Consequences⁶ all consider virginity examination to be a form of sexual violence.^g

In 2005, the UN Committee on the Elimination of Discrimination against Women expressed concern that certain provisions of the Civil and Penal Codes of the Republic of Turkey permitted virginity examinations to be conducted on women without their consent.⁷ In 2010, the UN Committee against Torture expressed concern that judges and prosecutors in Turkey could order a virginity examination in rape cases against the will of women.⁸

The European Court of Human Rights in 2009 held that two women in police detention were subjected to severe ill-treatment when they were forced to submit to virginity examinations without their consent, purportedly subsequent to allegations of sexual violence.⁹ As a result of the forcibly conducted virginity examinations, both women suffered from post-traumatic stress disorder, and one of them suffered from serious depressive disorder.^h

3. Physical and psychological effects

3.1. General effects

A number of physical and psychological effects result from the act of conducting virginity examinations forcibly on women. These examinations can cause physical pain, and can lead to damage to the hymen, bleeding, and to infection. Psychologically, the pain and suffering caused by these examinations is especially acute.

Forcibly conducting virginity examinations on women violates the autonomy of women in relation to their own body and sexual decision-making. In so doing, these examinations cause significant mental pain and suffering in almost all instances. When undertaken in a detention setting, they can be particularly traumatic because of the ease in which the state exploits these women's vulnerability and weakened resistance.¹⁰

The pain and suffering caused by forcibly conducting virginity examinations may manifest as severe emotional pain, as well as fear, a sense of powerlessness or denial. Irrespective of the findings of these examinations, conducting them forcibly also leads women to feel intense humiliation, self-disgust, and worthlessness. Women are often stricken by apathy, emotional numbing, and

^d This statement focuses on virginity examinations forcibly conducted on post-pubescent females (women). It does not address the particular and specialised concerns relating to prepubescent females.

^e The International Criminal Court has adopted this standard on lack of consent in the crimes of rape.

^f See e.g., Independent Forensic Expert Group. Statement on Hooding, Torture, 2011; 21(3):186–189; Independent Forensic Expert Group. Statement on access to relevant medical and other health records and relevant legal records for forensic medical evaluations of alleged torture and other cruel, inhuman or degrading treatment or punishment. Torture, 2012; 22 (Supplementum 1):39–48.

^g According to the World Health Organization, other forms of sexual violence include, but are not limited to: sexual slavery; sexual harassment (including demands for sex in exchange for job promotion or advancement or higher school marks or grades); trafficking for purposes of forced prostitution; forced exposure to pornography; forced pregnancy; forced sterilisation; forced abortion; forced marriage; and female genital mutilation.

^h Also, the Inter-American Court of Human Rights has ruled that “the acts of sexual violence to which an inmate was submitted under an alleged finger vaginal ‘examination’ constituted sexual rape that due to its effects constituted torture.” Inter-Am. Ct. H.R. Miguel Castro–Castro Prison v. Peru. Judgment of 25 Nov. 2006. 2006 Inter-Am. Ct. H.R. (ser. C) No. 160, para. 312.

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