



# Foundational Principles for Applying the Concepts of Consent, Assent, Dissent and Evolving Individual Capacity to Ensure Trauma-informed Documentation, Justice, and Reparations Processes for Child Survivors of Sexual Violence

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These foundational principles were developed by Physicians for Human Rights (PHR) in collaboration with a community of practice made up of global experts from the medical, psychological, legal, ethical and human rights sectors.<sup>1</sup> This is meant to serve as a “living” document which may be updated as the principles outlined here are applied and feedback is received from those using these principles to guide their work.<sup>2</sup>

The goal of these foundational principles is to provide key considerations when developing and implementing consent and assent processes for child survivors of sexual violence that respect children’s right to be heard and evolving capacity within trauma-informed justice and reparation processes. We acknowledge that each process for seeking consent and assent will be different and will need to be tailored both to the individual child, in their specific environment, and the specific context of their engagement with the documentation, justice or reparations process, but there are also certain minimum standards that must be adhered to. We also acknowledge that context and risk assessment is critical to determine how to develop an informed consent and assent process that considers the needs and challenges present in a specific situations and contexts and integrates this assessment into the process.

These principles are meant to be used by experienced, trained professionals seeking to apply an ethical and trauma-informed lens to structuring consent processes with children. These principles are also intended to provide key recommendations drawn from existing good practices, while also allowing for innovation and creativity in the design and implementation of processes which respect minimum

## Key Definitions:

- **Child<sup>3</sup>:** a person below the age of 18 years (unless under the law applicable to the child, majority is attained earlier).
- **Informed Consent<sup>4</sup>:** the process by which an individual is given the opportunity to decide to participate in a documentation, justice or reparations process before and during the process. In this process the individual must be given all the information needed to make an informed decision to agree or decline to participate.

There are three components to meaningful informed consent: (1) voluntariness which means that consent is freely given without any external or internal pressure; (2) comprehension, which means that the individual understands each part of the process, why it is being done, how the information collected may be used, and the benefits and risks of the process, and any alternatives available before they agree to participate; and (3) authorization which means that the individual's permission/consent to participate should be clearly stated.

Informed consent is a continuous process, and consent can be withdrawn at any time.

There is a general requirement that an individual must be competent to give informed consent; where an individual is deemed to lack competency to provide informed consent, informed assent may be appropriate.

- **Informed Assent:** the process by which an individual, who may not be able to legally or otherwise provide informed consent to participate in a documentation, justice, or reparations process, is given the opportunity to decide to participate in the process. This often applies to minors.

The same principles of voluntariness, comprehension, and authorization as outlined under "Informed Consent" also apply to meaningful informed assent processes.

Informed assent does not replace the need for informed consent from a responsible adult before moving forward with a documentation, justice, or reparations process.

Informed assent is a continuous process. Assent can be withdrawn at any time.

- **Dissent:** the act of declining or refusing to participate in a documentation, justice or reparations process and the process of ending such participation when consent or assent is withdrawn.
- **Evolving individual capacity:** the idea that children progressively acquire competencies, including as they relate to their cognitive, emotional, and behavioral ability to understand processes that affect them. Evolving individual capacity is related to a child's developing agency to take responsibility for certain actions and exercise their rights.
- **Do no harm:** the concept that all processes should refrain from doing any harm. In this context this means being fully aware of the possible negative impacts of participation in documentation, justice or reparations processes; being prepared for the harm those impacts may inflict; and putting in place measures to prevent or minimize that harm.<sup>5</sup> The benefits and risks of participation (or lack of participation) should be considered, and the benefits should be assessed to outweigh the potential risks of participation before moving forward.
- **Trauma-informed:** an approach that acknowledges the existence and prevalence of trauma, considers how trauma affects individuals and interpersonal interactions, and recognizes multiple stakeholders' role in being conscious of the role of trauma in an individual's life, and mitigating its effects.

## Overarching Principles for the Inclusion of Children in the Informed Consent Process

- The best interest of the child must always be the primary consideration in any documentation, justice, and reparations process and must be considered when making an ultimate determination about a child's participation in such a process.

- Children have the right to be heard and to participate in documentation, justice, and reparation processes that affect them.
  - A critical part of realizing and respecting this right is to engage children in consent and assent processes, subject to and in accordance with individualized vulnerability, threat, and risk assessments.
- Children should always be included, in an age-appropriate manner, in decision-making regarding their participation in documentation, justice and reparations processes.
- Consent and assent processes for children must be child-centered, trauma-informed, and conscious of intersectional identities and vulnerabilities.
- It should be clearly stated to children and their responsible adults at the outset of any process that their participation is voluntary and that they have the right to decline to participate or withdraw their consent/assent to participate at any time.
- Children's informed consent/assent must be reaffirmed at all steps/stages of a documentation, justice or reparations process.
- Children's decision to decline to provide or to withdraw consent/assent when previously provided, must be respected and processes must be in place to allow children to express dissent at every stage during the process.
- In consent and assent processes, when children's wishes to participate differ from their responsible adult's<sup>6</sup> decision the child's decision to participate must be seriously considered alongside the competence of the responsible adult to provide informed consent and represent the best interest and wishes of the child in order to ensure a meaningful process where the child's wishes are considered.
- Children's ability to participate and provide informed consent or assent should be assessed on an individual basis, taking into consideration their age, experiences, cognitive, emotional, and other developmental stages<sup>7</sup> not only their chronological age.
- Consent and assent processes for children should be structured in a way that is responsive to a child's individual evolving capacity.
- Consent and assent processes for children should be developed to ensure the "do no harm" principle is met.
- Consent and assent processes with children should always be carried out by highly qualified professionals who have experience, and the necessary competencies gained through training, supervision, and monitoring.
- Consent/assent processes should be tiered<sup>8</sup> and continue as a child moves along the justice pathway.
- Proper and ongoing planning, including individualized vulnerability, threat, and risk assessments, is fundamental and a precondition to realizing the rights of children in consent, assent, and dissent processes.
- A consent, documentation, justice, or reparations process should be stopped at any point if the process cannot be done in a safe and appropriate way aligned with these principles.

### **Commitment to Inclusion of Children in the Informed Consent Process**

- All children must be given the opportunity<sup>9</sup> to provide informed consent (when legally possible) or assent prior to participating in a documentation justice, or reparations process.
- Children's informed consent/assent should be reaffirmed at all steps/stages of a documentation justice, or reparations process.
- All children must have the opportunity to dissent or withdraw their consent/assent at any time. Such decisions should be respected, and processes should be in place to allow children to express dissent at every stage during the process and for immediate and effective steps to be taken to give effect to that decision.

- Children who cannot provide informed consent (due to legal thresholds, cognitive capacities, or developmental stage) should be given the opportunity to assent if possible given individual evolving capacity.
- If consent or assent is not provided for direct interviews<sup>10</sup> due to risk to the child, their family or community, their perspectives should be incorporated in other ways or through other approaches or sources of evidence.
- Children should be included, when possible, in shaping how a consent and assent process is designed.
- Families and communities (teachers, doctors, child protection workers, local experts with knowledge of the situation of children) should be included, when possible, and subject to and in accordance with related context and risk assessments, in developing consent processes to ensure children's safety and that their best interests are protected.
- Organizations should continually build organizational capacity to include children in consent processes.

## The Evolving Capacity of Children to Consent, Assent, and Dissent

- As their capacity evolves, children should take a more active role in consent processes and decisions.
- Information materials should be developed in consideration of children's evolving capacity to understand and process information. Such materials should represent developmental, gender, cultural, linguistic, geographical, and other relevant considerations.
- Environment, identities, and vulnerabilities including gender, gender roles, and gender norms should also be considered in how they influence children's capacity to provide consent and assent.

## Parameters for Assessing Consent, Assent and Dissent

- Consent/assent processes for children should be well planned and adapted for different contexts and must consider the linguistic, gender dynamics, cultural, and other factors that may impact a child's understanding of or ability to provide consent and assent.
  - Children should be provided information about documentation, justice and reparations processes in a language and format that they can understand and in a manner that considers their developmental stage, emotional, and cognitive development, prior to providing informed consent or assent.
- Children and their responsible adults should be provided with clear guidance and parameters on how to withdraw consent.
- Children must not in any direct or indirect way be given incentives or be pressured to consent, including rewards for participation or assurances including regarding justice processes, as this is coercive.
  - A discussion should be had with responsible adults at the outset of the process to also discuss potential undue pressure, incentives, and coercive measures and their impact on children to ensure responsible adults avoid them.
- When seeking informed consent, dynamics of power and control which may make participants feel compelled to provide consent should be considered and measures taken whenever possible to mitigate/eliminate these power dynamics in decision making.
- When seeking informed consent, potential risks (confidentiality, safety, well-being, social repercussions, stigma, legal, and so forth) should be comprehensively assessed and communicated to children and their responsible adults.
  - A vulnerability, risk and security assessment should be conducted prior to engaging children in a consent or assent process.
  - Processes should be structured to mitigate the risks identified.

- o Safeguarding and referral pathways and a child-centered complaints mechanism should be in place prior to beginning a consent/assent process.
- o An assessment of resources and support structures (including long-term and secure information storage) should be conducted to ensure that documentation can be conducted safely before a consent/assent process begins.

## Process for Seeking Consent, Assent, and Dissent

### Timeline

- Consent/assent should be received explicitly from children for all parts of the justice process, including, but not limited to audio/video recording, interview, physical examination, photography, diagnostic testing, participation in court proceedings.
- Children's informed consent/assent should not be required to occur along a set timeline (for example, only at the beginning of the encounter) and should be sought at each of the different stages of the process in which they are participating.
  - o Tools and mechanisms used to ask for consent/assent should reflect this.
  - o Sufficient time should be allocated to the consent/assent process to allow children an opportunity to participate at their own pace including time to ask questions, and time to build rapport with the child.
  - o Responsible adults should also be given sufficient time to understand the process and ask questions before being asked to provide consent/assent.

### Qualifications for Those Seeking Consent

- Professionals assessing informed consent need to have both competency and experience in assessing the ability of child survivors to participate in documentation, justice, or reparations processes.
  - o All professionals seeking informed consent from children should receive specific training on trauma-informed, survivor centered, and gender sensitive approaches for working with children.
  - o All professionals seeking informed consent/assent from children should have competency, skills and demonstrated experience interacting with children in nuanced ways that are attuned to individual children's evolving capacities, abilities, and needs.
  - o When those seeking consent/assent do not speak the language of the child, consent and assent processes with children should be carried out with trained interpreters who have experience engaging with child survivors.
- Time should be set aside for the consent/assent process at the outset of any encounter, and stakeholders should be trained in conducting the process (for example, setting, language to use, body language, use of developmentally appropriate learning tools, gender specific sensitivities, safety concerns).
- Whenever possible a trained local team should be used who understand the cultural dimensions of seeking consent/assent and can explain and document consent, assent, and dissent.
  - o This is especially important in cases of sexual violence to ensure linguistically, psychologically, and culturally appropriate approaches are taken to seeking consent to speak about sexual violence.

### Environment and Structure of Consent Processes

- Consent and assent processes with children should be conducted in an environment that is child-centered and ensures privacy and confidentiality during the activity.
- Opportunities should be provided for community members or other trusted individuals, subject to and in accordance with related threat and risk assessments and other plans, to engage in the process as a support person, in addition to a responsible adult, to ensure a safe environment can be created for children within the consent/assent process.

- Consent processes should ensure that both children and the adults representing them have a genuine understanding of what they are consenting to or assenting to and can give informed consent or assent.
  - Clearly explaining the documentation, justice, and reparations process, including any judicial proceedings, is important before seeking consent/assent.
  - Each stage of the process should be explained to children and their responsible adults with clear definitions and explanations along with an opportunity to ask questions.
- The consent process should consider legal, procedural, and other relevant factors when seeking assent from children to ensure admissibility in the justice process and limit legal risk.
  - The consent process should account for local laws and regulations as well as global standards and best practices.
  - The consent process should consider mandatory reporting requirements in the place where the activity is occurring and explain these requirements to children and their responsible adults before participation.

### **Engaging with Responsible Adults and Community**

- Responsible adults, families, and sometimes the wider community may need to be engaged, in a manner that respects confidentiality, so that there is comprehensive understanding of why an exam or interview is being conducted.
- If there is any question of whether the responsible adult is acting in the best interest of the child, then they should not participate in the activity.
- Time should be set aside to speak with the responsible adult prior to the consent/assent process with the child about what to expect and how to avoid giving their child undue pressure to make a certain decision or in any way compromising the child's own decision to consent/assent.
- It is important to understand the cultural and societal context, including gender dynamics, that the consent/assent/dissent process is happening within in order to enable informed and voluntary decision making and to know when and how to disengage from the process if it cannot be done in accordance with these principles and other applicable standards and laws.
- Professionals working with children should not seek to “replace” responsible adults or remove them from consent and assent processes. They should find ways to partner with them too to better realize the rights (and voice) of the child.
- Professionals should be prepared to disengage from a consent, documentation, justice or reparations process if it cannot be done in a safe and appropriate way and may cause more harm.
  - How to navigate this scenario must be planned and discussed at the beginning of the process with the child or adult.

### **Additional Information**

- 1 Editorial authority for developing the principles has rested with PHR, as such, being listed as a contributing expert or organization is not necessarily indicative of full endorsement of all aspects of these Principles. Organizations and experts who contributed to the drafting of these foundational principles include: An Michels, Arti Mohan, Baudouin Kipaka Basilimu, Danaé van der Straten Ponthoz, Dato’ Shyamala Alagendra, Global Survivors Fund, Emily Muthoni Kiragu, Francesco Cecon, Institute for International Criminal Investigations (IICI), IIMM (International, Impartial and Independent Mechanism – Syria), Dr. Jagadeesh Narayanareddy, Jeannette Mafika, Dr. Jean-Yves Frappier, Karina Violeta Padilla Malca, Mikiko Otani, Olena Chernova, Roselyne Mkabana, Safe Futures Hub (comprised of the Sexual Violence Research Initiative (SVRI), Together for Girls, and WeProtect Global Alliance), Save the Children, Stacy Mugure Muchugia
- 2 Please share any feedback on the principles with PHR by emailing Lindsey Green, Senior Program Officer, at [lgreen@phr.org](mailto:lgreen@phr.org).

- 3 Convention on the Rights of the Child. November 1989. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>
- 4 What is Informed Consent: <https://phr.org/what-is-informed-consent/>
- 5 Second edition of the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict; March 2017. <https://www.gov.uk/government/publications/international-protocol-on-the-documentation-and-investigation-of-sexual-violence-in-conflict>
- 6 A “responsible adult” is the person who makes decisions on behalf of a child. This may be their parent, caregiver, guardian or another responsible and competent individual.
- 7 A period in a child’s life when certain needs, behaviors, experiences and capabilities are common and different from other periods
- 8 Tiered consent provides the opportunity for the individual to choose the broadness of the consent, for example: agree to an interview but not an exam; agree to a photo but not a video; etc.)
- 9 Subject to individualized vulnerability, threat and risk assessments.
- 10 Either in-person or remotely conducted.