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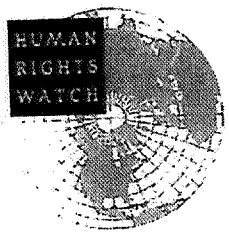

Memorandum to the Turkish Government on Human Rights Watch's Concerns with Regard to Academic Freedom in Higher Education, and Access to Higher Education for Women who Wear the Headscarf

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SUMMARY

Turkey's public universities are still emerging from more than twenty years of military influence and centralized ideological and operational controls. Academic freedom in Turkey reached a low point shortly after the 1980 military coup, when the junta expelled hundreds of staff and thousands of students for their political activities and enacted a new education law imposing firm political prescriptions on Turkey's higher education system. Although reforms, some as recent as May 2004, have improved campus life in important respects, many of the constraints remain in place.

With additional reform legislation now pending, there is an opportunity for Turkey to clear away the legacy of control and establish academic freedom on a more secure footing. This report summarizes the continuing barriers and provides suggestions on what should be done to remove them.

The discussion that follows is divided into two parts. The first part discusses the critical issue of institutional autonomy and the constraints placed on Turkish public universities by law and by the actions of the powerful state-controlled Higher Education Council (HEC/YÖK), a body given broad power to shape campus policies nationwide. The second part provides a detailed account of the controversy surrounding access to universities for women who choose to wear headscarves for religious reasons, and of the complex and often delicate relationship between religion and secular state institutions implicated in the controversy. Following a military directive, the HEC in 1997 banned the headscarf from Turkey's public campuses.

Institutional Autonomy

The 1980 military coup in Turkey had a profound impact on the country's higher education system. The military junta purged the universities of those it considered politically unacceptable, and then established the Higher Education Council as its watchdog to ensure that higher education operated along the lines it believed proper.

In November 1981, the junta enacted Law 2547 on Higher Education. This law expressly imposed ideological controls on Turkish higher education, stating that "[t]he aims of higher education" include "educat[ing] students so that they ... will be loyal to Atatürkist nationalism and to Atatürk's reforms and principles." It also established the HEC, conferring on it broad powers to intervene in campus life and granting the HEC effective immunity from court challenge. This law was reinforced by the junta in provisions of the 1982 constitution, still in effect in Turkey today.

The HEC exercises central control over the university system and violates international human rights law and standards on academic freedom. It restricts the liberty of professors to write, teach, and take an active role within society, and limits the autonomy of universities in their staffing, teaching, and research policies and practice.

In May 2004, constitutional changes finally removed military representation from the HEC, but the Turkish military has continued to use its considerable political clout to influence education policy. The military seems particularly concerned to protect its own creation, the HEC.

The HEC's mission to sustain a particular ideological view of the Turkish nation and its readiness to use its extensive powers to discipline individuals and institutions that step out of line have had a chilling and stifling effect on the university system. The threat of disciplinary measures that can result in the curtailment of an academic career or even the closing of a university for departure from an officially approved set of ideas has generated an atmosphere of self-censorship.

Recently, language policy became a flashpoint. Students' requests for optional courses in minority languages—in particular Kurdish—rocked a number of universities in 2001 and 2002. The HEC orchestrated institutional resistance to the request, while universities responded with student exclusions and expulsions, and prosecutors directed arrests and prosecutions of those who had submitted petitions. The sanctions applied to students for making this demand have been lifted, but the idea of optional courses in minority languages is something that the HEC has indicated it will not even consider.

So long as the Turkish higher education system is subjected to far-reaching centralized control by a body largely appointed by government authorities with an ideologically prescriptive mandate, academic freedom will not flourish.

Headscarf Ban

The ban on the headscarf within universities excludes thousands of women from higher education each year. In accordance with a 1997 military ultimatum delivered to the government of the day, the HEC forbids any woman who wears the closefitting headscarf from studying or teaching in higher education. This restriction of women's choice of dress is discriminatory and violates their right to education, their right to freedom of thought, conscience and religion, and their right to privacy.

The headscarf ban is imposed in the name of secularism as a barrier to the perceived threat of encroachment of Islam into the political field. Yet protection of religious freedom is consistent with secularism in state institutions. Accommodating different forms of religious headgear does not suggest that state authorities endorse any particular religion and does not require additional state resources. In fact, protecting religious freedoms demonstrates the very respect for the diversity of religious conscience on which the secularism of public institutions is founded. Policies requiring or forbidding students to wear visible religious dress is a failure in the duty of states to avoid coercion in matters of religious conscience.

Headscarves do not pose a threat to public safety, health, order, or morals, and they do not impinge on the rights of others. They are not inherently dangerous or disruptive of order, and do not undermine the educational function.

A fairly widespread suspicion among Turkey's secular population is that the religious parties have a plan to eliminate secularism by "salami tactics," and that the headscarf is the first slice. They fear that tolerance shown on this issue will be followed by a ramping up of demands. Such fears have been aggravated by attacks directed specifically at people who have criticized the wearing of the headscarf at university.

Added to the uneasy relationship between Islam and the state in Turkey is the fact that many women are far from confident that the Turkish state is genuinely committed to protecting women from discrimination and abuse. This suspicion fuels concerns that the state would not protect secular women from abuse that might attend a lifting of the ban.

Therefore, when this or any future government frames legislation or policy relating to the headscarf, Human Rights Watch believes that it would do well to acknowledge the long and sorry history of state failure to protect women from gender-based violence and discrimination, and commit itself to programs to remedy continuing shortcomings in that protection.

Any new legislation on higher education should also include provisions to offer reassurance to those who feel their rights could be put at risk by a change of policy with regard to the headscarf. Such provisions might be legislative or regulatory safeguards for the rights of women who choose not to wear the headscarf, as well as strong public endorsements of women's freedom to dress according to their own free choice. But the most important gesture the government could make would be actively to seek out civil society groups representing women and gather their views through the broadest possible consultation.

A convincing consultation would give opponents of liberalization an opportunity to express their strong reservations and to suggest safeguards or undertakings that the government could make to protect society against the erosion of civil liberties—and in particular, women's civil liberties—that the opponents fear would result from a lifting of the headscarf ban. By listening to the concerns of women from all sides of the argument, the government may be able to break away from the pessimistic zero-sum game and move toward a genuine pluralism that allows women to make their own free choice whether to wear the headscarf or not.

Such an approach, moreover, is the one most likely to succeed in Turkey today. It is quite possible that a broadly rights-based approach to changing the law could achieve wide acceptance—particularly at a time when civil society groups are reaching across traditional partisan divides to increase protection of individual rights through the rule of law.

Developments in May 2004

On May 7, 2004 the Turkish Parliament passed a constitutional reform law[1] which included a measure to remove military representation on the Higher Education Council.

On May 4, 2004 the Justice Ministry produced a draft higher education law which the Turkish parliament passed into law on May 13, 2004. The Law amending the Law on Higher Education and the Law on Higher Education Personnel[2] offers a degree of potential autonomy for higher education institutions. On May 28, 2004 President Ahmet Necdet Sezer vetoed four articles of the higher education law. His principle objection was that an adjustment to the points system for entry to universities would favor students at clerical training schools (*imam-hatip liseleri*) and was therefore in contravention of the constitutional principles of secularism and unity of education.[3] If the government resubmits the law unchanged, the president may appeal to the Constitutional Court to have the articles struck out.

Neither the constitutional changes in Law 5170 nor the legislative amendments in Law 5171 provide conclusive and effective protection for the freedom of professors and students to teach and learn. True protection for academic freedom will require more fundamental reform.

On June 1, 2004 Human Rights Watch submitted the attached memorandum to the Turkish government.

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[1] Law 5170.

[2] Law 5171

[3] Clerical training schools were originally founded to prepare students for training as religious prayer-leaders (*imam*) but were preferred by more devout sections of the population and during the 1980s and 1990s expanded until they were educating more than a hundred thousand male and female students, far exceeding the annual demand for prayer-leaders. Under current regulations it is extremely difficult for such students to qualify for admission to universities other than as members of theology faculties. The law proposed changes to the calculations that would relieve these difficulties for students at clerical training schools.

HUMAN RIGHTS WATCH'S CONCERNS WITH REGARD TO ACADEMIC FREEDOM IN HIGHER EDUCATION, AND ACCESS TO HIGHER EDUCATION FOR WOMEN WHO WEAR THE HEADSCARF

In November 1981, the military junta issued Law 2547 on Higher Education, which imposed firm political prescriptions on Turkey's higher education system. The military junta reinforced this law in the 1982 constitution, which established the Higher Education Council (HEC)[4] to administer the system. The HEC exercises central control over the university system and violates international standards on academic freedom. It restricts the liberty of professors to write, teach, and take an active role within society, and limits the autonomy of universities in their staffing, teaching, and research policies and practice. The HEC has also implemented a ban on access to education for women who wear the headscarf for religious reasons. This restriction of women's right to choose their dress violates their right to education, their right to freedom of thought, conscience and religion, their right to privacy, and is discriminatory.

In July 2003, the Justice Ministry, in collaboration with the Education Ministry, introduced a draft Law on Higher Education. There was widespread criticism that this draft did not resolve longstanding infringements of academic freedom by the state. The Inter-University Council, composed of academics, reviewed the draft and in December 2003 produced its own draft Law on Higher Education. The HEC president Professor Erdoğan Teziç conducted a review of both drafts, and produced a third draft Law on Higher Education in January 2004. On May 4, 2004 the Justice Ministry produced a further Draft Law Concerning Amendments to the Higher Education Law and to the Law on Higher Education Personnel, which the Turkish parliament passed into law on May 13, 2004 as Law no 5171 Amending the Higher Education Law and the Higher Education Personnel Law. At the time of writing it appeared likely that President Necdet Sezer would veto the law as contrary to the constitutional principle of secularism. On May 7, 2004 the Turkish Parliament passed a constitutional reform law[5] which included a measure to remove military representation on the Higher Education Council.

Neither the constitutional changes nor the legislative texts provided conclusive and effective protection for the freedom of professors and students to teach and learn.

This briefing paper describes longstanding human rights concerns relating to academic freedom and access to education for women who wear the headscarf, and suggests steps that the government could take to address these concerns in shaping further legislative and constitutional change.

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[4] Yüksek Öğretim Kurulu (YÖK).

[5] Law 5170.

ACADEMIC FREEDOM IN HIGHER EDUCATION

Academic freedom depends heavily on the continuity of an independent academic community characterized by respect for varying political, social, and scientific ideas within a context of scholastic excellence. In Turkey, this continuity took a severe blow as a consequence of the military intervention, and the creation of the HEC. Academic freedom in Turkey had already suffered in the late 1970s when universities became caught up in the turbulence of the era. The political violence that spread onto university campuses at that time imposed informal and unofficial but nonetheless severe strains on academic freedom. Various political groups intimidated academics and students, and campus life was disrupted by violent confrontations and even assassinations. After the 1980 military coup the junta punished universities for their part in the upheaval of the previous decade by expelling hundreds of staff and thousands of students for their political activities.

Academic freedom continues to be so severely restricted that commentators of almost every political color have suggested that the HEC should not continue in its current form. It was in this context that the draft law on Higher Education was announced. The Justice Ministry's July 2003 draft law drew public criticism from academics concerned that the proposed reforms do not fully establish the formal independence of universities, and leave academic institutions exposed to the outside imposition of political orthodoxy.

Some observers expressed fears that the Justice and Development Party (AKP) government, helped to electoral victory in November 2002 by a religiously devout constituency, might follow the common clientelist pattern in Turkey, and try to replace secularists with its own supporters throughout higher education, in retaliation for expulsions of devout academics following the February 1997 fall of the religious-oriented government headed by Prime Minister Necmettin Erbakan.

Academic Freedom Under International Law

Academic freedom is more than just the freedom of professors to speak and write freely in their fields of specialty. It also recognizes the role that academics play as intellectual shapers of society. As such, academic freedom is a sensitive barometer of a government's respect for human rights. Educational systems in general and universities in particular are public institutions, often dependant on government funding, and viewed by governments as potential instruments of national policy. Governments have considerable power to influence what takes place in schools and on campus, and a powerful incentive to wield that power. In Turkey, as in many other countries, governmental power has been used to force the educational system to reflect the values of state power holders and serve their interests. This has led to violations of international human rights law, and has obstructed the fulfillment of other civil, political, economic, social, and cultural rights.

International law has long recognized the cardinal significance of the right to education and the importance of academic freedom in fulfilling this right. The right to education is

enshrined in article 26(1) of the Universal Declaration of Human Rights, which simply states "Everyone has the right to education." The International Covenant on Economic, Social and Cultural Rights (ICESCR)[6] echoes this idea in article 13: "The States Parties to the present Covenant recognize the right of everyone to education." Article 13 sets forth in some detail the right to education, the purpose and content of education, and the critical role of teachers and their associations in establishing and implementing national educational policies. The U.N. Committee on Economic, Social and Cultural Rights (ESCR Committee), responsible for authoritatively interpreting the content of the rights enumerated in the ICESCR, has explained the importance of the right to education thus: "Education is both a human right in itself and an indispensable means of realizing other human rights."[7]

The ESCR Committee has identified a clear link between academic freedom and fulfillment of the right to education: "the right to education can only be enjoyed if accompanied by the academic freedom of staff and students."[8] It is useful here to refer in full to the Committee's definition of academic freedom:

> Members of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing. Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfill their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognized human rights applicable to other individuals in the same jurisdiction.[9]

As set out by the Committee, academic freedom includes two sets of rights: firstly, the individual rights of educators and their students, in particular the rights to free expression and free association; and secondly, institutional autonomy. Institutional autonomy is the collective right of the academic community to conduct its own affairs in order to fulfill its central mission of transmitting knowledge and information.

In the first category are those fundamental rights, applicable to all individuals under international law, that are particularly relevant in allowing educators and students as

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[6] Turkey signed the ICESCR and the International Covenant on Civil and Political Rights (ICCPR) in August 2000, and ratified both on June 17, 2003. The United Nations received the instrument on October 23, 2003 and is currently awaiting the text of any reservations Turkey may submit.

[7] ECSCR Committee, Gen. Com. no. 13, para.1.

[8] Ibid., para. 38.

[9] Ibid., para. 39.

individuals to engage in the pursuit and dissemination of knowledge and to participate in the formation of educational policy. The right to hold and freely express opinions is essential to academic freedom but can be seriously prejudiced in a climate of self-censorship when certain ideas are formally or informally outlawed.

In his "Thematic Report on Freedom of Opinion and Expression," presented at the fifty-sixth session of the U.N. Human Rights Commission in 2000, the United Nations special rapporteur on freedom of expression focused mainly on self-censorship in relation to defamation laws and suppression of women, but also took particular notice of "actions taken by governments in relation to academic freedom." These actions were found to include:

> Suppression of research on such controversial topics as a national independence movement that was active in the past; a ban on campuses of any independent organizations that are considered political; refusal of permission to hold a seminar on human rights; state-supported harassment of independent libraries that were established to provide access to materials to which there is no access in state institutions; charges of having published a play that was considered blasphemous; charges against and conviction of the head of a political science department, who was also a contributor to a student magazine, for having defamed the religion of the state.[10]

Knowingly encouraging self-censorship through government policies amounts to a violation of the freedom of opinion, which is considered to be absolute, and is protected as such in the International Covenant on Civil and Political Rights (ICCPR)—as noted in a report by the special rapporteur at the fifty-first session of the U.N. Commission on Human Rights on December 14, 1994:

> The freedom to form an opinion was held to be absolute [in the *travaux preparatoires* of the Covenant] and, in contrast to freedom of expression, not allowed to be restricted by law or any other power. It is for these reasons that the Covenant in article 19 (1) declares an independent right to hold opinions without interference. The absolute character of the protection offered by article 19 (1) is furthermore underlined by article 19 (3), which stipulates that special duties and responsibilities are only

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[10] Report of the special rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, to the Commission on Human Rights, 56th Session, para.37, E/CN.4/2000/63 (2000). Mr. Abid Hussain (India) was appointed special rapporteur on the promotion and protection of the right to freedom of opinion and expression on 2 April 1993, pursuant to Commission on Human Rights resolution 1993/45.

> carried with the exercise of the rights provided for in paragraph 2 of article 19, i.e. solely the right to freedom of expression and not the right to hold opinions.[11]

The second category of rights comprising academic freedom is the collective right of the academic community to pursue its mission of teaching and scholarship. Institutional autonomy is essential for fulfillment of this right. UNESCO, in its 1997 declaration on the role of higher-education personnel, described autonomy as "the institutional form of academic freedom and a necessary precondition to guarantee the proper fulfillment of the functions entrusted to higher-education teaching personnel and institutions."[12] The ESCR Committee expanded on this definition in its discussion of academic freedom: "the enjoyment of academic freedom requires the autonomy of institutions of higher education. Autonomy is that degree of self-governance necessary for effective decision-making by institutions of higher education in relation to their academic work, standards, management and related activities."[13]

Institutional autonomy does not mean that educational institutions are free to operate as they please. In fact, the ESCR Committee explicitly states that autonomy must be balanced against accountability to the public's needs and demands.[14] But it has been demonstrated repeatedly that educational institutions can only meet their obligations to society and satisfy the right of all individuals to education if educators, staff, and students are free as a community to "enhance their prospective function, through the ongoing analysis of emergent social, economic, cultural and political trends, acting as a watchtower, able to foresee, anticipate and provide early warning, thereby playing a preventative role."[15]

Regulatory Framework of Academic Freedom Under the Turkish Constitution and Law

Turkey's current higher education system violates the academic freedom of individual faculty and students, and also the institutional autonomy of universities.

The Turkish constitution explicitly limits the freedom of academics to research and teach. Article 42 of the 1982 Constitution bluntly prescribes tight state control of education at all levels, stating that education shall be "conducted along the lines of the

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[11] Report of the special rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, to the Commission on Human Rights, 51st Session, para. 24, E/CN.4/1995/32 (1994).

[12] UNESCO, Recommendation concerning the status of Higher-Education Teaching Personnel, para. 18, 1997.

[13] ECSCR Committee, Gen. Com. No. 13, para. 40.

[14] Ibid.

[15] The World Declaration on Higher Education in the 21st Century: Vision and Action, para. 3, adopted by the UNESCO World Conference on Higher Education in Paris, October 9, 1998.

principles and reforms of Atatürk, on the basis of contemporary science and education methods, under the supervision and control of the State." Article 130, which deals with higher education, states: "Universities, members of the teaching staff and their assistants may freely engage in all kinds of scientific research and publication. However, this shall not include the liberty to engage in activities directed against the existence and independence of the State, and against the integrity and indivisibility of the Nation and the Country."

The framers of the Turkish constitution proposed a linguistically, ethnically, and culturally monolithic Turkish state, and co-opted education to shore up this identity: article 42(9) states: "No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education. Foreign languages to be taught in institutions of training and education and the rules to be followed by schools conducting training and education in a foreign language shall be determined by law."

The 1982 constitution also provides the basis for the HEC's highly centralized overriding authority "to direct the teaching ... and steer the scientific research in Higher Education Institutions" as a permanent fixture within the education system.[16] These constitutional prescriptions grew out of the military junta's Law on Higher Education of November 1981. This law expressly imposes ideological controls on Turkish higher education. "The aims of higher education" in Article 4 of this law include: "To educate students so that they ... will be loyal to Atatürkist nationalism and to Atatürk's reforms and principles." Article 5 explains that "Higher education is organized, planned, and programmed in accordance with the following basic principles ... To ensure that students develop a sense of duty in line with Atatürk's reforms and principles, loyal to Atatürkist nationalism. .... In the course of education in the institutions of higher education, Atatürk's Principles and the History of the Turkish Reforms, the Turkish language and a foreign language are all compulsory courses."

The problem with the ideological preconditions imposed by the constitution and the law is not only that they conflict with the free social and political inquiry that are traditionally essential functions of a university, but that they permit university or state authorities to use such restrictive (but vague) prescriptions to persecute staff for their supposed ideological orientation. The HEC provides the administrative apparatus for such control.

The HEC conducts and controls administrative decisions at all levels of higher education. Faculty appointment, budgets, curricula, and research priorities are all subject to the HEC's political controls. The HEC also imposes disciplinary procedures at all levels of higher education. Article 7(l) of Law 2547 empowers the HEC "[t]o conduct and decide upon disciplinary proceedings concerning rectors,[17] to initiate regular proceedings for the dismissal or transfer on a probationary status to another institution

[16] Constitution of the Republic of Turkey, art. 131.

[17] The rector is the head of a university.

of higher education of those faculty members who fail to carry out in a satisfactory manner their duties as specified in this law or who act in a manner incompatible with the aims, fundamental principles and prescribed order as indicated in this law, upon the proposal of the rector or directly."

Law 2547 eroded the independence of academics and academic institutions, while simultaneously furnishing the HEC with immunity from prosecution and enabling it to authorize or halt prosecutions against academics.[18] In 1999, the Turkish parliament formed a commission to investigate the HEC's activities. The thirteen-member commission worked for nearly six months, conducting hundreds of interviews and researching thousands of documents. The commission's report never emerged, but it did submit evidence to prosecutors in Ankara and Istanbul. No prosecutions were initiated against the HEC because the president of the HEC withheld permission for them to go forward.[19]

More than two decades after the military coup, higher education in Turkey still stands in the long shadow of the military. Law 2547, passed in 1981 when Turkey was still under martial law, gave the armed forces substantial influence over the HEC, and enabled them to exercise direct influence over its deliberations at nearly every level. Under Law 2547 and the 1982 constitution, the Turkish military appointed one representative on the 22-person HEC supervisory board. This representative, always an active or retired military officer, was also by law a member of the HEC's nine-member Executive Council. In May 7, 2004 constitutional changes removed military representation from the HEC. The package of constitutional changes was proposed by the government and passed with substantial opposition support. The reforms, part of an ongoing series of legislative and constitutional changes aimed at fulfilling the European Union's political criteria for Turkey's candidacy, included removal of the death penalty from the constitution and enhancement of the applicability of international law in Turkish courts.

The removal of the military representative from the HEC board is a landmark reform, for which the government and parliament deserve much credit. It is the latest step in a long process that many hope will end in the complete elimination of military influence in academic life, and in civilian affairs more generally, in Turkey.[20]

Military influence has not been limited to representation on the HEC board, however. For example, military officers, often with no academic training, also sit on the HEC's disciplinary committees and staff the oversight teams that evaluate the conformity of Turkey's private universities with the strict political strictures established by the HEC.

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[18] Law 2547, art. 53.

[19] Human Rights Watch interview with Professor Reşat Apak, Istanbul, May 24, 2001.

[20] The first step in this process was the abolition of military judges and prosecutors from State Security Courts in 1999. A military representative still sits in the High Council for Radio and Television Broadcasting.

In addition, the military has used its extensive network of informal power to play a central role in appointments, including that of the all-powerful president of the HEC. In 1999, for instance, the Turkish military successfully secured the reappointment of Professor Kemal Gürüz to a second five-year term as HEC president, despite considerable criticism from some of Turkey's academics, politicians, and journalists who saw his appointment as a sign that there was to be no change from the system of tight state and military control of the universities.[21] It is essential that the implementing legislation for this constitutional change should ensure an end to the remaining forms of military influence.

For the moment, it seems unlikely that the departure of the military nominee to the Higher Education Council will be the Turkish military's final performance on the educational stage. On the day that the constitutional reforms were put before parliament for debate, the Office of the Chief of General Staff issued a statement indicating that it had "good reason to express its opposition to items in the latest Constitutional changes that closely concerned this institution,"[22] but had remained silent in view of the European Union accession process. The statement went on strongly to criticize the Justice Ministry's Draft Law Concerning Amendments to the Higher Education Law and to the Law on Higher Education Personnel. The Office of the Chief of General Staff sharply criticized the draft for permitting the Higher Education Council to devolve responsibilities other than that of coordination and supervision to individual universities if it so decides. In fact, the draft left the power to devolve or not to devolve these "other responsibilities" (which included the direction and guidance of education, learning and scientific research, planning for the development of universities, the effective use of allocated funds and the training of teaching staff) very much in the HEC's hands. If the intention of the reform were genuinely to safeguard institutional autonomy and academic freedom, then these responsibilities should have been firmly and formally devolved.

The Office of the Chief of General Staff also asserted that a measure allowing graduates of clerical training schools to apply to university on an equal footing with students from conventional high schools[23] would "obviously damage the principles of the unity of education and the principles of secular education. For this reason sectors and institutions whose attachment to the fundamental characteristics of the Republic cannot be expected to accept this draft law."[24] The Chief of General Staff's statement looks like a reassertion of the military's right to interfere in educational matters, and an attempt to preserve the HEC as a tool in this interference.

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[21] Professor Kemal Gürüz completed his second term. Professor Erdoğan Teziç was appointed as the new HEC president in December 2003.

[22] Office of the Chief of General Staff, Press Release, May 6, 2004.

[23] Clerical training schools (*imam-hatip liseleri*) were founded to prepare students for training as religious prayer-leaders (*imam*). Under current regulations it is extremely difficult for such students to qualify for admission to universities other than as members of theology faculties.

[24] Office of the Chief of General Staff, Press Release, May 6, 2004.

The Turkish parliament passed the law on May 13, 2004 as Law no 5171 Amending the Higher Education Law and the Higher Education Personnel Law, but at the time of writing it was expected that President Necdet Sezer would veto the law as contrary to the constitutional principle of secularism. If parliament passes the law once again, the President is entitled to ask for an adjudication from the Constitutional Court.

Impact on free expression and opinion

Since the 1980s, the threat of investigation or discipline by HEC tribunals has imposed strict self-censorship on the academic community. Academics whose opinions deviate from the political orthodoxy laid down for higher education in the constitution are subject to legal or administrative disciplinary proceedings—even when those opinions constitute protected expression under the European Human Rights Convention.

For example, on September 27, 2000 an HEC academic tribunal found Alev Erkilet Başer, lecturer at Kırıkkale University, guilty of acting contrary to Atatürk's reforms by producing a Ph.D. thesis regarded by the tribunal as anti-secularist and Islamist. The ruling, replete with procedural and substantive errors and shortcomings, was based on a report prepared by a three-person board which included a retired navy lieutenant.[25] On the basis of that ruling, Alev Erkilet Başer was dismissed from her job in April 2001. Her published dissertation, a comparison of Islamist movements in Turkey, Iran, and Egypt, included a frontispiece bearing the words *Bismillah alrahman alrahim*, [in the name of God, the gracious, the merciful] and included two pictures of Iran's Ayatollah Khomeini.

On December 7, 1999 Dr B of Ankara University responded to a poem urging a *carpe diem* approach to life posted on an internet discussion group with a parodic story suggesting what might have happened if Atatürk had adopted such an irresponsible approach during the War of Independence. He was immediately subjected to a gruelling investigation by the HEC in which he was accused of "publicly insulting Atatürk's glorious memory through electronic mail."[26] In the course of the HEC tribunal proceedings, the university authorities even wrote to the Office of the Chief of Staff[27] asking for their opinion on the email. The Office of the Chief of Staff replied that the expressions were "unsuitable" and "belittling of Atatürk's memory."[28] However, after a hearing in which all witnesses testified that the email was a simple parody and that the author was an expert on Turkish history who had shown knowledge and appreciation of Atatürk's life in his other writings, the charges against Dr B were dropped in mid-2000.

In January 2000, the HEC ordered Istanbul University to start a disciplinary investigation against law faculty Professor Bülent Tanör for authoring the landmark report *Perspectives*

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[25] Başer's petition to Ankara Administrative Court for review of her dismissal, December 20, 2000, copy on file at Human Rights Watch; Human Rights Watch interview with Alev Erkilet Başer, Ankara, May 27, 2001.

[26] Human Rights Watch interview, Ankara, May 28, 2001. The individual asked not to be identified.

[27] The military high command.

[28] Human Rights Watch interview, Istanbul, May 28, 2001. The individual asked not to be identified.

on Democratization in Turkey published by the Turkish Businessmen and Employers' Association (TÜSİAD). The investigation focussed on alleged irregularities in Professor Tanör's efforts to notify the university of this work, but was widely perceived as politically motivated. The report was critical of Turkish law, the constitution, and the education system. It made many recommendations that at the time were deeply offensive to the then-government, but have since been adopted in legislative and constitutional changes.[29] Professor Tanör died in February 2002.

The HEC has also kept a strict rein on any academic activity relating to Turkey's ethnic minority groups. The HEC has punished academics for researching issues related to Kurdish language or history, and punished students for demanding education in minority languages.

Constitutional amendments adopted in October 2001 removed mention of "language forbidden by law" from legal provisions concerning restriction of free expression. Thereafter, university students began a campaign for optional courses in Kurdish to be put on the university curriculum, triggering thousands of detentions throughout Turkey between January and August 2002. Scores of students reported that police tortured or otherwise ill-treated them during incommunicado detention. According to the Turkish Human Rights Association, a non-governmental organization, from January to August 2002, police detained 3,621 students or parents who submitted petitions for Kurdish language courses, and of those detained 446 were charged with aiding an illegal armed organization.[30]

Law 4771 of August 3, 2003 amended Law 2923 on Foreign Language Education and Teaching of October 1983 to provide that students at private schools could take courses in "various languages and dialects used by Turkish citizens in daily life"—code for minority languages such as Kurdish and Laz, the teaching of which were previously prohibited.

Following this step, students detained for submitting petitions began to be released, and many cases that went to trial resulted in acquittal. However, some students who submitted petitions were convicted and sentenced to up to more than three years' imprisonment. Students who took part in organizing the petition action received more severe sentences. Many others were suspended or expelled from university. Appeals against prison sentences for submitting petitions were in some cases successful, and the majority of the suspensions from university were struck down in actions in the administrative courts.

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[29] Gül Demir, "Professor Bulent Tanor faces expulsion from Istanbul University," *Turkish Daily News*, September 27, 2001.

[30] Human Rights Association statement, October 17, 2002, copy on file at Human Rights Watch.

The new attitude of the judiciary is welcome, but some students continue to face criminal charges for the petitions they submitted, and many students remain subject to university disciplinary proceedings. Kocatepe University in Afyon, western Turkey, suspended twenty-four students in January 2002 for two terms for submitting petitions. The students' objected to their suspension at Denizli Administrative Court, but on December 23, 2002, the court rejected their case.

In April 2002, the Dicle University Disciplinary Board suspended Ahmet Turhan, a student of the Law Faculty of Dicle University in Diyarbakır from the university for one year for submitting petitions calling for optional Kurdish courses. Turhan had earlier been sentenced to three years and nine months of imprisonment for "supporting an armed organization" for submitting the petitions. In January 2003, Diyarbakır Administrative Court ruled the expulsion unlawful, and Turhan returned to his course, pending his appeal against the prison sentence. In May 2003, however, Turhan was expelled from the university on the grounds of his criminal conviction at first instance. The HEC disciplinary regulation requires that any person who has committed "crimes against the state" be dismissed. Turhan successfully appealed against the prison sentence and is now on trial in a local criminal court under article 312 of the Turkish criminal code, on the pretext that the petition amounted to incitement to racial hatred. If he is again sentenced, Turhan will be permanently barred from registering at any higher education institution.

In January 2003, Abdurrahim Demir was expelled from Dicle University following his conviction and sentence to three years and nine months of imprisonment for "supporting an armed organization" allegedly evidenced, by his submission of 1,540 petitions for the addition of Kurdish courses to the curriculum in January 2002. Demir's appeal was also successful, and he is also on trial under article 312 of the Turkish criminal code.

Law 4771 of August 3, 2003, and the subsequent reforms that moved toward permitting broadcasting in minority languages and easing the constraints on non-Turkish names were driven by the so-called Copenhagen Criteria for Turkey's accession to the European Union (E.U.). The criteria require Turkey to demonstrate "stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities," before proceeding further with its E.U. candidacy.[31] Whether or not Kurdish is ever taught in universities in Turkey is a matter that universities should be free to decide in line with the interests of their students and staff and the availability of resources. But the HEC has been left far behind by the changes of the past two years, and remains entrenched in attitudes far from the "respect for minorities" required by the E.U. When the constitutional changes of October 2001 removed the concept of "languages forbidden by law," the HEC engineered a resolution by the rectors of

[31] Presidency Conclusions, Copenhagen European Council, June 1993, 7.A.iii.

Turkish universities which repudiated this reform.[32] The rectors condemned any activity that affirmed Kurdish identity, including "submitting petitions for instruction in and of Kurdish, reading and writing Kurdish in class, replying in Kurdish to exam questions, organizing panels, conferences and theatrical plays in Kurdish as well as hanging placards and posters." The resolution asserted that such activities were "not innocent, but planned and organized either directly by the PKK[33] or indirectly through the support of its comrades and supporters."[34]

Impact on institutional autonomy

Institutional autonomy is built from many different elements including a system of tenure, whereby educators are protected from politically motivated meddling in university staffing and administration. In the absence of the effective protection that tenure (or a comparable system) can provide, Turkish academics have sometimes been summarily dismissed for political or trade union activities. The Turkish government's use of administrative appraisals and short-term contracts for university faculty perpetuates uncertainty, decreases institutional autonomy, and chills academic activity.

Articles 7/l and 13/b-4 of Law 2547 give rectors and HEC broad authority to transfer faculty members and administrative staff, and to initiate dismissal proceedings against staff and students, but rules and objective criteria for their implementation are not built into the provisions which allocate these powers. Expulsions and transfers may be carried out directly by the HEC or through university rectors who are themselves under pressure from the HEC. Under current HEC rules, academics who lose their jobs due to political infractions may be banned from holding any position in the public sector—whether related to education or not.[35] This has resulted not only in a teaching body cowed by the threat of punitive transfer, which can amount to a sort of internal exile, but also in the expulsion of academics who refuse to toe the line laid down by the military-influenced state.

The HEC has on occasion stepped beyond its authorized powers in order to manipulate universities and secure obedience. For example, in the late 1990s Mersin University, which had a young staff with a reputation of leaning toward social democratic ideas, publicly challenged an attempt by the HEC to influence the appointment of faculty deans. In late 1997, the university senate passed a resolution that indicated in detail in

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[32] Dorian Jones, "Action to Crush Kurdish Language Campaign," *Times Higher Education Supplement*, December 7, 2001; "Rectors Committee Warns University Students Against Kurdish Education Campaign," *Turkish Daily News*, February 19, 2002.

[33] The Kurdistan Workers' Party (which subsequently changed its name to Kongra-Gel) is an illegal armed organization which the Turkish security forces fought in an intense campaign from 1984 to 1999.

[34] "Turkey Moves to Punish Students for Kurdish Education Demands," Agence France-Presse, November 27, 2001; "YOK disciplines Kurdish education requests: YOK says demands for Kurdish education planned by PKK as part of separatist activities threatening Turkey's integrity," Turkish Daily News, November 29, 2001.

[35] Disciplinary Regulation for Administrators, Teaching Staff and Civil Servants in Higher Education Institutions, art. 11, para. b. as amended November 7, 1998.

which areas of the university the HEC had interfered outside its mandate, registered a formal protest against HEC's attitude, and issued a press release indicating its concerns. The HEC initiated an investigation against the rector, but failed to have him taken from his post. The HEC also took action against four members of staff who were perceived to be behind the "uprising." Economic and Administrative Sciences Faculty professor Zafer Üskül was one of those targeted. He told Human Rights Watch:

> In September 1999 my friends phoned me and said that my university staff performance record had been "blotted." My record for 1997 and 1998 were ranked as "bad" by the Office of the President of the HEC. This was a completely illegal act so I opened a case in the Adana administrative court for cancellation of both records and won on both counts. The HEC appealed to the council of state but I won both cases. Two other professors had their record marked as "bad" for 1998 and 1999. The authorities tried to mark the records as "very bad." After receiving two "very bads," people are supposed to be moved to another university. These professors also protested and won both cases. An assistant rector [also suspected of participation in the challenge to the HEC] was sent against his will to Firat University in Elazığ. He opened a case against this and won. So the HEC lost all their cases against us. The decision of a court should be implemented within a month but it has been longer than that and still [the assistant rector] was not moved back.[36]

In documents submitted to the court the Mersin University professors were accused of "weakness in Atatürkism," and being favorably disposed to extreme political movements. Professor Üskül stated that the court decisions in all cases had reported that the performance records were not based on objective facts. Since this apparently constituted an abuse of office and therefore an offence under article 240 of the Turkish Criminal Code, Professor Üskül made a complaint to the public prosecutor. The prosecutor is not entitled to open a case without approval of the HEC general council under the presidency of the National Education Minister, however, and therefore no investigation was initiated.

In universities in the mainly Kurdish southeast, political loyalty to the state is considered paramount, and the first two rectors of Dicle University in Diyarbakır, founded in 1982, were retired military men. A member of staff, who asked that his identity be withheld for his own protection, told Human Rights Watch that police and gendarmes were very active on the campus, and that successive rectors had made no secret of the fact that they sent lists of new appointments for vetting by the security services. The close links

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[36] Human Rights Watch interview with Professor Üskül, Istanbul, June 5, 2001.

of the university establishment with the security forces reportedly were used to intimidate staff when it came to election of candidates for rector. University staff who were supporters of certain candidates reportedly approached academics, saying that life would be "difficult" if votes were not cast as required. According to one academic:

> Various people, including myself, were informed that the gendarmerie intelligence had supplied a list of people with dubious political orientation, and that people on the list *might* be transferred out of Dicle University to somewhere less convenient. The election for rector is secret but we have to write the names of our chosen candidates on a card ... and of course it is not difficult from them to work out who voted for whom.[37]

Under the Higher Education Law (Law 2547) currently in force, the Higher Education Council has extensive powers to control and direct appointments and administration in individual universities. The exercise of these powers severely prejudices institutional autonomy. The HEC has used these powers to threaten independent educational establishments including, for example, Fatih University, a private university in Istanbul. The Turkish government encouraged the growth of private universities in the early 1990s to ameliorate the pressure on the state to provide higher education to an increasing number of students. Twenty-one of Turkey's seventy-one universities are private. The HEC allowed foundations and corporations, not just individuals, to finance universities, paving the way for some of Turkey's major foundations, including religious foundations, to help answer the growing demand for higher education in Turkey.

Fatih University was established in 1996 by a private foundation led by Fethullah Gülen, a revivalist religious leader. The HEC president, along with the prime minister, attended the founding ceremony for the university, which has faculties for engineering, economics and administrative sciences, liberal arts, and medicine.

By 2000, the HEC had begun to change its attitude toward private universities, which had displayed a degree of independence that the HEC did not welcome, and threatened them with cutting off of aid or closure.[38] In 2001 Fatih University authorities learned, initially through newspaper reports, that the HEC was planning to close the university. The Board of Trustees contacted the HEC, and was informed that closure was not on the agenda. But two weeks later they heard (this time through a television news report) that the HEC had ordered the university to close its enrolment. A three-person HEC evaluation team, including a retired military officer with no academic credentials, initially found the university in full conformity with HEC guidelines. The team returned, however, two weeks after the HEC president made public statements critical of the

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[37] Human Rights Watch interview, Diyarbakõr, June 26, 2001.

[38] "Six foundation universities will not receive state financial aid," Turkish Daily News, January 7, 2002.

university. This time, the evaluation team found evidence of unacceptable religious influence at the university.[39]

Following this negative evaluation, the HEC blocked government support payments to Fatih University on February 28, 2001, the only university in Turkey that requested funds but did not receive them.[40] In March 2001, the HEC ruled that Fatih University should not admit further students for the 2001-2002 educational year, warning that Fatih University would have to close if it did not provide improve "practices and situations."[41] The ruling placed a strong emphasis on alleged "breaches of the dress code"[42] that the university authorities interpreted as an order to implement without exception the ban maintained by the Turkish authorities on the wearing of the headscarf. The university appealed to Ankara Administrative Court No 3, and on May 29, 2001, the court overturned the HEC's decision. The HEC complied with the court's decision and students were entitled to enroll at Fatih University for the 2001-2002 educational year.

The HEC's threatening maneuvers appear to have been aimed to bring Fatih University into line on the headscarf ban, which is discussed more fully below. Professor Şerif Ali Tekalan, administrator of Fatih University, told Human Rights Watch: "On the headscarf issue, I can say that our university is no different from the other state universities of Turkey in implementing the decisions. Students with headscarves are first being warned and then if necessary they are given penalties. On January 2001, the HEC declared to all the Universities in Turkey that students with headscarves should not even enter the campuses. We are implementing this decision."[43]

Assessment of the Draft Laws on Higher Education

In its present form, the Justice Ministry's draft law on higher education will perpetuate the HEC as a guardian of political orthodoxy—most importantly because they leave the constitutional restrictions on academic freedom untouched.

In fact, all four drafts commit higher education to national unity, "contemporary" values and secularism—concepts that in the past have provided grounds for persecuting supposedly wayward individuals and institutions. The Inter-University Council's draft, for example, states that one aim of the education system is to produce "individuals ... who accept the Turkish Republic and its people as an individual unity." All three drafts

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[39] Human Rights Watch interview with a member of Fatih University staff, Istanbul, May 19, 2001. The individual asked not to be identified.

[40] Bilgi University is the only other university that does not receive assistance from the HEC. Bilgi, widely viewed as one of Turkey's premiere private universities, refuses funding from the HEC in order to maintain its institutional autonomy.

[41] HEC ruling of March 16, 2001, reported in "Fatih – YÖK rules phase-out for university," *Turkish Daily News*, March 17, 2001.

[42] Ibid.

[43] Human Rights Watch interview with Professor Şerif Ali Tekalan, Istanbul, November 20, 2002.

also bind the higher education system to promote Atatürkist principles. The Justice Ministry's July 2003 draft makes seats of learning responsible for "establishing in students a service consciousness allied with Ataturkist nationalism in line with Atatürk's principles and revolutions."[44] National unity, secularism, and Atatürkist principles may be very important ideals in Turkish society, but committing an institution of inquiry to any particular set of political views opens the way to political steering, and permits academics to be challenged on the grounds of ideological orthodoxy.

All four drafts continue the arrangement whereby criminal investigation and prosecution of staff and HEC members for their activities related to education are subject to an initial internal investigation under HEC authority which may withhold permission for the judicial investigation or prosecution to continue. This presents a potential obstacle to the collection and protection of evidence and constitutes an infringement of judicial independence. It offers immunity against scrutiny and prosecution that is unhealthy for a public body. Similar provisions for the protection of security force members against prosecution for ill-treatment, torture, and unlawful killing were recently abolished.

The Justice Ministry's July 2003 draft actually increased government control over the HEC by increasing the number of members selected by the Council of Ministers from seven to eight, and reducing the number appointed by the President of the Republic from seven to two.[45] This, combined with measures such as giving the Education Minister the right to call and automatically chair extraordinary meetings of the council[46] provoked alarm in some academic quarters who fear that such arrangements would further erode the independence of universities and increase the risk of clientelism which has long plagued Turkish institutions.

The Justice Ministry's May 2004 draft sets the Council of Ministers' nominations and the President's nominations at five each, though this may change, as, in its current form, it also includes nominations by the Chief of General Staff. The special right of the Education Minister to call meetings is omitted, but his status as automatic chair of the meetings is retained.[47]

The centralized control of education by a body largely appointed by government authorities with an ideologically prescriptive mandate, compounded by frequent violations of due process and arbitrary decision-making, violates international legal protections for academic freedom. As stated at the outset, the tradition and culture of

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[44] Justice Ministry July 2003 draft, art. 5(a).

[45] Ibid., art. 7. The Inter-University Council's December 2003 Draft Law on Higher Education substantially reduced the influence of the Council of Ministers, reducing their nominations to four. The HEC president's draft of January 2004 did not alter the balance of nominations in the existing law, by retaining the number selected by the Council of Ministers at seven, as required by current law.

[46] Ibid.

[47] Draft Law Concerning Amendments to the Higher Education Law and to the Law on Higher Education Personnel, para. 1.

respect for scholarly independence is the strongest foundation for academic freedom, and legislation alone cannot repair the damage inflicted over the past quarter century. The government must legislate to create appropriate systems and viable safeguards, but it must also use its powers of appointment not to extend its power base but to nurture a varied college of academics who are able to work in an atmosphere of trust to improve and protect the university system in the future. In a public statement on September 26, 2003, the HEC called for "a healthy process of discussion" before moving to legislation. The suggestion was a valuable one, and the Inter-University Council draft and the HEC president's draft emerged from this discussion. Unfortunately in their current form, they do not remedy the shortcomings of the Justice Ministry's draft, or secure the future freedom and independence of Turkey's universities.

Recommendations on Academic Freedom

Human Rights Watch recommends that the Turkish government should:

- Remove constitutional restrictions on academic freedom, particularly those contained in articles 130 and 131 of the Turkish constitution.

- Remove any language from the law on higher education that may permit punitive treatment of academics for the political orientation of their research and teaching.

- Ensure that the legislation on higher education effectively protects the principle of institutional autonomy in Turkey's universities; that is:

    - Limit the HEC's authority to co-ordinating long-term planning of higher education.

    - Allocate tasks other than planning and co-ordination to the jurisdiction of the Inter-University Council and individual university management authorities, which should develop study and research on the basis of academic merit alone.

    - Within the framework of strictly academic authority, expand the jurisdictions of university senates, executive boards, faculty boards and faculty executive boards;

- Safeguard the autonomy and scientific independence of universities, enabling them to function as institutions of education and research.

- Encourage universities to respect minority languages and cultures.

- Remove military members from academic oversight committees.

- Abolish HEC academic board tribunals other than for instances of academic infractions such as plagiarism.

- Ensure that future legislation safeguards respect for tenure, and includes fairness procedures that minimize unfair or prohibited criteria (discrimination on grounds of gender, ethnicity, religion, political opinion) in appointments and disciplinary proceedings.

- Not place any reservation on Turkey's ratification of the ICESCR that might prejudice academic freedom.

- Remove restrictions on entry or employment in higher education from academics and students expelled from higher education since 1980 other than for reasons of gross violations of academic ethical standards or criminal activities.

- Remove HEC authority to block judicial investigations and the prosecution of university employees and HEC members.

ACCESS TO HIGHER EDUCATION FOR WOMEN WHO WEAR THE HEADSCARF

Policies of forced veiling and other restrictions on women's attire violate international human rights standards, and have repeatedly been criticized by Human Rights Watch.[48] Turkey's policy of excluding women who wear the headscarf from education also runs

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[48] Human Rights Watch, "World Report 2003, Events of 2002: Afghanistan," (New York: Human Rights Watch 2003); Human Rights Watch, "World Report 2003, Events of 2002: Saudi Arabia," (New York: Human Rights Watch 2003); Human Rights Watch, "World Report 2002, Events of 2001: Afghanistan," (New York: Human Rights Watch 2002); Human Rights Watch, "World Report 2002, Events of 2001: Iran," (New York: Human Rights Watch 2002); Human Rights Watch, "World Report 2001, Events of 2000: Saudi Arabia," (New York: Human Rights Watch 2000); Human Rights Watch, "Humanity Denied: Systematic Violations of Women's Rights in Afghanistan," A Human Rights Watch Report, vol. 13, no. 5(C), October 2001, pp. 7-8, 13-14; Human Rights Watch, "'We want to live as humans': Repression of Women and Girls in Western Afghanistan," A Human Rights Watch Report, vol. 14, no. 11(C), December 2002, pp. 33-39; Human Rights Watch, "'Killing You is a Very Easy Thing for Us': Human Rights Abuses in Southeast Afghanistan," A Human Rights Watch Report, vol. 15, no. 05(C), July 2003, pp. 84-87; Human Rights Watch press release, "Afghanistan: Women Still Under Threat," May 9, 2002; Human Rights Watch, "Stifling Dissent: The Human Rights Consequences of Inter-Factional Struggle in Iran," A Human Rights Watch Report, vol. 13, no 4(E), May 2001; Human Rights Watch, "Iran: Prosecution of Independent Cleric Condemned," October 11, 2000; Human Rights Watch, "Saudi Arabia: Religious Police Role in School Fire Criticized," March 15, 2002; Human Rights Watch, "Human Rights in Saudi Arabia: A Deafening Silence," December 2001; Human Rights Watch, "'In the Name of God:' Repression Continues in Northern Sudan," A Human Rights Watch Report, vol. 6, no. 9, November 1994. .

foul of these international norms. A ban on the headscarf in education undercuts individual autonomy and choice, a fundamental aspect of women's rights that is also violated in countries where women are forced to wear the *hijab* or *türban*. Human Rights Watch has repeatedly urged the Turkish government to ensure that women are permitted to attend university wearing the headscarf.

A flat prohibition on students wearing visible religious symbols in schools violates freedom of religion. The ICCPR, among other sources of international human rights law, obliges state authorities to avoid coercion in matters of conscience, and states must take this obligation into account when devising school dress codes. Countries, such as Iran or Saudi Arabia, that force girls to wear headscarves in schools violate this principle. So too do countries that adopt flat prohibitions on visible religious symbols.[49]

Protection of religious freedom is consistent with secularism in state institutions. Accommodating different forms of religious headgear does not suggest that state authorities endorse any particular religion and does not require additional state resources. In fact, protecting religious freedoms demonstrates the very respect for the diversity of religious conscience on which the secularism of public institutions is founded. Policies requiring or forbidding students to wear visible religious dress is a failure in the duty of states to avoid coercion in matters of religious conscience.

Headscarves do not pose a threat to public safety, health, order, or morals, and they do not impinge on the rights of others. They are not inherently dangerous or disruptive of order, and do not undermine the educational function. There may be specific circumstances in which state interests justify regulation of religious dress, as when such dress would directly jeopardize individual or public health or safety. Such concerns, however, cannot justify a flat prohibition.

In many contexts, the impact of a ban on visible religious symbols, even though phrased in neutral terms, will fall disproportionately on Muslim women who wear the headscarf as a sign of their devotion. To the extent that such bans target Muslims and/or girls and women, or disproportionately affect them without adequate justification, they violate anti-discrimination provisions of international human rights law as well as the right to equal educational opportunity.

In Turkey, as elsewhere, many other issues have been intertwined with the religious freedom issue in discussions of headscarves, including: religious fundamentalism and political uses of religious symbols, including the headscarf; oppression of girls and women; a generational clash between girls and their parents; and pluralism versus national integration. Some of these issues have important human rights dimensions, but they must be tackled on their own terms. Such issues are not appropriately addressed by

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[49] See Human Rights Watch press release, "France: Headscarf Ban Violates Religious Freedom," February 27, 2004.

the proposed ban, and women and girls should not be used as a proxy to address these larger controversies.

The fundamental questions at issue are what Turkey's laws say about women's dress, and whether these laws are in conformity with international standards. But it is impossible to appreciate the headscarf debate without taking into account the factors that heat the debate—particularly Turkey's geographical situation as neighbor to Iran, an influential country that enforces covering for women, and the Turkish state's long history of failing to protect women's rights, safety, and lives against threats posed by society and the state's own officials.

Various political groupings have exploited the headscarf issue in order to curry support from their respective devout or secular constituencies. Aksu Bora, a consultant at the Women's Studies Center at Ankara University suggests that: "Both sides try to create an artificial polarization so that they can change the political agenda to prevent the discussion of some other things. For example it is beneficial for the Democratic Left [former governing party] because it underlines that it is secular and it gains from this stance. But the Islamist party also benefits because it is making up for its withdrawal from politics after its severe reprimand from the army ... For them the headscarf issue is a kind of last resort and not something that the other rightist parties can oppose. As for the military, it is using it as a possible excuse for intervening in politics, to increase its influence."[50] Pınar İlkkaracan, coordinator of a local non-governmental organization working on women's rights, shares Aksu Bora's anxiety that this is an issue open to easy political manipulation: "We as Women for Women's Human Rights (WWHR) are against any attempt that aims at imposing restrictions and regulations on women's dress code. Therefore, WWHR has made a number of statements condemning the ban on the *türban* at the universities, which violates the human right of female students for education. But this issue is being exploited by the political parties on both sides of the question .... Men in power should not use women's bodies for a battlefield—and that is what is happening in many parts of the globe."[51]

The present government has described itself as "Muslim democrat," genuinely interested in extending women's rights to choose their dress and not merely pressing a sectional agenda. It should demonstrate this by actively seeking out civil society groups that represent women and gather their views through the broadest possible consultation before legislating on the headscarf. If those concerns are reflected not only in the final form of the law on higher education, but also in a broader government program to protect women's rights, a reformed Law on Higher Education consistent with international human rights standards may find greater acceptance within Turkey.

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[50] Aygen Aytaç, "Turkey's Headscarf Anger," BBC World Service, Turkish Service, May 26, 1999.

[51] Human Rights Watch interview, Istanbul, November 1, 1999.

The History Of the Headscarf Ban and Its Impact On Students and Teachers In Turkey

Modern Turkey's legislation on the subject of clothing began with a 1923 decree on dress, signed by Mustafa Kemal Atatürk, founder of the republic. The Hat Law of 1925 and the Law Relating to Prohibited Garments of 1934 emphasized that religious clothing should not be worn outside times of worship and laid down guidelines for the proper garb of students and state employees. But these laws—still in force—make no specific reference to women's clothing.

Turkey's unique brand of secularism is presented as a legacy of Atatürk. One of Atatürk's goals was to improve the status of Turkish women and integrate them into the contemporary world. Under his leadership Turkish women took a place in public life for the first time in history and he saw secularism as instrumental in this effort. Those who see themselves as Atatürk's most faithful heirs seek to bar women from education because of their choice of dress, but Atatürk himself took a relaxed position on the headscarf. He was frequently photographed on public business with his first wife, who covered her head. He wrote: "The religious covering of women will not cause difficulty.... This simple style [of headcovering] is not in conflict with the morals and manners of our society."[52]

Whether or not *hijab*[53] is actually a requirement of Islam is a focus of intense debate, but women who wear the close-fitting headscarf say that they do so on the basis of their reading of the Koran, and consider this form of dress an inalienable part of their own religious identity.[54] A survey conducted by the respected newspaper *Milliyet*

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[52] Quoted in *Atatürkism, Volume 1* (Istanbul: Office of the Chief of General Staff, 1982), p. 126.

[53] An Arabic word meaning "hiding, covering from view".

[54] The women interviewed by Human Rights Watch based their wearing of the headscarf on the Koran, verse 24.31: "Enjoin believing women to turn their eyes away from temptation and to preserve their chastity; not to display their adornments (except such as are normally revealed); to draw their veils over their bosoms and not to display their finery except to their husbands ..."; and 33.59: "Prophet, enjoin your wives, your daughters, and the wives of true believers to draw their veils close round them. That is more proper, so that they may be recognized and not be molested." *The Koran*, translated by N J Dawood (London: Penguin Books, 1999).

The Koran's injunctions concerning women's dress are open to widely diverging interpretation. Talking of the scriptural basis for *hijab*, the scholar Zin al-Din complained: "I found over 10 interpretations, none of them in harmony or even agreement with the others as if each scholar wanted to support what he saw and none of the interpretations was based on clear evidence." Quoted in Haleh Afshar, *Islam and Feminisms*, Macmillan 1998, p 13. See also pp 198-202. There is a large and fast growing body of literature analyzing the basis for *hijab* in the Koran and Hadith, and discussing how sociological and anthropological factors affect practice. For the picture in Turkey, noted works are Elisabeth Özdalga, *The Veiling Issue in Modern Turkey*, (Richmond, Surrey: Curzon, 1998 and Nilüfer Göle, *Modern Mahrem* (The Forbidden Modern), (Istanbul: Metis, 1991). Both describe the modern trend in veiling in Turkey as a highly complex phenomenon, quite distinct from veiling in traditional Muslim Turkey, but by no means a simple flag of fundamentalism. They describe the *türban* as part of a larger struggle of devout women to find a place for themselves in modern Turkey which suffered a break of continuity with the past when Atatürk's revolutions swept away the Ottoman world. The *türban* and full overcoat permit women to take an increasingly active part in modern society while conforming to a standard of propriety imposed by their own values and those of their peers. For Nilüfer Göle this paradoxically maintains a distinction between private and public based on a gender-separating view that inevitably props up male hegemony.

(Nationhood) in May 2003 found that at least one woman wore some form of headcovering in 77.2 percent of households in Turkey.[55]

Article 6 of the Regulation Concerning the Dress of Students and Staff in Schools under the Ministry of National Education and Other Ministries No: 8/3349 of July 22, 1981, as amended on November 26, 1982, requires that students should dress according to the code laid down for civil servants. In universities, this code is administered by the HEC. If applied uniformly, the code would also forbid women students from wearing miniskirts and jeans, but the prohibition is applied arbitrarily to the headscarf alone.

Universities have not applied the rules consistently, but in the years following the military coup, an increasing number of female students were suspended or dismissed from universities because they wore the headscarf, and this caused resentment among the religious sector of the middle class. This group was an important constituency for the center-right Motherland party, which was elected to power in 1984 under prime minister Turgut Özal after the military relinquished absolute control of government. In 1985, the HEC amended the Disciplinary Regulation for Students in Higher Education[56] and added a new paragraph imposing a reprimand punishment for students who appeared "in anachronistic clothing."[57] In 1987, the Motherland government sought to ease tension with a law that amnestied such students.[58] The amnesty was vetoed by General Kenan Evren,[59] then president of Turkey.[60] In 1988, the Motherland government passed an amendment to the Law on Higher Education stating that for students, "covering of the neck and hair for reasons of religious belief is not prohibited."[61] This law was annulled by the Constitutional Court in 1989 on the grounds that it was a breach of the principle of secularism that threatened the unity of the state, security, and public order.[62]

In 1990, the Motherland government passed Law 3670 that provided that "dress is not subject to any prohibition in institutions of higher education, provided that it is not

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[55] Tarhan Erdem, "Sadece yüzde 5 'türban' diyor," (Only five percent choose the *türban*) *Milliyet*, May 27, 2003.

[56] Published in the Official Gazette (*Resmi Gazete*), January 13, 1985/18634.

[57] Published in the Official Gazette, January 8, 1987/19335. This provision was removed by a further amendment which appeared in the Official Gazette of December 28, 1989/20386.

[58] There have been periodic "administrative amnesties" in which students' breaches of discipline are wiped from the record. Such amnesties are frequently used by ruling parties to win electoral favor.

[59] General Kenan Evren led the 1980 military coup. In a vote carefully orchestrated by the military in 1982, voters approved a constitution drawn up by the military and elected Kenan Evren as president for seven years. In 1984 the general election that returned Turkey to civilian rule put Turgut Özal's center right Motherland party in government. Turgut Özal had served as deputy prime minister in the government appointed by the military after the coup, but his party was not the choice favored by the military.

[60] Elisabeth Özdalga, *The Veiling Issue in Modern Turkey*, Curzon, 1997, p 46.

[61] Law 3511, December 10, 1988.

[62] Constitutional Court case no. 1989/1, judgment no. 1989/12

forbidden by law."[63] The secularist opposition Social Democrat Populist Party (SHP) challenged the law as unconstitutional, but the Constitutional Court upheld the law in 1991. In its judgment, however, the court expressed the view that current laws did forbid the wearing of the headscarf.[64]

Law 3670 and the Constitutional Court's judgment on it lie at the heart of the current *impasse* in education. Those who wear the headscarf point out that the court upheld the law, and dismiss the court's assertion that current law forbids the headscarf as "dicta" or a non-binding expression of judicial opinion.[65] Those who support the ban, including many university staff and judges in administrative courts, say that the Constitutional Court's judgment confirms that wearing a headscarf in a university is contrary to the constitution and therefore unlawful.

The position remained unresolved throughout the 1990s. Universities continued to apply the headscarf ban only sporadically, but an ultimatum delivered to the government in February 1997 by the armed forces at a meeting of the National Security Council[66] demanded that the civilian authorities (including universities) implement the ban without exception. This was part of a broader confrontation between the military and the government led by the devoutly religious prime minister, Necmettin Erbakan. When Erbakan failed to carry out the terms of their ultimatum, the military stepped up the pressure with a combination of behind-the-scenes activity and public statements. In the following months, a Constitutional Court case was opened for the closure of his Welfare party. Deputies began to migrate from the coalition parties for fear of losing their seats, and the government lost its parliamentary majority. Necmettin Erbakan resigned as prime minister in June 1997. A general involved in the process referred to this episode as a "post-modern *coup d'état*."[67]

Since 1997, the headscarf ban has been far more widely enforced, both inside and outside the universities. Officials eager to establish their "secular" credentials have obstructed women wearing headscarves who wish to register for driving courses or take open access education courses. Open support for women who wear the headscarf is also grounds for persecution. State institutions have suspended or fired academics who refuse to implement the ban or publicly criticize it. Police have ill-treated lawyers

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[63] Law 3670, October 25, 1990. The law inserted this simple phrase as Supplementary Article 17 in the Higher Education Law.

[64] Constitutional Court judgment no. 1991/8, July 31, 1991.

[65] The Turkish Council of State has concluded that "It is indubitably clear that ... a judicial body applying to a case a rule in law which remains in validity and has not been struck down by the Constitutional Court is not bound by the interpretation given by the Constitutional Court in its own interpretation of the rule in law." Constitutional Court case no. 1986/402, judgment no. 1988/192.

[66] The leaders of the armed forces regularly meet government leaders at meetings of the National Security Council. According to the constitution, the Council's role is advisory, but at least since the 1980 coup, the influence of the military within the Council has been overriding.

[67] General Erol Özkasnak, then General Secretary of the General Staff, quoted in *Milliyet* (Nationhood) January 16, 2001.

assisting women in their fight for justice, and courts have prosecuted human rights defenders campaigning for the ban to be lifted.

Impact of the headscarf ban on students

Women wearing the headscarf are not permitted to register as university students, enter university campuses or enter examination rooms. Those observed wearing the headscarf in class are warned about their behavior, and if they persist in wearing it are suspended or expelled.

The headscarf ban has denied thousands of women access to education temporarily or permanently. Hundreds of others have been suspended or discharged from employment in teaching. Many women told Human Rights Watch they were heartbroken that their hopes for a career in medicine, science, teaching, or the arts were permanently blighted. Women have also been detained, humiliated, ill-treated, and prosecuted. The authorities say that the scarf is a flag of aggressive political Islam that threatens the secular order of Turkey and the rights and freedoms of other Turkish women, but most women affected by the ban say that they wear the scarf solely as an expression of Islamic religious piety.

Students denied access to education have been unable to secure a remedy through the Turkish courts. The universities have used various subterfuges to avoid contesting claims of wrongful expulsion in court, and when court actions did go forward there were persistent signs that political pressure was being brought to bear on the courts, presumably by the HEC or the military. There were several reports that judges who found in favor of plaintiffs wearing the headscarf were transferred as a punitive measure. For example, after judgment was given at Samsun Administrative Court on October 1, 1999, in favor of Esra Ege, who had been excluded from Samsun University on May 19, 1999, for wearing a headscarf during 1998, a member of the three-person bench who gave one of the majority votes was immediately transferred to a court 300 kilometers away in Kayseri. Similar examples of punitive transfers occurred when courts in Edirne, Bursa, and Yozgat found the headscarf ban in breach of the constitutional right to education.[68]

Between 1999 and 2002 Human Rights Watch interviewed scores of students excluded for wearing the headscarf.

The case of twenty-four-year-old Fatma Gökçen is typical. In 1994, she won a place in the physics department of the Istanbul University science faculty. She was admitted to the faculty wearing a headscarf and told Human Rights Watch that her style of dress presented no problem in her studies prior to the military's February 1997 ultimatum. When the university began immediately to apply the ban, Fatma Gökçen took part in peaceful demonstrations to protest the policy.

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[68] "Başörtüsü hakim yedi!" (Headscarf judge in trouble!), *Zaman* (Time), October 28 and 29, 1999.

On June 8, 1997, Fatma Gökçen was shocked to learn from an announcement on a notice board in the science faculty that she and eleven other students had been expelled from the university for participating in the demonstrations. She told Human Rights Watch, "I still do not understand why they chose me in particular. I was not a ringleader but a rather quiet student and not really politically active."[69] She suspects that she may have been singled out for exemplary punishment because she was in the last month of her degree course. Gökçen challenged the decision, and after a two-year battle in the courts won a decision of the Istanbul Administrative Court No. 4, dated June 28, 1999, that her expulsion had been unlawful on the grounds of lack of evidence and her constitutional right to public protest.

Unfortunately, vindication in the courts did not restore Gökçen's access to education. Since October 1998, no students wearing the headscarf have been permitted into any Istanbul University faculty, and she was unable to complete her degree. She told Human Rights Watch that without a degree it was proving very difficult for her to find a job suitable to her talents and that the whole confrontation has left her with mixed feelings: "I am angry about missing my career, but I am happy in my faith and try to view the situation philosophically." She is now studying in the United States.[70]

Gökçen dismissed the argument that permitting the headscarf to be worn in educational institutions might mean that women who do not cover their heads would be perceived as atheist and victimized, or feel pressure to cover their heads: "I studied for three years with unbelievers and believers, many of whom were my friends. There was no problem between us, and I hope that if the situation were reversed, I would stand up for any students refused entry to education because they reject the headscarf. This is a personal choice."

Impact of the headscarf ban on university staff

Academic authorities have taken great pains to weed out university staff who wear the headscarf. Dr Sevgi Kurtulmuş was dismissed from her post as associate professor at the Faculty of Labor Economics, University of Istanbul, because she would not remove her *türban*. She told Human Rights Watch:

> I studied for three and a half years at Cornell University, in the Industrial Relations Department. I wore a headscarf and never had any problem from 1990 to 1993. I took the examinations to become associate professor in 1996 [in Turkey]. My head was covered and nobody complained. Then the investigation began on January 5, 1998—that is, immediately after the new rector of Istanbul University arrived. On the very first day that he arrived, his second job was to open an investigation

[69] Human Rights Watch telephone interview, October 28, 1999.

[70] Human Rights Watch telephone interview, September 16, 2003.

against me. I was immediately suspended and the investigation continued for five months. I could have been reprimanded, but I immediately had my promotion frozen for two years. I was dismissed and on June 1, 1998 my connection with the university was finished.

I was very upset at this decision, because you work all the time at developing your skills for so many years. You have to remember that in some families, this sort of expulsion is a disaster—I know a family of eight brothers and sisters who had agreed to support each other through university in a chain. One sister was in her fifth year of training to be a medical doctor and was expelled—so the whole family was visited with calamity. I objected to the administrative procedure at Istanbul Administrative Court. The authorities put a lot of work into getting my case heard in a tough court, which duly rejected my case ... I never imagined that this ban from academic life would last so long, and I still regard it as temporary and am optimistic that it will be lifted.[71]

University staff who publicly oppose the headscarf ban share many of the same risks of expulsion as those who wear it. Several academics have been sacked for criticizing the ban or failing to implement it. Professor Dursun Odabaş, dean of the medical faculty of the Yüzyıl University in Van, Eastern Turkey, was dismissed in October 1998 for showing support for a nationwide peaceful demonstration against the headscarf ban. The previous month, on September 20, the university rector had called a meeting of all heads of department and instructed them that this particular item of the dress code must be applied zealously. Professor Odabaş told Human Rights Watch:

I addressed the meeting saying that this rule had no sound basis in law, and was a breach of human rights and the freedom of religion. The order had come from the HEC, but as academics we are not slaves to orders, and we should have debated the issue as enlightened people. I made it clear that I would not apply it and that they could punish me if necessary. On October 2 the rector applied to the HEC asking that I be removed from my post as dean. In the meantime, the "Hand in Hand for Respect for Religion and Freedom of Thought" demonstration was to take place on October 11.[72]

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[71] Human Rights Watch interview, Istanbul, November 12, 1999

[72] Human Rights Watch telephone interview, October 30, 1999.

Although this demonstration, in which people were to have formed a human chain, was banned by the Van governor, Professor Odabaş expressed his views on the headscarf issue in subsequent interviews with the press and television. He arrived at work the following morning to find a fax from the HEC informing him that he had been suspended. On January 8, 1999, Professor Odabaş was dismissed. He has no further connection with the university.

Turkey's Headscarf Ban and International Law

In January 2001, the U.N. special rapporteur on the elimination of all forms of religious intolerance published his report on his 2000 visit to Turkey. The report strongly questioned the Turkish Republic's view of itself as a secular state, stating that the Directorate of Religious Affairs[73] wields "excessive powers of religious management such that religious practice appears to be regimented by the government and Islam is treated as if it were a 'State affair.'"[74] On the headscarf question, the interim report recommended that "legitimate concerns over the political exploitation of religion" should be put on a firmer footing in law "while allowing free expression of dress within legitimate limits established to this end."[75] The special rapporteur did not elaborate on the legitimate limits to free expression of dress.

Turkey has signed and ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[76] The ban on the headscarf seems to run counter to article 18 (1) of the ICCPR, which states:

> Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

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[73] The Department of Religious Affairs is attached to the Office of the Prime Minister. Law No. 429 provides that the Department's responsibilities are to carry out duties concerning belief, worship and moral principles in Islam, to enlighten the public in respect of religion and to manage places of worship. Article 136 of the 1982 Constitution requires the Department of Religious Affairs to carry out its duties "in accordance with the principles of secularism, independent of all political views and ideas with the goal of national solidarity and integrity." Through the Department of Religious Affairs, with its colossal staff and budget, the state trains and pays clerics, builds mosques, controls religious teaching in schools and even prescribes the content of Friday sermons.

[74] Interim report of the Special Rapporteur of the Commission on Human Rights on the elimination of all forms of intolerance and of discrimination based on religion or belief, Addendum 1, August 11, 2000, paragraph 128.

[75] Ibid., para. 131.

[76] See note 1 above.

ICCPR article 18(3) states that this right may be limited where "necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others." General Comment number 22 of the United Nations Human Rights Committee, adopted on July 20, 1993, issued to clarify the meaning of article 18, explicitly includes the wearing of distinctive religious headgear as a protected form of religious practice. The Committee states that, "The observance and practice of religion or belief may include not only ceremonial acts but also such customs as...the wearing of distinctive clothing or headcoverings."[77] With regard to paragraph (3) of article 18, the General Comment reads, "Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner."[78] The same principles are reflected in article 26 of the ICCPR, which prohibits discriminatory laws and has been interpreted to apply to "any field regulated and protected by public authorities."[79]

Religious attire can also be protected by article 19 of the ICCPR, which states: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers." The targeting of students and teachers who wear the headscarf to express their religious beliefs also violates this provision. Previous governments have attempted to justify their restrictive policy by stating that the headscarf is a demonstration of the wearer's rejection of Turkey's secular order. It is not clear that the attire of individual students or teaching staff necessarily expresses such an opinion, or even that the opinion would justify a limitation of the right. Nevertheless, where a government singles out a particular class of people on account of their perceived religious and political sympathies, it may well amount to discrimination. Article 2(1) of the ICCPR specifically requires states party to respect and ensure rights to all "without distinction of any kind" including religious, political, or other opinion.

Article 13 of the ICESCR sets forth the right to education. It states: "Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means... ." Article 2(2) requires State Parties to guarantee nondiscrimination in the exercise of all of the rights identified in the covenant, emphasizing that "religion" and "political or other opinion" are not permissible grounds for distinctions. This means that a student's entitlement to study at an advanced level must depend on their ability alone, and not their religious or political orientation.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) emphasizes the equality of men and women in their right to education.

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[77] General Comment number 22 of the United Nations Human Rights Committee, adopted on July 20, 1993, Doc.CCPR/C/21/Rev.1/Add.4.

[78] Ibid.

[79] General Comment 18, para.12. The General Comment goes on to conclude: "[When] legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant."

Article 10 states: "States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women." The impact of Turkey's prohibition on religious dress falls disproportionately on Muslim women and girls, and thus violates antidiscrimination provisions of international human rights law as well as the right to equal educational opportunity. Indeed, the promotion of understanding and tolerance for such differences in values is a key aspect of enforcement of the right to education. In practice, the law leaves some Muslim women no choice but to remove themselves from the state educational system or be forced out by university authorities.

Women's right to wear clothing that manifests their religious beliefs is also protected under article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which safeguards freedom of religion and conscience and prohibits discrimination,[80] and by article 10 of the same convention, which safeguards freedom of expression.[81] Turkey is a state party to the convention.

Governments may only impose limitations to article 9 in the interests of "public safety, for the protection of public order (ordre public), health or morals, or for the protection of the rights and freedoms of others." Limitations to article 10 are permitted only in the interests of "national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

In successive judgments, the European Court of Human Rights (ECtHR) has granted governments a narrow margin of appreciation in limiting such freedoms, particularly under article 10. The court holds that freedom of expression should not only protect inoffensive or conventional forms of expression, but also "those that offend, shock or disturb the State or any sector of the population."[82]

The qualifying language in articles 9(2) and 10(2) justifies limitations on freedoms of thought, conscience or religion, and expression only on grounds of necessity. According to the Court, "the adjective 'necessary,' within the meaning of Article 10(2) [and presumably Article 9(2)], implies the existence of a 'pressing social need.'" While State Parties have a certain margin of appreciation in assessing whether such a need exists, the restriction must be construed strictly, in the form of law, and the need for any

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[80] Art. 9, para. 1: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom ... to manifest his religion or belief, in worship, teaching, practice and observance."

[81] Art. 10, para. 1: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

[82] Handyside v United Kingdom, ECtHR, 1976.

restrictions must be established convincingly. None of the grounds of necessity is satisfied in the case of Turkey's headscarf ban.

The protection of health and morals is hardly an issue in connection with the headscarf ban. Neither is prevention of disorder or crime. A Constitutional Court judgment of 1989 number E.1989/1, K. 1989/12 invoked the protection of public order as a justification for the ban as applied to students.[83] But the headscarf is worn very widely in all parts of Turkey without giving rise to disturbance, and it was worn quite widely in state universities in the early 1990s without causing unrest there. Political strife among students in Turkey has sometimes been violent, but not in connection with the headscarf. If students do not respect their fellows' religious or political beliefs or lack of beliefs, it is the responsibility of the government, police and universities to ensure that they express any objections within the bounds of the law. It is not the responsibility of students who feel religiously obliged to wear the headscarf to maintain harmony by removing themselves from the campus altogether.

Under article 9 of the ECHR governments may limit the manifestation of religious belief on grounds of public order. The French term *ordre public*, sometimes translated as "public policy," is broader in scope than the English phrase "public order" and "not only describes the absence of disorder but also covers, in addition to public safety and the prevention of crime, all those universally accepted fundamental principles, consistent with respect for human rights, on which a democratic society is based."[84] In *Bulut v Turkey*, [85] (see below) the Turkish government claimed that the headscarf ban in universities was necessary to uphold secularism—effectively an *ordre public* defence. The appeal to the principle of secularism in Turkey in justifying this ban is unconvincing for two reasons. Firstly, as indicated above, the U.N. special rapporteur on the elimination of all forms of religious intolerance has questioned whether the arrangements in Turkey can be described as secular at all. Secondly, a number of stoutly secular states permit women students to wear headscarves at university. Beside referring to the abstract principle, the Turkish government has not shown how wearing a headscarf in a state university could in practice undermine a public policy that is effectively protecting the well-being and rights of citizens. The interests of *ordre public* are not overriding, and the benefit of limiting a right has to be balanced against the interests of those who wish to exercise their right. In this case, the costs for the women denied higher state education are heavy, whereas the benefit for other citizens is far from clear, since headscarves were frequently worn in universities without incident throughout the 1980s and much of the 1990s.

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[83] In November 1997 the High Coordinating Council for Human Rights of the Office of the Prime Minister of Turkey published the findings of an inquiry into the headscarf issue. Their conclusion that students should not be permitted to wear the headscarf was largely based on this Constitutional Court judgment.

[84] Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Kehl am Rhein: N.P Engel, 1993), p. 212, n. 2.

[85] Bulut v Turkey (Application No. 18783/91, 3 May 1993). See also Karaduman v Turkey (Application No. 16278/90, 3 May 1993).

In the same vein, Turkey's headscarf ban cannot be justified as necessary for public safety. The Constitutional Court's 1989 judgment concluded that wearing the headscarf in higher education "would give rise to division, particularly among youth, by provoking conflicts in social perspective and in religious or sectarian beliefs" to the extent that it would threaten national security, but the judgment gives no indication of how it would pose such a threat. Again, the experience on Turkish campuses during the 1980s and 1990s puts the accuracy of this assessment in question. It is difficult to see how recognition of the right to wear a headscarf, accompanied by credible safeguards for women who choose not to wear the headscarf, could present a threat convincing enough to justify such a drastic limitation of an individual's right to freedom of religion and expression.

The final justification commonly advanced for the headscarf ban is that it protects the rights and freedoms of others who choose not to cover their heads. Human Rights Watch is not aware of any evidence from the early 1990s, when the headscarf was worn more freely in universities, to suggest that this is a genuine problem. Excluding headscarfed women entirely from further education cannot be a reasonable and proportionate response to a future, hypothetical, threat of exclusion posed to women who leave their heads uncovered. In view of the well-established tradition of tolerance shown by headscarfed and non-headscarfed student to one another, the Turkish government cannot reasonably claim that a restriction on head-covering answers a "pressing social need" and advances democracy and rule of law.

A number of complaints brought by Turkish students barred from university education are currently pending at the European Court of Human Rights (ECtHR). In 2002, the ECtHR upheld a government's right to require a Muslim pre-school teacher to remove her headscarf in Switzerland on the grounds that "the ordinance did not target the plaintiff's religious beliefs, but rather it aimed to protect others' freedom and security of public order" given that the very young children in Dahlab's classes were more "open to influences" than other children.[86] A decade ago, the European Commission for Human Rights[87] rejected two applications from Turkish students who had been refused diplomas because the photographs they submitted to be affixed to the diplomas showed them wearing the headscarf. [88] The first ground for the commission's decision to reject the applications was that by applying to a secular university Ms. Bulut and Ms Karaduman had effectively accepted the conditions of such a university in which religious requirements could not be expected to be safeguarded unconditionally. In fact, since the headscarf ban is applied across the board in all post-secondary education institutions operated under the authority of the HEC, the applicants' only choice was to go to a

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[86] *Dahlab v Switzerland* (Application No. 42393/98, February 15, 2001).

[87] The European Commission for Human Rights, which used to determine the admissibility of applications made to the ECtHR, was abolished in November 1998. Applications are now dealt with directly by the Court.

[88] *Bulut v Turkey* (Application No. 18783/91, 3 May 1993). See also *Karaduman v Turkey* (Application No. 16278/90, 3 May 1993).

secular university where the headscarf was deemed unacceptable, or not to go to university at all.

The second main rationale for the Commission decision was that in a country with a majority Muslim population, such a visible token of religion could result in non-Muslim students being put under pressure. In other words, the Commission justified the headscarf ban for the protection of others' rights and freedoms.

Human Rights Watch does not agree with the Commission's zero sum calculation of the interests of devout Muslims and their non-Muslim classmates—that is, the assumption that the broadening of a Muslim's rights and freedoms necessarily narrows the rights and freedoms of non-Muslims and secularists.

At a time when the government is forming legislation on this highly sensitive issue, it is important to acknowledge the genuine alarm felt by those who fear an erosion of secularism, and to take account of the strains concerning Islam and the state, and women and the state in the Turkish context. The following section describes these fears, and outlines other measures short of a headscarf ban that the government could take to address them.

Secular Fears and the State's Failure to Protect Women

Şenal Sarıhan, a lawyer and president of the Republican Women's Association, has never hesitated to challenge and confront the state wherever she feels that it is abusing human rights. She has faced death threats while representing the families of victims of "disappearance" and death in custody at the hands of police and gendarmes. Yet she defends the government's limitation of freedom of religion and expression over the headscarf, arguing that an end to the ban would pose a serious threat to women's freedoms hard-won since 1923. She explained her rationale to Human Rights Watch:

> After the founding of the republic, Turkey took the civil code from Switzerland and, as an important revolution, abandoned the *shariah*, and ended the situation in which religion ruled the state. We human rights defenders well know the shortcomings of this republic, but it was won at great costs. At that time no pressure was put upon women to take off their headscarves. Our grandmothers and mothers covered their heads with scarves. The problem here is not a headscarf question, because there is no ban on headscarves. You can see many young women who leave school and put their scarf on their heads. And the women who do the cleaning in schools and universities can do their work without taking off their scarves.

> The main problem is in schools and certain state departments—especially where the MHP[89] and the Welfare party had organized themselves.[90] The *türban* or headscarf is not just a dress but a sign of political conviction. This really is a "near and present danger." ... This is a political movement that intends to destroy the whole republic, and to change it into another Iran. You must remember that in Iran the leftists initially made common cause with the Islamists but were then crushed by them after the Islamists came to power.[91]

Professor Toktamış Ateş has also frequently warned, in his regular column in the daily newspaper *Cumhuriyet* (Republic), that the reforms achieved since the founding of the republic are under threat. He sees a conflict of rights at the heart of the headscarf question: "In 1992 we all applauded the reforms that permitted the advocacy of communism and theocracy,[92] neither particularly democratic ideologies. So what is the difference here? The communist movements were not a threat to the state but these Islamists can be a threat. Look at the situation with FIS[93] in Algeria. I do not mind having students in my classes wear the headscarf, but their way of thinking does bother me. I had a group of students come to my office as a sort of delegation. I asked them whether they would permit their friends to go without headcovering. Most said yes, but one said no. If someone says that they are a Muslim and not a democrat, how can they claim to have the rights of a democrat?"[94]

It is not a condition of fundamental rights that those who enjoy them must hold tolerant and liberal opinions, but it is a fact that much of the resistance to the headscarf is inspired by a fear of what might happen if the tables were turned, and an outright Islamist regime were making the rules. This fear was stoked in the metropolitan cities of Ankara and Istanbul by incidents of crude triumphalism that followed hard upon the profound shock of some residents at the religious Welfare Party's victories there in the mid-1990s. An example of the "secularist's nightmare" was recounted by the

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[89] The National Action Party (MHP) is an extreme right-wing party and was a junior member of the government coalition including the Democratic Left Party (DSP) and Motherland Party (ANAP) that was voted out of power in 2002.

[90] Clientelism is a strong force in Turkish politics and for more than three decades leftist, liberal, extreme nationalist, or Islamist groupings have competed not just for electoral success, but also for control of institutions such as universities, ministries, the police force, municipalities, and government offices. Groups aim to bring a particular institution within their own zone of influence in order to promote their values and ideology within it, and gain access to the influence, finance, and posts at the disposal of that institution.

[91] Human Rights Watch interview, Ankara, November 25, 1999.

[92] The reforms referred to were the abolition of articles 141, 142, and 163 of the Turkish Criminal Code.

[93] *Front Islamique du Salut*, a political movement, now outlawed, that was on the verge of winning the 1992 parliamentary elections in Algeria. Overwhelming evidence, including the testimony of survivors, shows that, since 1992, Islamist armed groups have murdered thousands of individuals for defying Islamist demands, including women who refused to adhere to a dress code. See, for example, Human Rights Watch report *Human Rights Abuses In Algeria: No One Is Spared*, January 1994.

[94] Human Rights Watch interview, Istanbul, November 23, 1999.

anthropologist David Shankland in his book *Islam and society in Turkey*: "After the Welfare Party captured the Ankara Greater Municipality in 1994, I was trapped in the traffic created by their victory parade. ... Our car was buffeted and spat at by Welfare Party supporters: the women were entirely dressed in black, whilst the men with beards shouted 'Whores!' to the women in my car, who were unveiled."[95]

Individual women who wear the headscarf are not answerable for such abuses, of course. Most of the headscarfed women who spoke to Human Rights Watch said that they were not members of any political party, and emphasized that the decision to cover their heads was a private choice that they would not seek to impose upon other Muslim women. Leyla Topal, a law student who was unable to finish her degree, said: "Even if I had the power to do such a thing [enforce the wearing of the headscarf] I wouldn't do it. I don't see that they or we have such a right." When asked to comment about women in Algeria who were murdered because they refused to wear the headscarf, she replied: "Even if you accept that Muslims really committed such crimes, there is the question of whether you approve of such acts or not, and we do not. If you ask me whether a woman can enter school uncovered, I would say that of course she can."[96]

Secularists who support the headscarf ban are skeptical of such avowals. When Human Rights Watch mentioned to Professor Toktamış Ateş that many women had denied that there was any political significance to their choice to wear the headscarf, he replied that there was "such a thing as *takkiye*." *Takkiye*,[97] the concealment of a real opinion in order to gain a tactical advantage, is a charge frequently leveled at the religious right when it presents an appearance of tolerance and reason. Kezban Bülbül, journalist for *Yeni Şafak* (New Dawn), denied a press card because she submitted a headscarfed photograph, expressed exasperation at this allegation: "There is no way out of it when they say that you are practicing *takkiye*. I cannot open up my heart and show it to them."[98]

A fairly widespread suspicion among Turkey's secular population is that the religious parties have a master plan of eliminating secularism by 'salami tactics,' and that the headscarf is the first slice. They fear that tolerance shown on this issue will be followed by a ramping up of demands, and they quote the proverb "If you give the devil the little finger, he will soon take the whole hand."[99] Toktamış Ateş told Human Rights Watch:

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[95] David Shankland, *Islam and Society in Turkey* (London: Eothen, 1999), p 115.

[96] Human Rights Watch interview, Istanbul, November 26, 1999.

[97] *Takkiye*, Turkish form of the Arabic *taqīya*: "fear, caution, prudence; (in Shiitic Islam) dissimulation of one's religion (under duress or in the face of threatening damage)." *The Hans Wehr Dictionary of Modern Written Arabic*, ed., J M. Cowan (Ithaca: Spoken Language Services, Inc., 1976). The Islamic scholar and President of the Islamic Society of North America, Dr. Muzammil Siddiqui, gave the following opinion on *takkiye*: "There is no such practice in the Qur'an. In fact, deception is forbidden as means of promoting Islam. There is nothing to hide since it is a religion of openness, open to all people. A Muslim is permitted to conceal his/her faith in life-threatening situations." Quoted in msanews.mynet.net/MSANEWS/199806/19980612.3.html (accessed November 4, 2001).

[98] Human Rights Watch interview, Ankara, November 25, 1999.

[99] Özdalga, *The Veiling Issue in Modern Turkey*, p. 37.

> I always had students who wore the headscarf, but it was not a problem then. Universities always approached this issue and students who wore the headscarf in a spirit of moderation. But you must remember that these demands are going to escalate. They start by wanting to wear the headscarf, and then it will be the *çarşaf*,[100] and then people will ask where we are going.[101]

The alarm felt by those who see the headscarf as the thin end of a dangerous wedge has been aggravated by a catalogue of attacks by Islamic extremists directed specifically at people who have criticized the wearing of the headscarf at university. Bahriye Üçok was an academic in religious affairs, a senator in the 1970s, and Social Democratic Populist Party member of parliament in the 1980s. She had frequently spoken and written against the wearing of headscarves in educational establishments and government offices.[102] Because of her public statements on this and related issues, she received death threats. On October 6, 1990, she was killed by a mail-bomb.[103] The prominent *Cumhuriyet* columnist Uğur Mumcu asked, "Why was Bahriye Üçok killed? The answer to this question is clear...because she proved that the wearing of headscarves in universities and high schools by girl students had nothing to do with the religion of Islam, and that the *türban* and headscarf were used as a flag by a collection of religious orders."[104] Mumcu, himself an outspoken critic of the headscarf in education, was killed by a bomb attached to his car on January 24, 1993.

In his book "Islam and attire—A religious solution to the headscarf problem,"[105] Professor Zekeriya Beyaz, dean of the Theology Faculty of Marmara University in Istanbul presented an alternative reading of the Koran, stating that conventional western dress for women contradicts no Koranic requirement, and women are therefore not bound by their religion to wear the headscarf. On January 8, 2001, Professor Beyaz entered into a heated argument on the headscarf issue with a group of second-year students, some of whom accused him of acting as an apologist for the university's restrictive policy. When a group of young women walked out of the meeting in protest, a

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[100] The *çarşaf*, or sheet, is a more complete covering, allowing little more than the eyes to be seen.

[101] Human Rights Watch interview, Istanbul, November 23, 2000.

[102] See *Güneş* (Sun) January 4, 1987, *Cumhuriyet* (Republic) January 19, 1987, and *Sabah* (Morning) May 19, 1987, republished in *Aydõnlanma Yürüyüşünde Bahriye Üçok* [Bahriye Üçok on the March of Enlightenment] (Ankara: Kadõnlar Derneği Yayõnlarõ 1999).

[103] In an interview that appeared in *Gerçek* (Fact) of October 24, 1992, a representative of the armed organization Hizbullah (unconnected with the Lebanese organization of the same name) claimed responsibility for the killing of Bahriye Üçok. *Milliyet* of February 5, 1993 quoted the then Interior Minister İsmet Sezgin attributing the killing to another armed group Islami Hareket (Islamist Movement). On January 7, 2002, Ankara State Security Court No. 2 found sixteen defendants guilty of carrying out twenty-two armed attacks, including the killing of Dr. Bahriye Üçok and Uğur Mumcu. The prosecution relied on the testimony of a former Hizbullah militant who turned state's evidence.

[104] *Cumhuriyet*, October 9, 1990.

[105] *Islam ve giyim-kuşam — Başörtüsü Sorununa Dini Çözüm*, (Islam and Attire: A Religious Solution to the Headscarf Problem) (Istanbul: Sancak Yayõnlarõ July 1999).

young man ran at the professor and stabbed him in his stomach, chest, and neck. The professor was seriously wounded but survived the attack. In December 2002, Üsküdar Criminal Court sentenced the assailant to life imprisonment for attempted murder, but commuted the sentence to eleven years because he was a minor.

Added to the uneasy relationship between Islam and the state in Turkey is the fact that many women are far from confident that the Turkish state is genuinely committed to protecting women from discrimination and abuse. This suspicion fuels concerns that the state would not protect secular women from abuse that might attend a lifting of the ban. In recent history, the state has allowed women to be exposed to serious gender-specific abuses inflicted by both state officials and society at large. When the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW committee) gave its concluding observations on the Turkish government's report on the status of women, [106] it did not mention the difficulties in accessing education faced by women wearing the headscarf. The CEDAW committee did, however, draw attention to other areas of discrimination against women in which it expected the government to act, including the sexual assault of women in police custody; and enforced gynecological examinations (so-called "virginity tests")—two subjects repeatedly addressed by Human Rights Watch.[107]

The Turkish government's own report to the CEDAW committee admitted that domestic violence is a widespread problem. Studies indicate that domestic violence is commonplace even in the urban west. A survey of women aged 18-67 in Ankara showed that 89 percent of the respondents had been subjected to one or more forms of psychological violence, while 39 percent had experienced physical violence.[108] The Turkish Human Rights Association reported that thirty-seven women died as a consequence of domestic violence in 2003.[109] The Turkish non-governmental organization Women for Women's Human Rights (WWHR) has stated that the most pressing steps needed to combat domestic violence are legal aid services for women, more shelters and SOS lines for victims, gender training of judges, public prosecutors, lawyers and the police, training programs.[110]

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[106] *Consideration Of Turkish Combined Second And Third Periodic Reports By The Committee On The Elimination Of Discrimination Against Women*, 23/01/97. A/52/38/Rev.1, paras.151-206. The CEDAW committee examines signatory states' performance in the protection of women and their human rights. Turkey ratified the U.N. Convention on the Elimination of All Form of Discrimination Against Women on 14 October 1985.

[107] See: Human Rights Watch, "Turkey: Torture, Killings By Police And Political Violence Increasing," July 1991; Human Rights Watch, "Broken Promises: Torture and Killings Continue in Turkey," December 1992; Human Rights Watch, "A Matter of Power: State Control of Women's Virginity in Turkey," June 1994; Human Rights Watch/ECA, "Torture and Mistreatment in Pre-trial Detention by Anti-terror Police," March 1997. See also Amnesty International, "Turkey: End sexual violence against women in custody!," February 26, 2003.

[108] Leyla Gülçür, *A Study on DomesticViolence and Sexual Abuse in Ankara, Turkey* (Istanbul: Women for Women's Human Rights,1999).

[109] Human Rights Association bulletin, March 8, 2004, p. 2.

[110] *NGO Report on the Implementation of CEDAW in Turkey*, Women for Women's Human Rights, December 1996.

The CEDAW committee also urged the Turkish government to make greater efforts to halt so-called "honor killings." Daily newspapers in Turkey frequently report the murder of young girls and unmarried and married women by members of their family who believe that the family reputation has been dishonored by their behavior. The executioner is usually a young male of the family, frequently a younger brother who is pressed by the family to commit the murder because, as a minor, he will receive a reduced sentence.[111] The Turkish Human Rights Association reported that forty women were the victims in so-called "honor killings" in 2003.[112]

WWHR campaigns for changes in law to combat the abuses described above, but argues that raising awareness among individual women and society just as much a priority. The group points out that legal reforms enacted seventy-five years ago have still scarcely benefited women in enclosed traditional communities where social pressures combine with lack of access to information on a range of women's rights and freedoms, and that such women have been left behind by the modern republican project of emancipating women. The 1998 WWHR field study *Woman and the Family in Eastern Anatolia* [113] indicated that the majority of women in the eastern and southeastern Turkey were unaware of their existing marital rights in law: for example, the rights that exist in Turkish law to seek divorce, to have a forced marriage dissolved, or to recourse against physical violence by their husband. The study also clearly showed that level of education was a key factor in empowering women to exercise their rights in spite of an oppressive social environment.

Education is now compulsory by law up to the age of fourteen, but many families do not send their children to school because they cannot afford even the basic school kit, or because they need the children as extra hands in the fields or shop. Poorly educated families with strongly traditional values remain reluctant to send their daughters to school, particularly as they approach puberty. This self perpetuating process locks generations of women out of the learning environment with the consequence that, in some regions of the country, the provision of a universal free state education has failed to impact traditional values to the extent that might have been predicted.

The CEDAW committee expressed deep concern at the high level of illiteracy among women and girls (especially in rural areas), the drop-out rates of girls in schools owing to family practices, the impact on girls of early marriages and the prioritization of boys in school enrollment, and other gender discriminatory practices in education.[114] 22.4

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[111] For a contemporary survey of domestic violence and so-called "honor killings," and recommendations for combatting such abuses, see Amnesty International's report *Turkey: Women confronting family violence*, June 2004.

[112] Human Rights Association bulletin, March 8, 2004, p. 2.

[113] Põnar İlkkaracan, Women for Women's Human Rights, "Doğu Anadolu'da Kadõn ve Aile" (Woman and the Family in Eastern Anatolia) in *Bilanço 98: 75 Yõda Kadõnlar ve Erkekler* (Balance Sheet 98: Women and Men after 75 years) (Istanbul: Türkiye İş Bankasõ İMKB, and Tarih Vakfõ 1998).

[114] *Consideration Of Turkish Combined Second And Third Periodic Reports By The Committee On The Elimination Of Discrimination Against Women*, 23/01/97. A/52/38/Rev.1, paras.151-206.

percent of girls and women more than twelve years old are illiterate, as compared to 5.9 percent of boys and men.[115] Even this striking figure understates the problem of access to education by women in less developed regions. In its study of women in east and southeast Turkey, and a district of Istanbul that is largely populated by migrants from those regions, WWHR found that 62.2 percent of the sample had never been to school or had not been permitted to complete primary education. Only 9.8 percent had completed middle school.[116]

Impact of the Draft Law on the Headscarf Issue

The AKP government has made no commitments concerning the headscarf and education, but it seems probable that it would lift the ban if it could do so without provoking a strong reaction from those that support it, and especially from the military. The Justice Ministry's July 2003 draft Higher Education Law leaves the door open for a move toward liberalization by repeating the Motherland government's 1990 formula that dress is "free, provided that it does not contravene existing law."[117] It would not, however, resolve the legal perplexity that has lain at the heart of the problem for a decade and a half. Another reference to clothing in the draft law (in article 66 (B)(1)(e)), provides that university staff "acting in contravention of the provisions on clothing" will be subject to reprimand. The "provisions on clothing" presumably refer to the Regulation for Dress of Personnel Working in Public Institutions and Organizations, published in the Official Gazette of October 25, 1982. Article five of that regulation requires that "the head should always be uncovered in the work area." The draft law as it currently stands would continue the prohibition on teachers wearing the headscarf.

The HEC President's draft of January 2004 does not explicitly mention the headscarf, but it provides that "all additional and provisional articles of Law 2547 not in conformity with this law are abolished."[118] If enacted, this catch-all expression may provide universities and courts with a tool they can eventually use to nullify the effects of the Motherland government's 1990 amendment that "dress is not subject to any prohibition in institutions of higher education, provided that it is not forbidden by law" in the event of any future attempt to lift the headscarf ban.

The Inter-University Council's draft leaves the headscarf question where it stands by avoiding all mention of it. Article 35 of their draft law provides for "abolished articles and provisions," but specifies none at this stage.

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[115] "National Program For The Enhancement Of Women's Integration" in *Development Project 2000*, produced by the Turkish state Directorate General on the Status and Problems of Women and the United Nations Development Project, available at www.die.gov.tr /CIN/women/undpwomen.htm.

[116] Põnar İlkkaracan, *Doğu Anadolu'da Kadõn ve Aile* (Women in the Family in Eastern Turkey) (Istanbul: Women for Women's Human Rights, 1998), p. 2.

[117] Justice Ministry's July 2003 draft, Art. 84.

[118] Provisional art. 2.

Steps to Improve the Draft Law With Respect to the Headscarf Issue: Consultation and a Rights-Based Program

Human Rights Watch regrets that none of the proposed legislation effectively ensures that students and staff will have an unambiguous and enforceable right in law to wear clothing that manifests their religious belief.

If the Justice Ministry manages to retain the formula that for students, dress is "free, provided that it does not contravene existing law" in the final version of the legislation, the present government or a future one may seek to lift the ban by altering the balance of power in university administrations and arranging the appointment of academics willing to use the phrase to admit students who wear the headscarf. Elements within the state and military would very likely oppose such a move as an erosion of the secular constitution, and it is likely that there would be a strong reaction by some women who fear the erosion of their poorly safeguarded rights.

Therefore, when this or any future government frames legislation or policy relating to the headscarf, it would do well to acknowledge the long and sorry history of state failure to protect women from gender-based violence and discrimination, and commit itself to programs to remedy continuing shortcomings in that protection. Those programs should take as their starting point the recommendations of the CEDAW committee in their 1997 Concluding Observations, and the recommendations of the E.U. revised Accession Partnership with respect to equality of treatment for women and men in social policy and employment.

Any new legislation on higher education should also include provisions to offer reassurance to those who feel their rights could be put at risk by a change of policy with regard to the headscarf. Such provisions might be legislative or regulatory safeguards for the rights of women who choose not to wear the headscarf, as well as strong public endorsements of women's freedom to dress according to their own free choice. But the most important gesture the government could make would be actively to seek out civil society groups representing women and gather their views through the broadest possible consultation.

A convincing consultation would give opponents of liberalization an opportunity to express their strong reservations and to suggest safeguards or undertakings that the government could make to protect society against the erosion of civil liberties—and in particular, women's civil liberties—that the opponents fear would result from a lifting of the headscarf ban. By listening to the concerns of women from all sides of the argument, the government may be able to break away from the pessimistic zero-sum game and move toward a genuine pluralism that allows women to make their own free choice whether to wear the headscarf or not.

It is quite possible that a broadly rights-based approach to changing the law could achieve wide acceptance—particularly in the current atmosphere in Turkey, when civil

society is reaching across traditional partisan divides to increase protection of individual rights through the rule of law. For example, Mazlum-Der (the Association for Oppressed Peoples), which approaches human rights from a strongly Muslim point of view, was one of the main champions of the legal changes to protect the property rights of non-Muslim, that is, Armenian, Greek, and Jewish foundations, and ran a strong public campaign for the protection of those rights.

The Turkish Human Rights Association, with a membership drawn largely from left of center and secularist circles, has issued a statement strongly asserting the right of women students to wear the headscarf. Turkish women from secular and religious backgrounds have come together under the Freedom of Expression Initiative[119] to protect each other's right to freedom of expression. On October 9, 2001 the secularist actor Lâle Mansur and the devout Muslim publisher Emine Şenlikoğlu stood together on the step of Istanbul State Security Court, where they, with others, were on trial for jointly republishing a selection of proscribed statements by a variety of religious, non-religious, and Kurdish figures. Before the hearing the two women explained why they were there: Emine Şenlikoğlu, swathed in the *çarşaf* said: "I do not share the views of most of the people here. I am a writer who puts her Islamic identity before all else. I do not respect ideas that contradict Islam. But what could be more natural than for me to appear here at the side of the others in order to ensure that my views and their views can be freely expressed?" Lâle Mansur, bare-headed, responded: "And I share almost none of Emine's opinions. But I will always be by her side so that she can freely express them."[120]

The previous, mainly secularist, government failed to put in place laws that effectively and unambiguously guaranteed the right of women to exercise free choice with regard to their clothing, but instead preferred to impose arbitrary restrictions on what they viewed as the daughters and wives of a rival political constituency. Now that those rivals are in government, Human Rights Watch hopes that the present administration will neither be cowed by military-backed pressure to stay clear of the headscarf issue, nor isolate the headscarf issue from other outstanding women's concerns. Women have for too long been the victims of the Turkish state's failure to guarantee their rights, and have become unwilling pawns in a game played between vying political interests. It is time to protect all women's human rights in Turkey, including their rights of freedom of expression and religion.

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[119] The Freedom of Expression Initiative arranges the republication of statements, articles, caricatures, and songs that contain no advocacy of violence but have nevertheless been subject to prosecution under various articles of the Turkish Criminal Code. These republications are then immediately submitted to the courts who are obliged to open court actions. The actions embarrass the authorities because the republishers are either well-known public figures, or unmanageably huge groups of ordinary people. A record-breaking 77,663 defendants were responsible for the slender volume on trial in this particular case: "Freedom of Expression — For All."

[120] Video record by the Freedom of Expression Initiative, October 19, 2001.

Recommendations Concerning Removal of the Headscarf Ban

Human Rights Watch urges that the Turkish government should:

- Conduct, prior to enacting the draft legislation on the Higher Education Council, a thorough consultation with relevant interest groups to ensure that legislation and regulations concerning dress in higher education are fully consonant with international law and standards concerning freedom of religion and freedom of expression;

- Ensure that the legislation, and other legislation concerning the future shape of learning in Turkey, addresses the recommendations concerning education contained in the CEDAW Committee Concluding Observations of 1997;

- Ensure that university authorities lift the ban on the wearing of the headscarf in universities for students and staff. Rectors of universities and other educational institutions should ensure that their entry and appointment procedures do not discriminate on grounds of gender or religion;

- Ensure that higher education bodies reinstate all students currently excluded because they choose to wear a headscarf for religious reasons, and reinstate all university or college staff discharged or suspended because they choose to wear a headscarf;

- Respect the United Nations Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion or Belief and the United Nations and the Convention on the Elimination of All Form of Discrimination Against Women.