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Guidance Document

The Concept of consent in relation to violence against women and girls

By
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I. Introduction

1. In the present guidance document, the Special Rapporteur on violence against women and girls presents a summary of key observations on the concept of consent, its various understandings, and manifestations. Given the evolution of the concept - with states adopting or considering the adoption of consent-based laws on sexual violence against women and girls, particularly rape - the Special Rapporteur considers it important to provide a structural examination of the subject. The document complements and expands of the findings and analysis presented in a report and its addendum to the Human Rights Council in June 2025 (A/HRC/59/47/Add.4).

2. The objective of the guidance document is to critically assess how the concept of consent is defined and applied in laws addressing violence against women and girls. The inquiry explores which approaches adequately reflect the realities of coercion, power imbalances, and trauma, and which models risk shifting blame onto victims while allowing certain forms of exploitation and abuse to go unpunished. This is done through an analysis of different models of consent, their challenges and limitations, and the description of harmful practices. Based on the international legal framework, the document aims to present lessons learned from the application of a consent-based approach and to offer recommendations regarding the "contextualized consent" model that would strengthen a human rights-based approach to consent in law and policy.

3. Following the call for inputs, the Special Rapporteur received 70 submissions from states and stakeholders. She also held two expert consultations, in which 45 experts and representatives of civil society participated.

II. Definition of consent

4. Broadly, consent can be defined as agreement to engage in a specific act, freely and without coercion, manipulation, or fear. Domestic legal systems diverge significantly in how they interpret and operationalize the definition of consent in the context of violence against women and girls, with some maintaining the minimum definition and others expanding it through the particularization of attributes of consent, such as being unequivocal, expressive, positive, and affirmative, among others.[1] Its application requires taking into account and

[1] Submission by Abigail Nthuba.

balancing the principles of autonomy, freedom, and inalienable human dignity understood as the intrinsic worth of the human person.

5. As a legal construct, consent is grounded in three interrelated doctrines. The first is the principle of informed consent in the medical field that affirms the right of individuals to bodily integrity, requiring that they be fully informed and voluntarily agree to a procedure before it is carried out. The second one, stemming from contract law, is the doctrine of legal capacity to consent, which emphasizes that individuals must possess the cognitive and psychological ability to understand the nature and consequences of their decisions in order for their consent to be legally recognized as valid.[2]

6. The third doctrine is rooted in criminal law and the protection of fundamental human rights. In both international and domestic criminal law, the victim's consent is deemed irrelevant to the legal characterization of some offences that inherently involve abuse, exploitation, degradation, and humiliation, such as slavery, torture, prostitution and other forms of sexual exploitation, or human trafficking.[3] This principle underscores the fact that consent must not constitute a defense when power asymmetries are so profound that any agreement is presumed to be coerced.

III. Approaches to consent

7. Domestic laws regarding consent in the context of violence against women focus primarily on its role regarding sexual violence. The conclusions of this report might, however, also apply to other harmful practices against women and girls. In recent years, a significant shift has been observed from forced-based to consent-based approaches. Different models may overlap even within a single jurisdiction, and the meaning of provisions is often clarified in judicial interpretation, which highlights the importance of appropriate training and education for judges.

A. Force-based models

8. Despite clear international standards affirming the centrality of consent,[4] many states continue to define sexual violence, particularly rape, through a force-based model, where physical coercion, threats, or resistance are required to establish an offence. Survivors who do not physically resist or show substantial physical harm—or who were unable to do so due to fear, shock, and various vulnerabilities may be denied justice altogether. Force-based models often reflect societal beliefs that place the burden of moral responsibility on women, creating an environment where perpetrators are exonerated and the responsibility of the violence is transferred to the victims.[5]

9. Examples include El Salvador, where women still frequently experience sexual assault in all forms.[6] Its laws define rape as vaginal or anal sexual intercourse "through violence."[7] Although the penal code also provides for the exception for "inability to resist,"[8] it fails to

[2] Submission by the International Commission of Jurists.

[3] See e.g. UN's Protocol to Prevent, Suppress and Punish Trafficking in Persons [hereinafter: Palermo Protocol], art. 3(1); The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [hereinafter: Convention Against Torture], art. 2(1).

[4] See e.g. M.C. v. Bulgaria, App. No. 39272/98, Eur. Ct. H.R. ¶ 166 (Dec. 4, 2003).

[5] Submission by GREVIO.

[6] Walter Alonso Iraheta, Mónica Alexandra Linares and Brenda Castillo, *First Report on Gender-Based Violence Statistics in El Salvador* (Gender-Based Violence Research Institute (IVG), October 2023)

[7] Penal Code of Salvador, art. 158.

[8] Id., art. 159.

consider the broader range of coercive circumstances, including both physical and non-physical threats.[9] Similar definitions of rape as requiring the use of force with an exception for the situation of the victim's inability to resist can be found, for example, in the penal codes of Albania,[10] Estonia[11], or Slovakia.[12] Although violence could be defined broadly, including psychological or emotional violence, which to a certain extent might account for women's and girls' intersecting vulnerabilities, in the absence of clear provisions, it is not sufficient to simply "hope" for such judicial interpretation, especially when evidence proves the contrary.[13]

10. Force-based models can also lead to revictimization through non-consensual or otherwise violent physical examinations, either required by law or, even in the absence of such a requirement, continuing to happen in practice. Although other models may rely on or encourage victims to go through physical examinations, force-based models usually rely on particularly humiliating and violent methods. In some countries, "virginity tests" are conducted as part of investigations.[14] In India, although the law has evolved to prohibit invasive practices like the "two-finger test," survivors are still commonly expected to demonstrate non-consent through physical evidence.[15]

B. "No-means-no" models

11. "No-means-no" models suggest that the absence of consent is indicated through refusal or rejection. Passivity, therefore, might be perceived as consent, even though it occurs, for example, when a victim freezes out of fear.[16] Although these models do not require the use of physical force for rape to be recognized, victims are still expected to express their opposition to the act, either verbally or non-verbally, which could create a distinction between an act committed "against a person's will" and "all other non-consensual acts."[17]

12. Some states, for example, Mexico, recognize both explicit and tacit forms of consent, defining it as an agreement of wills intended to produce legal effects. Tacit consent may be inferred from inaction in the face of harm, provided legal avenues to contest it exist and are not exercised.[18] To complement such models, a strict, rights-based understanding of consent as a voluntary, informed, and explicit manifestation of will regarding actions affecting one's bodily integrity and fundamental rights sometimes emerges in jurisprudence.[19]

C. "Yes-means-yes" models

13. "Yes-means-yes" models are affirmative and communicative, treating sexual acts without explicit consent as criminal, and implying that consent exists only when it is freely and clearly expressed, whether verbally or non-verbally. This approach emphasizes that it is the responsibility of the initiator to ensure consent, rather than relying on the victim to say no, as

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[9] See U.N. Model Law on Rape, A/HRC/47/26/Add.1, art. 6.

[10] GREVIO's baseline evaluation reports on Albania, paragraphs 135-138.

[11] GREVIO's baseline evaluation reports on Estonia, paragraphs 171-172

[12] Slovakia's Criminal Code, § 199 of Act No. 300/2005 Coll.

[13] See e.g. CAT/C/SLV/CO/3, par. 28.

[14] See e.g. https://www.amnesty.org/fr/wp-content/uploads/2021/05/MDE1338782016ENGLISH.pdf https://www.bbc.com/news/world-asia-42112827

[15] Submission by Sama Resource Group for Women and Health.

[16] Sara Uhnoo, Sofie Erixon and Moa Bladini, 'The Wave of Consent-Based Rape Laws in Europe' (2024) 77 International Journal of Law, Crime and Justice.

[17] See GREVIO's baseline evaluation reports on Austria, paragraph 141.

[18] Submission by Mexico.

[19] See submission by Singapore.

reflected in laws criminalizing sexual violence with a "person who is not participating voluntarily" or "who has not given consent."[20] Such an approach focuses on whether a woman wanted the particular act, on the specific occasion, with that particular person, shifting away the resistance requirement.[21]

14. Following the ratification of the Istanbul Convention, which defines sexual violence based on the absence of voluntary consent, an increasing number of countries have adopted a "yes-means-yes" model.[22] For example, in North Macedonia, the absence of "clearly expressed consent of another, obtained in the context of the case" constitutes the element of rape.[23] Norway changed its laws to require consent by "word or deed."[24] Malta requires that consent be assessed in the context of surrounding circumstances, including the emotional and psychological state of the victim at the time.[25] Similarly, Spain has redefined sexual assault based on the absence of "freely expressed" consent, establishing that silence or passivity cannot be interpreted as agreement.[26] The United Kingdom defines consent not only by affirmative agreement but also by the victim's freedom and capacity to make that choice.[27]

D. "Two-tiered" and "one-crime" approaches

15. Some approaches prioritize consent while also recognizing that aggravating factors must be taken into account in determining the consequences of the act. In a two-tiered approach to sexual violence, laws distinguish between crimes based on the use of force and those based on lack of consent, with the former often carrying harsher penalties.[28] For example, the Portuguese and Greek provisions on rape provide for two sexual crimes of rape – force-based rape and non-consensual rape, subject to different prison sentences.[29] Sweden introduced the crime of "negligent rape," where a person can be convicted for failing to ensure the other party's consent.[30] The Netherlands distinguishes between intentional rape and sexual assault and sexual assault and rape where intent cannot be established, but where the perpetrator had serious reason to suspect that the other person did not consent.[31]

16. In the "one-crime model," lack of consent defines the crime, while threats or violence serve as aggravating factors rather than necessary elements. The legal qualification of the crime is based on the absence of consent, regardless of whether violence or abuse of power is involved, but particularly violent or abusive acts carry enhanced penalties to reflect their severity.[32] For example, Croatia transitioned from treating rape as a crime against morality to a crime against individual sexual autonomy, defining rape now solely by the absence of consent, with force or threat appearing only as aggravating circumstances, not as part of the

[20] Submission by GREVIO.

[21] Nicholas J. Little, From No Means No to Only Yes Means Yes: The Rational Results of an Affirmative Consent Standard in Rape Law, 58 Vanderbilt Law Review 1321, 1335 (2019).

[22] Submission be GREVIO.

[23] GREVIOs baseline evaluation report on North Macedonia, paragraphs 257-259.

[24] https://www.reuters.com/world/norway-outlaws-sex-without-consent-europe-strengthens-rape-laws-2025-06-06/

[25] See GREVIO's baseline evaluation report on Malta, paragraphs 169-171.

[26] https://www.theguardian.com/world/2022/aug/25/spain-only-yes-means-yes-sexual-consent-bill-expected-to-become-law

[27] https://www.cps.gov.uk/sites/default/files/documents/publications/what_is_consent_v2.pdf

[28] Submission by GREVIO.

[29] https://www.europarl.europa.eu/RegData/etudes/IDAN/2024/757618/EPRS_IDA%282024%29757618_EN.pdf p. 9.

[30] See https://bra.se/english/publications/archive/2025-04-08-application-and-consequences-of-the-consent-law

[31] https://www.europarl.europa.eu/RegData/etudes/IDAN/2024/757618/EPRS_IDA(2024)757618_EN.pdf 19.

[32] Submission by GREVIO.

core definition.[33] Similarly, Canada provides for a consent-based definition of sexual assault while designating physical injuries as elements constituting aggravated crime.[34]

IV. Challenges and limitations

A. Contextualizing consent and intersecting vulnerabilities

17. Sexual and other forms of violence frequently occur within patterns of coercive control and the threat of further violence, characterized by isolation, psychological abuse, surveillance, and economic dependence. When power imbalances or survival strategies are the reasons why women comply, what may seem like a "yes" is not truly a "yes."[35] In other words, in order to give a valid "yes," a woman must be in a situation where it is safe to say "no" without the fear of coercion or any form of negative repercussions.[36] Notably, most femicides are committed by male partners when women decide to leave abusive and violent relationships.[37] The law must not confuse strategic submission under duress with voluntary agreement.[38] When evaluating whether consent is present and valid, it is crucial to consider the intersecting vulnerabilities of women and girls that may have influenced their decisions.

18. Suffering from post-traumatic stress disorder is both a cause why consent would not be valid, but also a consequence of expressing it in a manner that is not free and informed. Among the more frequent posttraumatic problems, are: (a) emotional and psychophysiological arousal dysregulation; (b) negative sense of self including feeling unlovable, dirty or defiled, (c) dissociative experiences from relatively mild inattention to flashbacks, time-distortion, voice hearing, depersonalization, and marked emotional numbing, identity confusion and amnesia; (d) psychosomatic symptoms; (e) addictive behavior as risk taking behaviors as secondary coping mechanisms (f) self-harm and suicidality.[39] Disbelief or denial of victims' experiences further exacerbates the effects of trauma.

19. Complex trauma may also manifest in ambivalent attachment to and traumatic bonding with perpetrators.[40] Victims sometimes could appear to crave the perpetrator's attention or affection, clinging to "nice times" and hoping for more of them, especially when these are among the only sources of happiness to which they have access.[41] Many perpetrators of violence avoid causing physical injuries that would necessitate medical attention or raise suspicion by others in the community. Instead, it is common that they seek the victim's cooperation and submission to create the appearance of a consensual relationship and help to evade legal consequences.[42] It should be recognized, therefore, that there is no 'typical

[33] European Parliamentary Research Service, Definitions of rape in the legislation of EU Member States (In-Depth Analysis, PE 757.618, May 2025) 11 https://www.europarl.europa.eu/RegData/etudes/IDAN/2024/757618/EPRS_IDA%282024%29757618_EN.pdf p. 11.

[34] Canadian Criminal Code, art. 271-273 https://laws-lois.justice.gc.ca/eng/acts/c-46/page-38.html#h-120223

[35] Submission by Canada

[36] https://dremmakatz.substack.com/p/heres-why-a-domestic-violence-victim

[37] Submission by Women's Platform for Action International.

[38] Submission by Alyssa Ahrabare.

[39] American Psychological Association and the International Society for the Study of Trauma and Dissociation, *Working with Adults with Complex Trauma Histories* (approved by APA Council of Representatives, August 2024) 11 https://www.apa.org/practice/guidelines/adults-complex-trauma-histories.pdf

[40] Id, at 13.

[41] https://dremmakatz.substack.com/p/heres-why-a-domestic-violence-victim

[42] Submission by Strategic Advocacy Human Rights (SAHR)

behavior' when responding to sexual violence[43], and there must be no artificial distinction between "true" victims who fight back or others who are unable to do so.[44]

20. Another circumstance that should be considered in determining consent is the presence of economic violence. Economic dependence on the perpetrators is often the key reason why women feel unable to leave abusive relationships.[45] For example, East Asian women abroad may become vulnerable to exploitation and trafficking under the pretense of their consent, as they feel a responsibility to support their families financially.[46] In Lebanon, migrant women in difficult financial situations are coerced into prostitution under "artist visas" and made to sign restrictive contracts, with authorities using these contracts later as the alleged evidence of consent.[47]

21. All relevant factors must also be taken into account in evaluating the consent of women and girls with disabilities, which may be impeded by substituted decision-making, especially when caregivers and family members act as gatekeepers of their access to justice, or when they have the power to consent to medical treatment on their behalf.[48] Courts still fail to take into account how intersecting vulnerabilities of women and girls with disabilities make it more difficult to prove the lack of consent, particularly in forced-based models when they allegedly "didn't resist."[49]

22. In some cultural contexts, even adult women cannot make independent decisions, but older family members control their lives and make decisions for them.[50] The idea of women and girls as property, belonging to their father, husband, or a particular community, leads to the justification of serious human rights violations.[51] Similarly alarming are provisions defining rape as an offence against freedom, honor, and morals, rather than as a crime against an individual woman.[52] A particularly extreme example is Afghanistan, where, under the Taliban, women are reportedly considered unable to consent, while forced marriage is officially prohibited, it has been documented, and rape victims are allegedly criminalized and/or forced to marry their rapists.[53]

B. Legal and de facto limitations

23. Despite clear progress in many countries, significant challenges persist in aligning legal definitions of consent with the lived realities of victims.[54] The lack of consistent legal standards across jurisdictions means that similar cases can have widely divergent outcomes.[55] Even where consent is legally defined, inconsistent judicial interpretation undermines the purpose of

[43] Submission by Just Rights for Children.

[44] Submission by the Coalition Against Trafficking in Women.

[45] CEDAW General Recommendation No. 19, A/47/38, art. 23.

[46] Submission by Dale Consulting.

[47] Submission by Double X; E/CN.4/2006/62/Add.3, par. 53

[48] Submission by the Global Alliance Against Trafficking in Women (GAATW)

[49] See R.P.B. v. Philippines, 12 March 2014, CEDAW Committee, CEDAW/C/57/D/34/2011, para 3.2.

[50] Submission by Rosa & AWHZ

[51] Submission by the Coalition Against Trafficking in Women.

[52] A/HRC/53/36/Add.2 par. 26.

[53] Submission by Afghanistan; S/2025/389, par. 19; A/HRC/59/25, par. 27.

[54] Submission by the National Organization for Women's Shelters and Young Women's Shelters in Sweden (ROKS).

[55] See e.g. https://healthpolicy-watch.news/rapists-avoid-punishment-in-many-african-countries/

the law. Cultural and institutional barriers contributing to revictimization persist,[56] particularly when victims are children,[57] persons with disabilities, women and girls belonging to ethnic, linguistic or cultural minorities, women and girls in the commercial sexual exploitation sector, or individuals in detention.[58] Applying the law can be especially challenging when determining the threshold for criminality in cases where a woman "agrees" to engage in a sexual act after persuasion.[59] Another problematic scenario arises when a woman's note or text message is perceived as proof of consent, even if she later orally or otherwise communicated a change in her decision.[60] As the law cannot fully capture the complexity of women's and girls' lived experiences, cultural and educational changes in the understanding of consent are also needed.[61]

24. A serious limitation in addressing sexual violence is the persistent underreporting and low conviction rates for rape and other forms of sexual abuse.[62] Data from 44 countries show that, on average, half of the women who have experienced physical or sexual violence never disclosed their experiences to anyone—often due to fear of repercussions, stigma rooted in socio-cultural norms, or a sense of hopelessness about the possibility of justice.[63] Even fewer women report sexual crimes to the police - in the United States, for example, it is only about 21.5% of victims.[64] Data from the United Kingdom reveal problematic police and prosecutorial practices that may contribute to further underreporting, such as investigating victims' perceived credibility by reviewing their counselling records—even when the victims were under 18—instead of focusing on the facts of the case.[65]

25. Another challenge is the notion of "reasonable belief," also framed as "fact mistake," as to whether a woman expressed her consent.[66] Alcohol or drug use, flirtation, or prior intimacy are sometimes interpreted as indicators of consent, even in the absence of explicit agreement.[67] In this context, South Africa's High Court ruled that a subjective belief in consent cannot serve as a valid defense to rape unless the accused took objectively reasonable steps to ascertain that the complainant consented to the sexual conduct in question.[68]

26. The presumption of 'consent' is also found in several descriptors judges use, that place the responsibility on the victim obscuring her true experience: she adhered, complied, gave in, went along, tolerated, yielded, sacrificed, compromised, renounced, resigned, capitulated,

[56] Submission by the Institute of Blessed Virgin Mary.

[57] A. Pereira, A. Peterman, A.N. Neijhoft, *et al.* Disclosure, reporting and help seeking among child survivors of violence: a cross-country analysis. *BMC Public Health* 20, 1051 (2020).

[58] https://www.driadvocacy.org/reports/crimes-against-humanity-decades-violence-and-abuse-mexican-institutions-children-and-adults

[59] Submission by Swedish Women Lobby

[60] Expert consultations.

[61] Submission by AF4WR.

[62] Submission by Sanctuary for Families.

[63] https://genderdata.worldbank.org/en/data-stories/seeking-help-for-gender-based-violence

[64] https://womenfamilies.org/why-most-sexual-assaults-are-not-reported/?utm

[65] https://www.endviolenceagainstwomen.org.uk/review-shows-scale-of-police-requests-for-rape-survivors-counselling-notes/

[66] Submission by Wendy Murphy.

[67] Submission by the European Network of Migrant Women.

[68] The Embrace Project NPC and Others v Minister of Justice and Correctional Services and Others [2024] ZAGPPHC 967 (30 September 2024).

acquiesced, was persuaded, which in turn serve initiators of sexual advances and perpetrators to avoid responsibility for their acts and to justify degrees of violence against their victims.[69]

27. Some jurisdictions also allow specifically for an "age mistake" defense when the perpetrator could avoid responsibility, arguing that he thought that the minor had already reached the age of consent.[70] Although some legislations, for example, Uzbekistan,[71] address the absence of consent in cases of intoxication, mental incapacity, or other vulnerabilities, others do not, as is the case in Botswana,[72] which has one of the highest rape rates in the world,[73] leaving room for ambiguous interpretations.

C. Structural issues underlying consent

28. Many misconceptions surrounding consent also have structural causes and remain deeply ingrained in patriarchal social norms. Sexual violence, in particular, represents a form of patriarchal domination that frames female sexuality as permanently available and offered to men.[74] These misconceptions are reinforced by structural inequalities. Women's more limited access to education and economic opportunities compared to men, coupled with their unequal representation in political and decision-making spheres, restricts their autonomy and fosters an environment in which violence against them is ignored.[75] An exclusive focus on consent as an "individual choice" fails to account for these realities. Seemingly neutral legal systems that overlook systemic sexist inequalities are also problematic, given that the law shapes culture and is, in turn, shaped by it.

29. In addition to individual mostly male perpetrators, some industries systematically benefit from violence against women and girls and therefore have an interest in justifying it by their alleged "consent." Pimps, pornographic websites and apps, or surrogacy agencies normalize harmful practices and mask coercion; in such a context, the allegation of abuse might be dismissed merely because the victims were smiling.[76] When these industries are not held accountable—which is happening when consent lacks contextualization—they become further empowered over time, increasing their incentive to perpetuate violence.

V. Harmful practices

A. Forced marriage and marital rape

30. The free and informed consent to enter into marriage continues to be undermined in many countries. Some women and girls face pressure to marry their rapists to allegedly "save" their own or their families' "honor."[77] Those pressures are exacerbated by laws that permit

[69] Submission by Women's Platform for Action International

[70] Isabel Grant & Janine Benedet, "Confronting Sexual Assault the Sexual Assault of Teenage Girls: The Mistake of Age Defence in Canadian Sexual Assault Law" (2019) 97:1 Can Bar Rev 1.

[71] Submission by the Government of Uzbekistan.

[72] Section 141 of the Penal Code of Botswana.

[73] https://www.tbsnews.net/world/countries-highest-rape-incidents-144499

[74] Assemblee des Femmes at al., 10 preconceived ideas on the introduction of consent into the legal definition of rape (November 2024).

[75] Submission by the European Network of Migrant Women.

[76] *Id.*

[77] https://equalitynow.medium.com/forced-to-marry-your-rapist-not-a-plot-from-the-handmaids-tale-a-reality-for-women-in-iraq-62ff50e28115; https://reliefweb.int/report/ethiopia/you-have-marry-your-rapist-sexual-violence-survivor-victimized-harmful-tradition

rapists to escape punishment when they marry their victims,[78] which fortunately start to be repealed.[79] In Russia, the law creates a paradox by presuming that marriage retroactively legitimizes prior sexual relations with a minor, even though minors are legally incapable of giving valid consent. Courts lack adequate mechanisms to determine whether such marriages are authentic or entered into under duress.[80]

31. Practices, such as bride price and dowries, further impede the consent to enter into marriage.[81] Bride kidnappings are another way to force women to marry men who "chose" them.[82] Such marital coercion is even worse in communities where the power to grant a religious divorce rests mainly or exclusively with a male spouse.[83]

32. In many states, rape within marriage is not recognized as a crime.[84] Some jurisdictions, such as Bahrain[85] or India,[86] exclude marital rape from prosecution as the laws fail to recognize the necessity of consent within marriage. Others, such as Côte d'Ivoire[87] or South Sudan,[88] explicitly presume that a married woman consents to sex. Although some reforms are in progress,[89] resistance is often based on the belief that criminalizing marital rape would "destabilize" families and contradict cultural norms.[90]

B. Prostitution

33. In her report A/HRC/56/48, the Special Rapporteur asserted that prostitution is a system of exploitation and violence against women and girls. She also addressed how the issue of consent is instrumentalized to legitimize the harm inflicted on women in prostitution. Those who claim that a woman is freely "consenting" to the sale of her body and the sale of a sexual act, liken it to the consent of the sale of any object, despite the fact that there are fundamental differences between the consent to the sale of an object and consent given to perform sexual acts. The former is a straightforward business transaction, whereas the latter involves the highest degree of physical intimacy. The concept of consent and the criteria attached to the quality of consent must differ accordingly.[91] In prostitution, the payment is not for a specific good or a service, but rather for the suspension of the woman's right to object and to obtain her consent to being violated.[92] In many cases, it is third parties—pimps or traffickers—who

[78] See.g. Syria – Penal Code Article 508; Iraq Article 398 of Penal Code; Libya Article 424 of the Penal Code; Malaysia Section 375 Exception 2.

[79] https://www.unwomen.org/en/news/stories/2019/6/feature-story-of-change-reforming-laws-that-forced-women-to-marry-their-rapists

[80] Submission by Memorial Human Rights Defense Center; Note 1 to article 134 of the Criminal Code of the Russian Federation.

[81] Submission by Abigail Nthuba.

[82] https://theconversation.com/bride-kidnapping-haunts-rural-kyrgyzstan-causing-young-women-to-flee-their-homeland-158404 https://www.bbc.com/news/world-asia-53418099

[83] Submission by Nordic Model Now.

[84] Submission by Abigail Nthuba

[85] Submission by the Bahrain Centre for Human Rights.

[86] Submission by Amit Anand.

[87] Journal officiel de la République de Côte d'Ivoire, 18 juin 2019, n° 49, p. 2301. CEDAW/C/CIV/CO/4, par. 29.

[88] South Sudan Penal Code Act, 2008. Section 253(2):

[89] E.g. the Supreme Court of India is currently hearing petitions seeking to criminalize marital rape. See Submission by SAMA and others.

[90] Submission by Amit Anand.

[91] Submission by End Demand Switzerland (EDS)

[92] Nordic Model Australia Coalition (NorMAC) & Nordic Model Information Network (NMIN), p.5.

effectively become the ones to control "consent" and "give it" on behalf of exploited women and girls.[93]

34. Historically, the alleged given "consent" of a woman has been invoked to shift blame away from the perpetrator, typically the purchaser of a sexual act, to the victim, suggesting that she "consented" to the abuse.[94] By legalizing prostitution, the law strengthens its social acceptance, but without combating the structural causes, such as poverty, social inequality, and discrimination, based on sex, which make "free choice" for women illusory.[95] Such circumstances make the distinction between "free" and forced prostitution a myth,[96] especially given the intersection between prostitution and human trafficking.[97] This reality is even starker given that prostitutes can talk to buyers of sexual acts only for a minimal amount of time before they decide to go with them, having no means to verify how abusive they might be.[98] Coercion, therefore, is built into the prostitution system, facilitating entry factors as well as control and exploitation by pimps, traffickers, and States.[99]

C. Pornography and other forms of digital abuse

35. As of 2024, approximately 98% of deepfake videos online are pornographic, with 99% of the depicted subjects being women.[100] Reports indicate that 97% of identified child sexual abuse imagery involves girls.[101] According to research from 2025, 35,000 AI tools aimed at the creation of non-consensual, sexualized images of women were available for public download on one popular globally accessible online platform. These sexual digital forgeries, also known as deepfake generators, have been downloaded almost 15 million times since late 2022.[102] One analysis found that over 96% of AI-generated pornographic material was created without the consent of the individuals depicted.[103] In many cases, victims are not only non-consenting but entirely unaware of their digital exploitation.[104]

36. The consumption of pornography has been shown to contribute to a broader culture of entitlement among men and boys, while girls feel pressure to submit.[105] Many men and boys emulate behavior portrayed in pornography, which they perceive as "normal", and in turn, women and girls are made to think that it is normal and expected of them to fulfill their partners' desires, including agreeing to aggressive, degrading, and dangerous sexual activities such as strangulation, should be "normal" for them.[106] Injuries and violence inflicted on women during porn shoots are, at times, edited out.[107] Reports from human rights groups about acts

[93] Expert consultations.

[94] Submission by CATW

[95] Submission by The Federal Association for the Nordic Model (BVNM).

[96] Submission by Space International

[97] A/HRC/56/48.

[98] Submission by EVE (Trisha Baptie)

[99] A/HRC/56/48, par. 52.

[100] https://genderlawjustice.org/under-deconstruction/confronting-the-rise-of-digital-violence

[101] https://www.iwf.org.uk/news-media/news/charity-raises-alarm-over-surge-in-level-of-child-sexual-abuse-imagery-hosted-in-eu/

[102] https://www.oii.ox.ac.uk/news-events/dramatic-rise-in-publicly-downloadable-deepfake-image-generators/

[103] Emine Saner, "Inside the Taylor Swift deepfake scandal", The Guardian, 31 January 2024.

[104] Submission by Image Angel

[105] A/HRC/56/48 (prostitution report), par. 24.

[106] https://serp.ie/wp-content/uploads/2024/10/WA_SERP_Report_FINAL.pdf p. 76

[107] Submission by Nordic Model Now

they condemn as torture on political detainees often include degrading acts that have become normalized sexual activities through online pornography.[108]

37. While the material difference between pornography and prostitution is the presence of a camera or the mediation of a screen between buyer and seller, pornography, as the documentation of the act, amplifies and prolongs the harm in ways that prostitution alone does not.[109] Pornographic content is also weaponized to extort or coerce women,[110] or punish them or make an example of them to other women, particularly in the digital age, where controlling the spread of such material is exceedingly difficult. The pornified patriarchal cultural environment also shapes how judges, juries, and the public interpret consent, often to the detriment of victims.[111] Even children, who in law cannot consent, are being filmed with their alleged consent and posted online.[112]

38. Like prostitution, the pornography industry exploits women who come from economically disadvantaged backgrounds and/or who have histories of trauma and systemic vulnerabilities. A recent study of 120 individuals filmed for commercial pornography production reveals that 88% were sexually abused as children, 96% were subjected to some form of abuse as children, 77% were first exploited in pornography as minors, 84% suffered from PTSD at the time of the interview, 69% had attempted suicide at least once and 86% had experiences in traditional prostitution.[113]

D. Drug-facilitated sexual assault

39. Drug-facilitated sexual assault refers to the use of drugs or alcohol as tools to perpetrate rape, typically by rendering the victim incapacitated, often unconscious or semi-conscious, during the assault. This form of violence, remains significantly underreported, as perpetrators, who frequently know their victims, exploit prevailing rape myths to shift blame onto the victim, particularly when alcohol or recreational drugs are involved.[114] Victims sometimes blame themselves for "missing" the danger of the perpetrator's drugging.[115] Substances like Gamma Hydroxybutyrate (GHB), known for its sexual enhancement effects, can cause victims to act in ways uncharacteristic of their normal behavior, preventing them from providing consent or resisting.[116] Absence or blurring of memories makes gathering evidence and the prosecution challenging,[117] and maximizes the psychological suffering as the victim feels robbed of her memories and therefore the full truth and accountability.

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[108] Id.

[109] Submission by Unizon.

[110] https://www.ohchr.org/sites/default/files/documents/issues/women/sr/activities/stm-at-conference-artificial-intelli.pdf

[111] M. Hildebrand, and C. Najdowski "The Potential Impact of Rape Culture on Juror Decision Making: Implications for Wrongful Acquittals in Sexual Assault Trials." (2015). Psychology Faculty Scholarship. 43.

[112] Submission by Just Rights for Children.

[113] Donevan, M., Jonsson, L. S., & Svedin, C. G. (2025). The experience of individuals filmed for pornography production: A history of continuous polyvictimization and ongoing mental health challenges https://www.tandfonline.com/doi/full/10.1080/08039488.2025.2464634#abstract

[114] Submission by Medical Whistleblower Advocacy Network.

[115] L. Fields, DA Young, AR Patel, et al., 'Drug-Facilitated Sexual Assault, Impaired Trauma Memory, and Implications for Mental Health Treatment' (2022) 13(1) European Journal of Psychotraumatology.

https://pmc.ncbi.nlm.nih.gov/articles/PMC9090424/

[116] Submission by Medical Whistleblower Advocacy Network.

[117] https://pdf.ipinnovative.com/pdf/19351

40. Women and girls in prostitution often use substances as coping mechanisms to endure the conditions they face.[118] In such cases, consent is compromised in two ways: first, because substance use may render them incapable of legally consenting to sexual activity; and second, because they may "agree" to sexual acts in exchange for access to drugs to which they are already addicted and would need assistance to recover.[119]

E. Intrusion of males into female spaces

41. Laws and policies that allow males who identify as women to access female-only spaces, such as bathrooms, shelters, hospital wards, rape crisis centers, prisons, and changing rooms, effectively undermine women's right to set personal boundaries, rendering any purported consent to such arrangements illusory. In some countries, male prisoners can be transferred to female prison estates if they identify as females, including in situations in which they self-identify. In these settings, women—many of whom have experienced trauma, poverty, and prior abuse—may be subjected to harassment and physical, psychological, or sexual violence.[120] Women are also compelled to compete against men who identify as women in sports, despite males' physical advantages, and females' vulnerability to sustaining serious physical injuries in such situations.[121] In humanitarian contexts such as refugee camps, where women and girls already face a heightened risk of sexual violence, access to single-sex facilities, including toilets, showers, and sleeping areas, remains essential to ensure their safety, dignity, and privacy.[122]

42. Keeping female-only spaces, when justified by the principles of proportionality and necessity,[123] is particularly important for lesbians whose sexual attraction is based on biological sex, not gender identity.[124] In practice, however, lesbians are often subject to sexualization by heterosexual males, pressured into sexual relations with males who identify as women, and accused of transphobia when they assert boundaries or refuse such encounters.[125]

43. Women and girls cannot meaningfully consent to the intrusion of males into female-only spaces when refusal is either prohibited, penalized, or redefined as discrimination.[126] Those expressing critical views have been subjected to online vilification, threats, and smear campaigns,[127] including misrepresentation of their views.[128] As a consequence, women also face disciplinary action at work or termination of employment,[129] even when their dissent is motivated by objective health concerns.[130]

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[118] Submission by Women's Support Project

[119] Submission by Linda Thompson.

[120] A/HRC/59/47, par. 31.

[121] A/79/325, par. 7.

[122] A/HRC/59/47, par. 32

[123] A/HRC/59/47 par. 62(e).

[124] Submission by Lesbian Persistence and submission by Women Speak Tasmania.

[125] Angela C. Wild, "Lesbians at ground zero: how transgenderism is conquering the lesbian body" (2019).

[126] Submission by WDI England and Wales.

[127] A/HRC/59/47, A/HRC/59/47, par 36

[128] https://www.ohchr.org/sites/default/files/documents/issues/women/sr/activities/2025-07-21-stm-global-solutions.pdf

[129] See e.g. https://commonslibrary.parliament.uk/employment-tribunal-rulings-on-gender-critical-beliefs-in-the-workplace/

[130] https://www.christianpost.com/news/christian-nurse-disciplined-over-objecting-to-queer-birth-club.html

F. Surrogacy

44. Globally, most surrogate mothers come from lower-income backgrounds and are in a weaker position compared to the commissioning parents.[131] Such a power imbalance, coupled with the promise of a "life-changing amount of money"[132] and a lack of viable alternatives to support themselves and their families, makes their free consent illusory. This is further exemplified in the fact that in many instances, surrogate mothers are coerced into relinquishing in advance their right to medical decision-making[133] or even waiving confidentiality of information obtained by doctors during the psychotherapy process.[134]

45. Often, such consent also cannot be described as informed. Many mothers are unaware or not fully aware of the additional risks, especially when they come from impoverished backgrounds, and they are not given appropriate information in an accessible way.[135] Sometimes the language of the contract is not a native language of a surrogate mother, the terms are too legalistic, and the contract is explained rather than actively negotiated by her.[136] Emphasizing "consent" as a central element in legitimizing surrogacy arrangements can also have the adverse effect of discouraging surrogate mothers from seeking assistance or acknowledging the negative impacts of the arrangement, including health-related harms, as these may be perceived merely as consequences of their own voluntary decision.[137]

46. Moreover, the nature of consent in surrogacy differs significantly from that in adoption. In adoption, entrusting a child to others is not related to financial compensation, and the decision is generally reversible for a certain period after birth, without penalizing the birth mother. Particularly concerning are jurisdictions in which a surrogate mother legally forfeits all parental rights while still pregnant, such as in Ukraine.[138] Legal systems that safeguard the rights and parentage of intending parents often do so at the expense of the surrogate mother, transforming her into a "legal stranger"[139] and leaving her with little or no legal protection should she change her mind and wish to keep the child. Importantly, children, including girls, born through surrogacy, cannot consent to this practice and to being transferred from the birth mother to the receiving party.

VI. Girls-specific harmful practices

A. Child marriage

47. Globally, approximately one in five women aged 20 to 24 was married by the time she turned 18, and 4% were married before turning 15.[140] An estimated 640 million girls and

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[131] Attawet, J., Alsharaydeh, E. & Brady, M. (2024). Commercial surrogacy: Landscapes of empowerment or oppression explored through integrative review. Health Care for Women International, 1–19. https://doi.org/10.1080/07399332.2024.2303520

[132] https://pace.coe.int/en/files/23015/html p.14

[133] Submission by the Casablanca Declaration.

[134] Carlos Martínez de Aguirre, 'International Surrogacy Arrangements: A Global "Handmaid's Tale"?' in Piotr Mostowik (ed), *Fundamental Problems in Surrogate Motherhood* (2019) 458.

[135] https://www.reuters.com/article/business/healthcare-pharmaceuticals/surrogate-mothers-in-india-unaware-of-risks-idUSKBN0LY1J6/#:~:text=The%20women%20in%20India%20who,to%20start%20a%20small%20business

[136] Amrita Pande, Wombs in Labor: Transnational Commercial Surrogacy in India (2014) 977.

[137] Malcolm Smith, Jayne Hewitt and Patricia Fronek,' Surrogacy and bioethics' in Katarina Trimmings, Sharon Shakargy and Claire Achmad (eds), *Research Handbook on Surrogacy and the Law (*Elgar 2024) 270.

[138] Article 123, Part 2 of the Family Code of Ukraine

[139] Áine Mulligan, 'Surrogacy and the Significance of Gestation: Implications for Law and Policy' (2024) 38 *Bioethics* 674, 682 https://onlinelibrary.wiley.com/doi/epdf/10.1111/bioe.13302

[140] https://data.unicef.org/topic/child-protection/child-marriage/

women alive today were married in childhood.[141] In Niger, 76% of girls marry before their 18th birthday.[142] For the Central African Republic, Chad, Mali, Mozambique, South Sudan, Bangladesh, and Burkina Faso, this figure ranges from 51 to 61%.[143] Due to their immaturity, children are unable to provide free and informed consent for marriage and the repercussions are suffered for the rest of their lives. They also lack the capacity to effectively dissent, particularly in contexts where familial, social, or economic pressures override their autonomy.

48. Child brides are frequently married to significantly older men, which limits their ability to negotiate within the relationship—whether regarding intimacy, household roles, finances, or reproductive decisions. This power imbalance compounds the original harm of non-consensual marriage.[144] Girls forced into early marriages are far less likely to complete secondary school, undermining their future earning potential and perpetuating cycles of poverty.[145] They face disproportionately high risks of early and complicated pregnancies, are more likely to suffer obstetric fistulas, severe bleeding, and eclampsia, and have up to a four-fold higher risk of maternal mortality compared to women aged 20–24 years.[146] Child marriage also increases girls' vulnerability to HIV and other sexually transmitted infections, and the infant mortality rate increases by 60% when the mother is under the age of 18 years.[147]

B. Female Genital Mutilation (FGM)

49. FGM is typically performed on girls between infancy and age 15, often long before they possess the developmental or legal capacity to provide any informed consent.[148] Beyond age, the sociocultural context in which FGM occurs is characterized by intense peer, familial, and community pressures and frequently perceived as a prerequisite for marriageability, social acceptance, or notions of purity and honor.[149] For these reasons, and because FGM constitutes an irreversible harm, the High Court of Kenya rejected consent as a defense for FGM, reflecting a broader trend of invalidating consent in exploitative cultural contexts.[150]

50. However, in some countries, such harmful prosecutorial practices infringe on the bodily integrity of survivors by enabling non-consensual medical examinations of girls subjected to FGM.[151] Survivors themselves**,** including minors, are prosecuted and convicted for the "failure to report the commission of FGM,"[152] despite prohibitions under international human rights law against criminalizing victims or imposing mandatory reporting duties on children.[153]

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[141] https://data.unicef.org/topic/child-protection/child-marriage/

[142] https://www.unicef.org/media/111396/file/Child-marriage-country-profile-Niger-2021.pdf

[143] https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/atlas/

[144] J. Arthur, A. Earle, A. Raub *et al*, 'Child Marriage Laws around the World: Minimum Marriage Age, Legal Exceptions, and Gender Disparities' (2017) 39(1) Journal of Women, Politics & Policy 51 https://pmc.ncbi.nlm.nih.gov/articles/PMC6382347/

[145] https://www.unicef.org/rosa/media/3096/file/UNICEF_ROSA_Child_marriage_adolescent_pregnancy_3May2019.pdf

[146] NM Nour, 'Child Marriage: A Silent Health and Human Rights Issue' (2009) 2(1) *Reviews in Obstetrics and Gynecology* 51 https://pmc.ncbi.nlm.nih.gov/articles/PMC2672998/

[147] Id.

[148] https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation

[149] https://www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions

[150] Dr Tatu Kamau v Attorney General & 14 Others [2019] eKLR (Nairobi High Court, Muigai J, 14 June 2019) https://kenyalaw.org/caselaw/cases/view/209223/

[151] https://cfj.org/wp-content/uploads/2024/12/ABA-CHR-Kenya-FGM-Report.pdf

[152] https://cfj.org/wp-content/uploads/2024/12/ABA-CHR-Kenya-FGM-Report.pdf p. 4

[153] See e.g. CRC, art. 16.

C. Gender identity-related social and medical "transition"

51. In recent years, there has been a marked and unprecedented increase in the number of children, especially girls, whose prevalence is estimated to be approximately twice that of boys, experiencing gender dysphoria.[154] This trend raises serious concerns, especially given that the cognitive control system, which governs decision-making and impulse regulation, continues to mature into the early twenties, which creates a window of heightened vulnerability to coercion, peer-pressure, and impulsive decisions, undermining genuine, deliberative consent in emotionally charged contexts.[155] Additionally, many minors undergoing gender transition suffer from pre-existing psychosocial and psychological vulnerabilities.[156] Coercive social circumstances and pressure from sexist stereotyping in media, including social media, further contribute to a significant increase in young females "consenting" to life-altering medical interventions, including the removal of reproductive organs.[157]

52. Gender "transition" encompasses irreversible interventions that sterilize girls, impair the healthy functioning and reproductive capacity of their bodies, and fail to address the underlying causes of sex-based distress.[158] Research indicates that 'puberty blockers' can lead to irreversible harm, including compromised bone density, sexual function, and brain development, while so-called 'cross-sex hormones' have been linked to cardiovascular health issues as well as infertility.[159] Children cannot provide informed consent for such procedures, and when they have been found to cause grave and lifelong harm, consent would be meaningless for both adults and children.[160]

D. Child sexual abuse

53. A comprehensive review of over 200 studies found that one in eight of the world's children (12,7%) have been sexually abused before reaching the age of 18 years[161] and girls are disproportionately affected.[162] Globally, it is estimated that approximately 120 million girls have been subjected to some form of sexual violence during their lifetimes.[163] Some of them were manipulated to believe that fulfilling the sexual demands of a family member or acquaintance is an obligation to be fulfilled. In such situations, perpetrators often seek to evade

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[154] Stuart Williams Jarvis, Lorna K. Fraser, Trilby Langton, Catherine Elizabeth Hewitt, Tim Doran, *Epidemiology of gender dysphoria and gender incongruence in children and young people attending primary care practices in England: retrospective cohort study* (24 January 2025) https://adc.bmj.com/content/archdischild/early/2025/01/19/archdischild-2024-327992.full.pdf, p.1.

[155] Laurence Steinberg, 'A Social Neuroscience Perspective on Adolescent Risk-Taking' (2008) 28(1) *Developmental Review* 78 https://pmc.ncbi.nlm.nih.gov/articles/PMC2396566/

[156] Melanie Bechard et. al. *Psychosocial and Psychological Vulnerability in Adolescents with Gender Dysphoria: A 'Proof of Principle' Study* (2016) https://www.tandfonline.com/doi/full/10.1080/0092623X.2016.1232325.

[157] A/HRC/59/47/Add.4, par. 25.

[158] Submission by Women Declaration International England and Wales.

[159] Mariska C Vlot, et. al., *Effect of pubertal suppression and cross-sex hormone therapy on bone turnover markers and bone mineral apparent density (BMAD) in transgender adolescents* (February 2017) https://pubmed.ncbi.nlm.nih.gov/27845262/; *See also* Maiko A. Schneider et. al., *Brain Maturation, Cognition and Voice Pattern in a Gender Dysphoria Case under Pubertal Suppression* (13 November 2017) https://www.frontiersin.org/journals/human-neuroscience/articles/10.3389/fnhum.2017.00528/full.

[160] A/HRC/59/47, par. 22.

[161] M Stoltenborgh and others 'A global perspective on child sexual abuse: Meta-analysis of prevalence around the world (2011) 16 Child Maltreatment 79-101

[162] https://www.unicef.org/turkiye/en/press-releases/over-370-million-girls-and-women-globally-subjected-rape-or-sexual-assault-children https://www.thetimes.com/uk/crime/article/most-young-sex-offenders-target-other-children-qwhdptxf0

[163] UNICEF and End Violence against Children Action to end sexual abuse and exploitation (2020) 5-6

legal responsibility by alleging that the victim 'consented' to having sexual relations with them.[164] In some instances, they try to claim that prior sexual contact with the victim invalidates any subsequent withdrawal or absence of consent.[165] Sexual abuse may also occur in psychologically coercive and exploitative forms that do not involve physical force, restraint, or even direct physical contact, especially in online and digital environments.[166]

54. A key factor in classifying an act as child sexual abuse is the age of consent established in a given jurisdiction. Globally, the minimum age ranges from 12 to 18 years, most commonly falling between 15 and 18, often with the so-called "Romeo and Juliet" exception when at least one participant is under the normal age of consent, and the other participant is close in age.[167] In establishing the age of consent, states must take into account children's evolving capacities[168] as well as the need to protect adolescents from sexual predators,[169] and other pressures invalidating the freedom of consent. Empirical data reflect the seriousness of these concerns - a study conducted among 14-17-year-old adolescent girls in a poor urban region of the United States, found that 38% had sex out of fear that their partner would get angry if they did not, and 10% were scared their partner would break up with them.[170] Seemingly consensual sexual activity, can, therefore, still be harmful.[171] Vulnerabilities such as mental health issues, disabilities, substance abuse, or dependence on the perpetrator further invalidate the consent of a minor. Importantly, these vulnerabilities do not disappear upon turning 18,[172] and should be taken into account when assessing cases involving "consent" of adult women.

V. International legal framework

55. International legal frameworks establish global norms for consent, emphasizing its irrelevance in coercive or exploitative contexts and its centrality in defining sexual violence. These instruments provide a foundation for protecting women from systemic abuses while addressing power imbalances that undermine genuine consent.

A. Irrelevance of consent in situations of human rights abuses and exploitation

56. While some practices, such as medical treatment, participation in research,[173] or engaging in sexual activity, are lawful when an individual expresses free and informed consent, under international human rights law, the alleged consent of a victim cannot justify human rights abuses. Human dignity, as a principle underpinning the entire human rights system, is recognized in the Universal Declaration of Human Rights as inherent and linked to inalienable rights, which excludes any possibility of consenting to its violation.

57. Trafficking in persons, where the majority of victims are women,[174] is a crime in which international law most clearly rejects alleged consent as an acceptable defense. The Palermo

[164] Submission by Just Rights for Children

[165] Expert consultations.

[166] Admark Moyo 'Sexual consent laws and the child's right to freedom from sexual exploitation in Zimbabwe: Unpacking the 'polarising' legacy of Kawenda & Another v Minister of Justice, Legal and Parliamentary Affairs & Others' (2024) African Human Rights Law Journal 24, 746

[167] https://worldpopulationreview.com/country-rankings/age-of-consent-by-country

[168] CRC Committee General Comment 20 Implementation of the rights of the child during adolescence (2016).

[169] CRC General Comment 7 (n 7) para 47.

[170] Elly Hanson, Beyond consent: Moving toward a full-bodied sexual ethics (November 2024).

[171] Expert consultations.

[172] Submission by Unizon.

[173] ICCPR, art. 7.

[174] ILO, Global Estimates of Modern Slavery. Forced Labor and Forced Marriage (2017).

Protocol defines it as involving "the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, [or] of the abuse of power or of a position of vulnerability" for the purpose of exploitation, and explicitly states that when any such means are used, "the consent of a victim of trafficking in persons […] shall be irrelevant."[175] The Protocol's recognition of "abuse of power or a position of vulnerability"[176] underscores how economic destitution or unequal power dynamics negate genuine consent, which is a critical consideration for women in prostitution and trafficking and other forms of exploitation, including surrogacy.

58. Similarly, the 1949 Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others criminalizes the exploitation of prostitution, even with the victim's consent, recognizing that coercion, abuse of power, or vulnerability invalidates consent.[177] It aligns with the Palermo Protocol in placing the burden on perpetrators and emphasizes that no one can consent to their own exploitation. The 2005 Council of Europe Convention on Action against Trafficking in Human Beings[178] and EU Directive 2024/1712[179] on preventing and combating trafficking in human beings echo these standards. This is particularly important in light of the fact that many victims of human trafficking give their "consent" at least at one of the stages of the trafficking process.[180]

59. Consent is also irrelevant in sexual practices involving violence and submission of one of the partners, which amount to the inhuman and degrading treatment, to which "no one" under "no circumstances" can be subjected as stipulated in the International Covenant on Civil and Political Rights[181] the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[182] the Convention for the Protection of Rights and Fundamental Freedoms (European Convention on Human Rights - ECHR)[183] and the American Convention on Human Rights[184] among others.

60. It is important to note that irrelevance of consent is distinguished from invalid/invalidated consent. The irrelevance of consent, as explained above, should be automatically presumed in cases of violation of human dignity, right to life, inhumane and degrading treatment, violence or exploitation, among other grave human rights violations. Nonetheless, even when not presumed as irrelevant based on surrounding circumstances, perpetrators actions or harm caused, consent may be invalidated/nullified under several circumstances, including but not limited not sufficient information or limited capacity to comprehend it.

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[175] Palermo Protocol, art. 57.

[176] Art. 3(2).

[177] 1949 Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, art. 1.

[178] *Council of Europe Convention on Action against Trafficking in Human Beings* (adopted 16 May 2005, entered into force 1 February 2008) CETS No 197. 4(b).

[179] Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims [2024], [hereinafter: Directive (EU) 2024/1712].

[180] Submission by the Coalition Against Trafficking in Persons.

[181] Art. 7.

[182] Art 2(2).

[183] Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 221, art. 3 [hereinafter: ECHR].

[184] American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) OAS Treaty Series No 36, 1144 UNTS 123 (ACHR), art. 5.

B. Practice by international criminal tribunals

61. Jurisprudence and rules from the International Criminal Court (ICC), the International Criminal Tribunal for the Former Yugoslavia (ICTY), and the International Criminal Tribunal for Rwanda (ICTR) confirm that force is not a requisite element of rape, and coercive environments—common in conflict settings—negate the possibility of genuine consent. The ICC Rules of Procedure and Evidence stipulate that "consent cannot be inferred because of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment."[185] The burden does not fall on the victim to prove that they did not consent.[186]

62. In the *Bemba Gombo* case, the Trial Chamber stated that "where 'force', 'threat of force or coercion', or 'taking advantage of coercive environment' is proven, there is no need to prove the victim's lack of consent."[187] The ICC, ICTY, ICTR and Special Court for Sierra Leone confirmed that force is not an element of rape or other sexual violence crimes[188], with ICTY noting that "the circumstances ... that prevail in most cases charged as either war crimes or crimes against humanity will be almost universally coercive [such that] consent will not be possible."[189] Although the jurisprudence of these courts focuses on international crimes, their conclusions might be applied, analogously, to other cases where power imbalances impede the consent of victims.

C. Universal international standards on women's protection

63. Although not all key international human rights instruments explicitly address the issue of consent, other rights safeguarded in them should, nonetheless, guide its interpretation. The UDHR protects the rights to liberty, the security of persons, freedom from discrimination, and freedom from inhumane and degrading treatment.[190] These principles should be at the forefront of any deliberations on consent in human rights law, ensuring the right to life free from violence and discrimination and respect for the physical and mental integrity of a person.

64. In the same vein, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), by its references to equality, provides the foundation to define consent as unequivocal, voluntary, and free from coercion. CEDAW also safeguards the right to freely choose a spouse and to enter into marriage only with free and full consent. It requires states to modify the social and cultural patterns of conduct of men and women, which are based on the idea of inferiority or superiority, or on stereotyped roles.[191] Forced marriage is also

[185] Rule 70, *ICC Rules of Procedure and Evidence* (adopted 9 September 2002, entered into force 9 September 2002).

[186] See, e.g. Judgment of 7 March 2014, International Criminal Court, The Prosecutor v. Germain Katanga, No. ICC-01/04-01/07,

[187] Judgment of 8 June 2018, International Criminal Court, The Prosecutor v. Jean-Pierre Bemba Gombo, No. ICC-01/05-01/08.

[188] See Judgment of 8 June 2018, International Criminal Court, The Prosecutor v. Jean-Pierre Bemba Gombo, No. ICC-01/05-01/08, para. 688; Judgment of 18 May 2012, Special Court for Sierra Leone, Prosecutor v. Charles Ghankay Taylor, No. SCSL-03-01-T, para 416.

[189] Appeal Judgment of 12 June 2002, International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Dragoljub Kunarac et al., No. IT-96-23 & 23/1, para 130.

[190] UDHR, art. 3, 5, 7

[191] Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW), art. 16(1)(b) and art. 5(a).

explicitly prohibited by the UDHR[192] and ICCPR,[193] which emphasize that marriage must be entered into with free and full consent of the intending spouses.

65. The CEDAW Committee also defined sexual harassment as a form of violence against women[194], emphasizing that unwelcome sexual acts can have a humiliating impact on victims, constituting health and safety violations and sex discrimination in the workplace. In relation to consent, the Committee clarified that such acts are discriminatory "when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment".

66. According to the CEDAW Committee, the definition of sexual crimes, "including marital and acquaintance or date rape," should be based on the "lack of freely given consent and take into account coercive circumstances."[195] In their views on *Vertido v. Philippines* and *R.P.B. v. Philippines*, the Committee, noting the problem of stereotyped expectations of women's behavior, stressed that the lack of physical resistance can never be interpreted as a presumption of consent, and instead, the absence of consent is an essential element of rape.[196] In concluding observations on Sweden[197] and Norway,[198] the Committee reiterated that states should adopt consent-based definitions of rape and, in observations on Djibouti,[199] the Republic of Korea[200] and Morocco[201] called for explicit criminalization of marital rape.

D. Regional international standards on women's protection

67. The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) provides the most comprehensive regional framework for addressing consent in sexual violence. It requires state parties to criminalize all non-consensual sexual acts, including rape, defined as "non-consensual vaginal, anal, or oral penetration."[202] The Convention also obliges states to take measures to combat stalking, forced marriage, FGM, forced abortion and forced sterilization.[203] Consent must be given voluntarily, as an expression of free will, and assessed in light of the surrounding circumstances, including coercion or power imbalances. Istanbul Convention rejects requirements for perpetrator violence or victim resistance, centering consent as the defining element and gender-sensitive and victim-centered investigations.[204]

68. The European Court on Human Rights (ECtHR) confirmed states' positive obligations, stemming from the prohibition of inhumane and degrading treatments (art. 3 of ECHR) and protection of the right to privacy (art. 8 of ECHR) which require "penalization and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance

[192] UDHR, art 16(2)

[193] ICCPR, art. 23(3).

[194] CEDAW/C/GC/19 (art. 11(18))

[195] CEDAW/C/GC/35.

[196] CEDAW/C/46/D/18/2008 and CEDAW/C/57/D/34/2011.

[197] CEDAW/C/SWE/CO/10.

[198] CEDAW/C/NOR/CO/8,

[199] CEDAW/C/DJI/CO/1-3

[200] CEDAW/C/KOR/CO/9

[201] CEDAW/C/MAR/CO/5-6.

[202] Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (adopted 11 May 2011, entered into force 1 August 2014) CETS No 210, art 36

[203] Id, art. 34, 37, 38, 39.

[204] Id., art. 49-58.

by the victim."[205] In *X and Others v. Bulgaria*, the ECHR highlighted power imbalances in child sexual abuse, invalidating consent under coercive circumstances, and reinforcing protections under articles 3 and 8.[206] While in *K.A. and A.D. v. Belgium* the Court upheld the State's position that consent cannot justify sadomasochistic practices involving serious harm, this ruling has been criticized by some legal scholars who argue that the European Court of Human Rights has gone astray by elevating 'personal autonomy' and 'sexual freedom' to the rank of fundamental rights. According to the Court, criminal law should in principle not interfere with consensual sexual practices except for particularly serious reasons, marking a departure from the *Laskey* judgment (1997). This represents a dangerous inversion: sexual freedom becomes a justificatory ground capable of excluding the criminal characterization of assault or even torture. Such a shift risks placing sexual freedom above the protection of physical integrity and other fundamental rights, opening the door to what some have called a 'right to sadism,' which is incompatible with the very spirit of human rights.

69. Additionally relevant, is the pending case E.A. and Association AVFT v. France (Application No. 30556/22) before the ECtHR concerns a woman subjected to years of sexual violence and coercion by her workplace superior, characterized by French courts as consensual BDSM. Despite repeated acts amounting to torture and sexual assault, the domestic judiciary accepted the relationship as consensual, based on the existence of a "master-slave" contract, although unlawful in its object. The case raises critical issues under Articles 3 and 8 ECHR, questioning France's failure to investigate and prosecute serious violence, to protect the applicant's dignity and integrity, and to recognize the inherent invalidity of contracts based on submission and domination. It highlights how stereotypes around women's sexuality and consent perpetuate impunity and invites the Court to clarify the limits of consent in contexts of coercion, power imbalance, and abuse.[207]

70. Within the European Union, the EU Directive 2024/1712, on preventing and combating human trafficking, includes the exploitation of surrogacy as a prosecutable offense within the scope of human trafficking, stipulating that consent is irrelevant. This approach requires an in-depth assessment of contextual factors, such as power imbalances or economic pressures, which disproportionately affect women in surrogacy arrangements. The directive's focus on "exploitation of surrogacy" targets those who coerce or deceive women into acting as surrogates, reinforcing protections against invalid consent.[208]

71. The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará) considers rape a form of physical, sexual, and psychological violence.[209] The Inter-American Court of Human Rights defined it in *Miguel Castro-Castro Prison v. Peru* as vaginal or anal penetration, without the victim's consent, without mentioning the requirement of force or the victim's resistance.[210] In *Fernández Ortega et al. v. Mexico*[211], the Court emphasized that due to sexual violence's private nature, it relies on victim testimony, accepting minor discrepancies attributed to trauma.

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[205] I.C. v. the Republic of Moldova, no. 36436/22, § 194, 27 February 2025; *M.C. v. Bulgaria*, no. 39272/98, § 153, 4 December 2003.

[206] X and Others v. Bulgaria [GC], no. 22457/16, 2 February 2021.

[207] K.A. and A.D. v. Belgium, nos. 42758/98 and 45558/99, 17 February 2005

[208] Directive (EU) 2024/1712, preamble para 6.

[209] Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (adopted 9 June 1994, entered into force 5 March 1995), art. 2.

[210] Miguel Castro-Castro Prison v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 160. (Nov. 25, 2006), para 310.

[211] Fernández Ortega et al. v Mexico (Merits, Reparations and Costs) IACtHR Series C No 215 (30 August 2010) 102-108.

It also rejected the need for physical struggle, particularly in extreme coercion scenarios like military assaults, while criticizing state failures to preserve evidence.

72. In the African system, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) prohibits forced marriage and FGM and requires states to "enact and enforce laws to prohibit all forms of violence against women, including unwanted or forced sex."[212] Those provisions should be reflected in the regional laws as well as their practical and effective enforcement.

73. Although the Asia Pacific and Middle East regions have not developed or adopted any legally binding regional frameworks that explicitly address violence against women, in 2004, the Association of Southeast Asian Nations (ASEAN) adopted a non-legally binding multinational regional framework, known as the Declaration on the Elimination of Violence Against Women in the ASEAN region. ASEAN signatories notably pledged "to enact and, where necessary, reinforce or amend domestic legislation to prevent violence against women."[213] Nonetheless, the Declaration fails to characterize rape as a form of gender-based violence or provide an explicit definition for the crime of rape.

E. Girls-specific international standards of protection

74. International human rights law, primarily through the Convention on the Rights of the Child (CRC), emphasizes that children's consent to decisions affecting all processes that concern them must be informed, voluntary, consistent with their evolving capacities, and guided by parents and guardians.[214] These measures are taken in order to protect children and adolescents from making choices and/or taking responsibility for actions that they do not have the capacity to understand entirely and comprehend the full consequences. Their lack of experience, psychological maturity, impossibility of perceiving themselves as victims, and even the impossibility of taking responsibility for social demands (like education and employment), call for a minimum age of consent that helps develop their full potential in a protective environment.[215] Pursuant to the CRC, and as echoed in the African Charter on the Rights and Welfare of the Child (ACRWC), a child who is capable of forming his or her own views has the right to express them freely, including in any judicial and administrative proceedings, with the views being given due weight in accordance with the age and maturity of the child.[216] Children can never consent to sexual abuse and other forms of exploitation, and it is the responsibility of states to take all appropriate measures to safeguard their rights.[217] Girls should, therefore, in line with the principle of the best interest of the child, be protected from any decisions that could result in irreversible harm, such as prostitution, pornography, FGM, surrogacy, or gender "transition" of minors.

75. The 2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) mandates that states establish a

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[212] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, (adopted 11 July 2003, entered into force 25 Nov 2005) OAU Doc CAB/LEG/66.6, [hereinafter: Maputo Protocol], art. 6(a), 5(b), 4(2)(a).

[213] The Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children in ASEAN, art. 1.

[214] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 [hereinafter: CRC], art. 5

[215] United Nations Children's Fund -UNICEF (2016), Legal minimum ages and the realization of adolescents' rights: A review of the situation in Latin America and the Caribbean.

[216] CRC, art. 12; African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) OAU Doc CAB/LEG/24.9/49, art. 4.

[217] CRC, art. 34.

minimum age for sexual consent, while including provisions exempting consensual relationships between minors from prosecution.[218] In the same vein, the African Committee of Experts on the Rights and Welfare of the Child underscores that adults engaging in sexual activities with children below the age of consent should face criminal penalties, regardless of any purported consent, emphasizing the irrelevance of a child's consent in such contexts.[219]

76. With regards to child marriage, as a form of forced marriage, CEDAW explicitly states that the "betrothal and marriage of a child shall have no legal effect" and requires states to take all necessary action to specify a minimum age for marriage. ACRWC[220] and the Maputo Protocol[221] set the minimum age for marriage at 18 – a position supported by the CRC and CEDAW Committees.[222] Ending child marriage is also one of the key commitments of the Beijing Declaration and Platform for Action.[223]

VI. Conclusions and recommendations

77. Disregarding the critical role of circumstances surrounding women's and girls' consent can result in justifying various and continued forms of violence against them. When consent is decontextualized and treated merely as a formalistic "yes/no" checkbox, particularly in exploitative contexts such as pornography, prostitution, and surrogacy, it obscures the realities of power imbalances, psychological and economic pressures, and exploitation, contributing to the objectification of women and girls. It also creates false justification for state inaction and results in impunity, which encourages further violations. As the situations and practices described in this report relate to the most fundamental and intimate aspects of one's life, the suffering and harm experienced will be life-changing and often irreversible.

78. There is evidence that the incorporation of an affirmative consent-based definition has, to some extent, enhanced the criminal justice response to some forms of violence against women and girls, particularly sexual violence.[224] However, it failed to fully reach its goal. Consent, as currently framed, is an inadequate tool because it fails to account for how gendered power structures shape women's subordination to men and places an undue burden on victims to prove violence.

79. In view of the above, the Special Rapporteur recommends the adoption and implementation of the "contextualized consent" model, which offers the most comprehensive framework for assessing all relevant circumstances and factors that must inform the interpretation of consent under international human rights law. This model is aimed at providing clear standards for establishing consent and investigating coercive circumstances, thereby promoting both fair trials for the accused and improved access to justice for victims, including through shifting the focus to the perpetrator's actions rather than the victim's behavior.

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[218] Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (adopted 25 October 2007, entered into force 1 July 2010) CETS No 201, art 18(2)–(3).

[219] *General Comment No 7 on Article 27 of the African Charter on the Rights and Welfare of the Child: Sexual Exploitation* (3–12 July 2021) para 52.

[220] ACRWC, art. 21(2).

[221] Maputo Protocol, art 6(2).

[222] CEDAW/C/GC/31/Rev.1–CRC/C/GC/18/Rev.1, par. 20.

[223] A/CONF.177/20/Add.1. Strategic Objective L.2; par. 274(e).

[224] See e.g. https://bra.se/english/publications/archive/2025-04-08-application-and-consequences-of-the-consent-law

A. Elements of "contextualized consent"

80. The model of "contextualized consent" recognizes that, in order to be treated as relevant or validly given, consent must first be enabled—that is, it must occur in a context in which an individual is able to make the choice freely. Consent cannot be valid in the abstract but only within the concrete reality that a woman or girl faces. This contextual approach is not novel in international human rights law; similar determinations are required in interpreting terms such as "fair" in the right to a fair trial or "adequate" in the right to an adequate standard of living. The process and criteria for determining whether contextualized consent has been both enabled and given form part of the protection of that right itself.

81. To evaluate whether 'contextualized consent' exists, it is essential to consider: (1) whether circumstances rendering consent categorically or presumptively irrelevant or invalid are present, to be determined from the specific context of the case, including an examination of the intersecting vulnerabilities faced by the woman or girl; and (2) whether the positive conditions of contextualized consent are met — noting that these conditions are deemed unmet by default if any of the circumstances identified under the first step apply.

82. First, it is necessary to assess whether (1) circumstances are present deeming alleged consent either categorically irrelevant or invalid, or (2) circumstances that render consent presumptively irrelevant or invalid unless clearly proven otherwise, are present. These circumstances include, but are not limited to, coercion, manipulation, assault, surprise, threats, abuse of authority or power, or exploitation of the victim's vulnerability due to unconsciousness, fear, intoxication, mental impairment, debt bondage, dependency, including administrative, impoverishment, economic and material dependency (for example dependency to a landlord or employer), presence or promise of payment, irregular or unstable migration status, disability, age, pregnancy, maternity, prior victimization, belonging to a discriminated group. These circumstances and/or consequences are inferred from a context-specific evaluation, which must take into account the profile of the woman or girl in question and factor in the multiple and intersecting vulnerabilities she may face.

83. As a consequence of these initial steps, the inquiry must determine whether the accused created or exploited a coercive context, and/or took advantage of the victim's vulnerabilities for his own benefit, rather than limiting the assessment to whether he merely disregarded the absence or invalidity of consent. This evaluation should focus on objectively verifiable actions and strategies employed by the perpetrator, rather than on his subjective perception of the victim's words, behavior, or reactions to violence.

84. If none of the circumstances listed in the first step are identified, it should be evaluated whether positive elements of "contextualized consent" are present, that is, whether it is free, informed, active, and unambiguous. "Free" is to be understood not solely as the absence of direct threats of coercion, physical and mental safety, but also as the presence of viable alternatives of which a woman is aware. "Informed" relates not only to the amount of information but also to its accessibility, adequacy, and the possibility of guidance in navigating it. "Active" means that the consent must be continuous, applicable to every act occurring, and capable of being withdrawn at any moment. "Unambiguous" means that consent must be

clearly expressed through words or conduct and never presumed; silence, hesitation, or passivity are insufficient.

85. For the model of "contextualized consent" to be translated into reality, it must be implemented through coherent and integrated measures at three levels: legal frameworks, policy development, and practical application on the ground, through tools and solutions designed in a victim-centered manner. While legal reform in line with international human rights law typically precedes policy and practice, the two components must be treated as interdependent and essential layers of a functioning model.

B. "Contextualized consent" in the legal frameworks

86. States that continue to rely on force-based definitions of rape and sexual violence must abolish them, and all states, including those that have already incorporated consent-based models into their legal frameworks, should adopt and implement a "contextualized consent" model. Under no circumstances should a lack of physical resistance by the victim be interpreted as a presumption of consent. The nature and patterns governing the acts of the aggressor must also be examined against international human rights standards to determine if they constitute violations of human rights.

87. In defining the minimum age of sexual consent, States must balance children's protection and their evolving capacities, in accordance with international law obligations. The most common threshold of 16 years can be acceptable if additional safeguards are put in place to protect minors under 18 from exploitation, including banning any adult from engaging in sexual acts with 16- to 18-year-olds who are more than five years younger. In jurisdictions in which a person under 18 might be prosecuted and criminalized as if they were adults, judicial discretion should be applied in deciding on situations where such a person engages in sexual acts with a girl under the age of consent, to balance protecting minors from harm with acknowledging that the older minor should not be automatically criminalized.

88. Pending the full criminalization of the purchase of sexual acts, States must criminalize the buying of sexual acts from minors aged above the age of consent, in the same manner as for those under, without requiring proof of coercion. This should include strict criminal liability for platforms that host pornographic content and benefit from it. A victim's status as a minor must be treated as an aggravating factor in cases involving prostitution and pornography, and any purported consent must be deemed legally irrelevant.

89. To ensure access to justice, states should eliminate burdensome evidentiary standards and corroboration requirements imposed on victims. They must never be penalized for delays or failures in reporting violence. At the same time, it is important to establish and enforce mandatory reporting obligations for individuals in positions of authority who are aware of violence and are in a position to protect women and girls.

90. Accountability for perpetrators must be a central pillar of any strategy to combat violence, and it is the state's obligation to ensure that the aggressors cannot act with impunity. Measures to that end should include the imposition of proportionate and deterring penalties, the avoidance of unduly prolonged proceedings, effective oversight of actions of the law enforcement officers, and the creation of clear, accessible procedures through which victims can safely file complaints without fear of reprisal.

91. States should also clearly recognize in law circumstances under which the absence of consent should be presumed unless proven otherwise, as well as circumstances categorically

deeming alleged consent either irrelevant or invalid. When those are present, "consent" cannot serve as a legal defense. In particular:

a) In situations where a woman or girl is under the influence of alcohol, drugs, or other intoxicating substances, the absence of consent must be presumed. This presumption cannot be rebutted by reference to the woman's prior substance use history, by her inability to say no, resist, or assess and control her conduct at the time of the act.

b) In cases involving adult women with mental or cognitive disabilities that impair their ability to make free and informed decisions in other areas of life, the law should establish a presumption of non-consent and recognize the abuse of vulnerability. The burden must lie with the accused to prove that valid consent was given.

c) In the context of unequal sexual relationships, involving the imbalance of power influencing a woman's decision, the absence of consent should be presumed, consistent with analogous standards in labor, education, and healthcare law. Where the relationships are manifestly unequal or involve threats, history of violence, and abuse of position to force the partner to a sexual act, any alleged "consent" should be deemed categorically irrelevant, in line with the legal approach to human trafficking and conflict-related sexual violence. Particular attention must be paid to the situations of institutional dependency and using the victim's immigration status to obtain compliance.

d) In situations where grave and irreversible harm is inflicted, including in the context of FGM, surrogacy, human trafficking, prostitution, pornography, child marriage, and "gender transition" of minors, any alleged consent should be considered legally invalid. Women and girls subjected to such practices must be recognized as victims and entitled to remedies.

e) In cases involving the intrusion of males into female-only spaces—where the preservation of such spaces is proportionate and necessary for the safety and well-being of women and girls—no person can provide valid consent on behalf of all those affected. Given that particularly vulnerable women and girls may be less willing or able to express dissent, such intrusions must be considered categorically non-consensual. The intrusion of males in spaces designated as female-only must be treated in law as sexual harassment, and private and state actors permitting such intrusion must be viewed as commissioning such harassment.

f) In the context of prostitution, understood as a system of violence and abuse of power, any alleged consent must be considered legally irrelevant and cannot serve as a defense. Accordingly, States should adopt the abolitionist legal framework, which effectively addresses demand for prostitution by criminalizing the buyers of sexual acts while decriminalizing victims and educating the public about the associated harms. States that already apply the abolitionist legal framework for physical prostitution should extend it to pornography, as an online form of prostitution.

g) Any purported consent for child marriage should be deemed categorically invalid and produce no legal effects to the detriment of girls.

92. The concept of "contextualized consent" should be incorporated into any future treaties on discrimination and violence against women and girls, including any future optional protocol to the CEDAW.

C. "Contextualized consent" in policies

93. The model of "*contextualized consent"* must not remain confined to legal frameworks alone but should be actively integrated into public policy, particularly in areas related to education, awareness-raising, training for professionals, and into monitoring systems. Embedding this model into state policy is essential to fostering a cultural shift that upholds the dignity, autonomy, and rights of women and girls, and to ensuring that legal standards are effectively translated into lived protections.

94. As an important step, states should develop and incorporate into curricula education that comprehensively addresses the issue of consent in sexual relations and beyond, covering also the topics of relational ethics and reciprocal care. Such education would promote the "contextualized consent" model and an integral approach to a partner, which, in addition to their sexual preferences, takes into account their lived experiences, values, needs, and challenges. States and other relevant stakeholders should also implement awareness campaigns and educational initiatives targeted at diverse audiences, particularly young people and their parents, on the risks of grooming, online sexual exploitation, and the harmful consequences of prostitution and pornography.

95. As part of awareness-raising efforts, states should also develop community-based programs in partnership with local organizations and women's groups, especially survivor-led NGOs, that challenge harmful stereotypes and provide safe spaces for dialogue and support. Particular attention should be paid to challenging cultural practices such as dowries and bride price.

96. To support professionals who interact directly with survivors of violence or are responsible for assessing the presence or absence of valid consent, states must develop, strengthen, and adequately fund training programs grounded in the "*contextualized consent"* model. These programs must be trauma-informed, culturally sensitive, and tailored to the needs of first responders, health care providers, social workers, police officers, prosecutors, and judges. They should also take into consideration the challenges of different cultural or socioeconomic backgrounds of survivors and how they might shape their perception of free and informed consent in ways that exacerbate their vulnerabilities. Stakeholders must ensure that such cultural or socioeconomic factors are never used to excuse abuse or inaction, but rather to improve victim identification, legal interpretation, and support services.

97. States should facilitate the exchange of experiences and best practices regarding current and future consent-based approaches, with a view to learning lessons and improving the way in which sex and gender-based crimes against women and girls are dealt with. This must be accompanied by systematic data collection disaggregated at least by sex and age in order to document the prevalence and patterns of violence against women and girls, as well as by regular evaluation of contextualized consent-based model laws to assess their effectiveness in practice, and potential unintended consequences.

98. Independent monitoring and reporting mechanisms must also be established and tasked with collecting disaggregated data on how consent is interpreted and applied in practice. These mechanisms should track institutional failures and identify systemic issues, including those contributing to the underreporting of violence.

D. "Contextualized consent" in practice – solutions and tools for a victim-centered approach

99. The implementation of a "*contextualized consent"* model must ultimately be realized through concrete, victim-centered practices that reflect the principles established in law and policy. These practical measures must permeate every stage of consent evaluation and every

point of interaction with women and girls who are survivors of violence, exploitation, or coercion.

100. Judicial processes must be designed to minimize the risk of secondary trauma. Survivors should not be required to repeatedly recount painful or degrading experiences. Wherever possible, testimony should be recorded in advance and accepted as sufficient evidence to prevent traumatization during the trial. Free legal aid must be provided to all victims to ensure that they understand their rights, can participate fully in proceedings, and are not disadvantaged by their socioeconomic position or lack of legal literacy.

101. Protective measures must also be effective and enforceable. Restraining orders and victim protection programs should not only exist in law but also be meaningfully applied in practice. Law enforcement and judicial authorities must respond promptly to violations of such orders, and mechanisms must be in place to hold accountable those who fail to act. Access to immediate support is likewise essential. To that end, states must establish and maintain 24/7 confidential hotlines that ensure prompt, empathetic, and professional responses.

102. As part of this comprehensive, victim-centered approach, practical tools should also be developed to guide consent assessments. One such tool could be a standardized manual containing context-sensitive questions for use by professionals tasked with determining whether "contextual consent" was present. The manual could include specific questions aimed at understanding whether a woman would suffer negative consequences in case of dissent and whether she felt that she had no other choice than the one to which she allegedly consented. To ensure relevance, the questionnaire should be tailored to the specific profile of the woman or girl involved and be included in the case documentation.

103. States should also provide comprehensive support services to victims, including free psychological counseling, trauma and complex trauma healing and programs focused on economic empowerment, with the aim of breaking cycles of coercion and dependency. Particular attention must be given to ensuring that survivors of prostitution and pornography have equal legal standing and full access to assistance, adequate to their experiences as victims of sexual violence. The support offered must also extend to women and girls before their status as victims is formally recognized in the final judicial decision.

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