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including the right to development**

Overview of challenges and limitations of using the concept of consent in relation to violence against women and girls

**Report of the Special Rapporteur on violence against women and girls,
its causes and consequences, Reem Alsalem***

* Circulated as received, in the language of submission only.



I. Introduction

1. In the present report, the Special Rapporteur on violence against women and girls presents a summary of key observations that arose in the context of the preparation of her report entitled “Sex-based violence against women and girls: new frontiers and emerging issues” (A/HRC/59/47) and the consultations she conducted with stakeholders on how consent relates to the issues of sex-based violence against women and girls.¹

2. Considering the evolution of the concept of consent in law, the ongoing discussions surrounding this issue, and State parties adapting, or considering to adapt, consent-based laws on sexual violence against women and girls, rape in particular, the Special Rapporteur considers it important at this stage to provide a structural examination of the subject as it pertains to her mandate of protecting women and girls from all forms of violence. The purpose of this expository document is to draw attention to several critical issues emanating from the current interpretations and applications of consent in the domain of violence against women and girls.

3. A more detailed, comprehensive stand-alone policy brief will follow that expands on the findings and the analysis of the relevant international legal framework and that will present detailed policy recommendations in the second half of 2025.

II. Key observations

A. International legal standards

4. The concept of consent is central to international law insofar as State parties sign and ratify international treaties, thus consenting to fulfil the obligations contained therein. As such, the principle of consent can be considered as underpinning all international legal frameworks, including customary law. However, certain norms of international law, classified as *jus cogens*, or pre-emptory norms, operate independently of State consent.

5. What concerns international human rights law and its application to individuals and violations of their human rights and fundamental freedoms, the concept of consent has not been understood or elaborated with the same degree of certainty.

6. On the one hand, the “irrelevance of consent” is explicitly used in two international conventions on trafficking in persons² and the exploitation of the prostitution of others³, in order to place the burden of proof on the perpetrators rather than on the victims, and emphasize that under the dignity *and the worth of the human person*, no one can consent to their own exploitation. The irrelevance of consent has also been used to protect children and adolescents⁴ from making choices and/or from taking responsibility for actions that they do not have the capacity to understand entirely and comprehend the full consequences of.⁵

7. On the other hand, the concepts of “informed consent” and “coercive circumstances” have been introduced in CEDAW jurisprudence,⁶ and regional treaties such as the Istanbul

¹ The Special Rapporteur received 170 submissions and held two online consultations with experts <https://www.ohchr.org/en/calls-for-input/2025/call-input-report-special-rapporteur-violence-against-women-and-girls-hrc>.

² Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

³ 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

⁴ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 25th May 2000

⁵ Convention for the Rights of the Child Committee, General Comment No. 20 (2016).

⁶ CEDAW General Recommendation N35.

Convention.⁷ International Criminal Courts⁸ have emphasized that silence, lack of resistance to force or conduct under coercive circumstances, make consent impossible in the context of sexual violence as crimes against humanity and war crimes.

8. Furthermore, the addition of the terms “enforced” and/or “forced” before the term “prostitution” in international humanitarian law (e.g. Geneva Conventions), international criminal law (e.g. Statute of Rome), as well as women’s human rights instruments (e.g. the Beijing Declaration and Platform for Action) has led to multiple interpretations.⁹ One interpretation conceptualizes prostitution as inherently forced. Another interpretation implies that the engagement in prostitution can take place voluntarily and can be distinguished from forced prostitution. The latter places an undue burden on victims whose actions are scrutinized (to assess whether they are “free” or “forced”) rather than focusing on the systemic nature of exploitation, the harm inflicted, or the conditions of vulnerability and abuse that enable such practices.

9. The challenge in international human rights law thus remains of how to effectively put the onus on the perpetrators of violence against women and girls while ensuring justice and protection for the victims.

B. Divergent interpretation and application of consent in national legislations

10. Although domestic jurisdictions vary in how they define and apply the concept of consent in laws in the context of violence against women and girls, under international human rights law, consent is understood as a legal construct grounded in three interrelated doctrines. The first one 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, rooted in 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. The third doctrine is rooted in criminal law and protection of fundamental human rights, affirming that individuals cannot legally consent to acts that inherently involve the violation of human dignity, deprivation of liberty, acts of violence or exploitation, such as slavery, torture, or human trafficking.

11. 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, some maintaining the minimum definition; others - expanding this definition through particularising attributes of consent, such as *unequivocal*, *expressive*, *positive*, *affirmative*, among others.

12. In some jurisdictions, consent is not explicitly defined and must be inferred from the presence or absence of physical resistance or the use of force. Some States treat the absence of consent as the core element defining crimes such as rape and sexual assault - a principle defined as “she did not say yes”. In others, the victim’s “no” is treated as central, known as the “no means no” principle. According to the principle, the victim avoided, denied, fought, resisted, refused, or stopped the perpetrator. Other States have introduced a “yes means yes” definition of consent, also known as affirmative or expressive consent. According to the latter, consent must be voluntary and affirmatively communicated through words or actions

⁷ Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) Articles 36 (2); 39 (a),(b).

⁸ Rome Statute of the International Criminal Court (ICC), International Criminal Tribunal for the Former Yugoslavia (ICTY), and International Criminal Tribunal for Rwanda (ICTR).

⁹ In her report on prostitution and violence against women and girls (A/HRC/56/48), the Special Rapporteur describes prostitution as a system of violence, which reduces women and girls to commodities. She also noted that the concept of “consent” is meaningless in the context of prostitution or pornography, and that it can be weaponized against prostituted women, when extorted through physical or economic coercion, manipulation and violence.

by all parties involved. The silence, lack of resistance or past consent does not imply ongoing or future consent.

C. Limitations and concerns

13. There are observable limitations of an approach to male sexual violence against women centred on the concept of “consent”, including its so-called *positive* or *affirmative* consent versions, especially when used as the core or sole element in the criminal definition of rape and sexual assault.

14. In contrast to civil law, where consent is treated as an important element guaranteeing protection of the weaker party in the context of a wide interpretation of “duress”, in criminal law, consent is often weaponized against the victim, since “coercive circumstances” are hardly considered. This results in limiting the protection of victims and perpetuating the impunity of perpetrators.

15. The inclusion of consent - pertaining to an internal aspect of the individual involved, specifically the mental state of the victim - in the definition of crimes such as rape, often leads courts to examine the victim’s behaviour, overlooking the circumstances and the perpetrators’ actions and judicial systems’ interpretations of what constitutes consent are often deeply shaped by cultural and sexist stereotypes. There is evidence that, when assessing consent of the rape victims, judicial proceedings invoke irrelevant factors deriving from the dominant idea of the “ideal victim behaviour”.

16. The concept of consent risks overlooking the condition of historically ingrained unbalance of power and asymmetry of positions between women and men in public and private life. This systemic unequal relation between women and men makes the concept of consent questionable in criminal justice systems.

17. The appearance of consent may arise in situations characterized by coercive control, dependency, or power imbalances, wherein women’s subordination is instrumentalized for the benefit of men, insofar as it builds on the vulnerability created by inequalities. Unlike isolated incidents of violence, coercive control is characterised by a pattern of ongoing, purposeful behaviour aimed at instilling fear and dependence. In this context, the very idea of consent becomes unattainable and any semblance of it is tainted by the environmental power dynamics and manipulation.

18. Coercive control often leads to complex trauma (Complex Post Traumatic Stress Disorder¹⁰) for the victim. It is often accompanied by the secondary trauma arising from the societal disbelief and denial of violence and traumatic circumstances, leading to an appearance of consent of the victim. The role of such trauma in the victim’s behaviour is often overlooked in criminal proceedings centring on the victim’s consent. Furthermore, psychological and psychiatric examinations of victims are often conducted in a manner that risks exacerbating their trauma by scrutinising their behaviour to assess whether they had consented.

19. In practice, in some jurisdictions, consent becomes a ground for exemption from criminal liability that arises when the victim of the offence or the rights holder, who can also be the person affected by the action, accepts or consents, under certain conditions, to the perpetrator infringing upon that legal interest.

20. Consent has come to play an important role in many systems of industrialized exploitation of women, particularly those facilitated by digital and bio-medical technologies. This includes the rapidly growing global markets of surrogacy,¹¹ “sex-reassignment”

¹⁰ Complex Post Traumatic Stress Disorder, World Health Organization (2021), International statistical classification of diseases and related health problems (11th ed.).

¹¹ <https://www.gminsights.com/industry-analysis/surrogacy-market>.

surgeries,¹² as well as pornography¹³ and prostitution. In all these industries, “consent” has become instrumentalized to provide legal security to them against possible criminal suits.

21. There is also evidence that the notion of consent may and does act as a barrier for the criminalisation of several extreme forms of violence against women and girls, such as bondage, dominance, and sadomasochism practices.

22. In the context of prostitution, there is not one jurisdiction in the world that has either developed or implemented comprehensive protocols of identification that would lead national mechanisms, law enforcement and the judiciary to determine whether a woman’s “consent” to prostitution exists without coercion, duress, abuse of vulnerability, or undue influence.

23. Upon examination of different forms of sex-based violence, the evidence demonstrates that the reliance on “consent” still persists in criminal and family law in such domains of violence against women as trafficking in women, forced marriage, and sexual and reproductive exploitation, where it should be deemed irrelevant.

24. At the same time, in some jurisdictions where consent has been historically treated as an important concept in civil law, its significance has been overridden in such areas as single-sex services and spaces, and same-sex protections, often with the omission and/or acquiescence of State actors.

25. In the area of girl-child rights and protections, coercive social circumstances, pressure from sexist stereotyping in media, including social media, have contributed to a significant increase in young females “consenting” to life-altering medical interventions, including the removal of reproductive organs.

III. Conclusion

26. The above observations highlight the need to clarify the application of consent in the context of legal provisions on violence against women and girls in order to effectively protect the victims, ensure accountability of perpetrators, and support States parties in fulfilling their obligations under international human rights law.

27. The preliminary analysis provided in this document also necessitates the attention of States parties towards the interpretation and application of consent in the context of the Special Rapporteur’s report on sex-based violence against women and girls (A/HRC/59/47).

28. It is also crucial that in creating and implementing legal instruments protecting and promoting women’s human rights, States respond to the needs of victims of violence against women, maintaining the highest possible standards.

29. With these deliberations in mind, the Special Rapporteur hopes to support States parties by producing a more detailed report on consent and contributing to the development of such standards.

¹² <https://www.gminsights.com/industry-analysis/us-sex-reassignment-hormone-therapy-market>.

¹³ <https://www.gminsights.com/industry-analysis/sextech-market>.