

VIEWPOINT

When Independence Meets Accountability: Upholding Non-Retrogression in the Human Rights System

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We write this viewpoint as a collective of academics and advocates with over three decades of experience advancing sexual and reproductive rights as well as gender equality, at national, regional, and international levels. We aim to champion a resilient human rights system that secures the rights and dignity of everyone in all their diversity.

Here, we address the status of, and ongoing contestations over, accountability norms for gender-based violence. Advancing state accountability for gender-based violence requires comprehensive standards that recognize persons affected by such violence, that reflect new understandings of “harm,” and that extend state obligations to prevent abuses by nonstate actors. This work is closely tied to the right to health.¹

Independence, transparency, and ethical practices are essential for the development of human rights norms, designed to benefit individuals rather than just state interests.² Contestation is a key element of human rights norm-building, marked by shifts in players and voices that challenge power and abuse through

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new claims and disagreements among experts. While debate is essential to the process, commitment to constructive engagement and adherence to non-retrogression remains paramount.³

Here we raise two interrelated issues that are visible in efforts to advance gender equality and rights-based responses to gender-based violence: how to grapple with United Nations (UN) expert practices that are contributing to normative retrogressions for state accountability; and how to best promote accountability to ensure non-retrogression by experts in the human rights system, while preserving their independence. We argue that careful and constructive civil society critiques of UN experts' work are essential to guide and safeguard professional practices by experts and normative developments to which these experts contribute.

Comparing two recent statements from UN human rights expert mechanisms highlights our concerns regarding the elaboration of norms on gender and gender-based violence. One reaffirms gender as a central analytic device for achieving full equality as a cornerstone of human rights, emphasizing that gender- and sex-based discrimination must be addressed to dismantle structural inequality.⁴ In contrast, the other statement warns that using the concept of gender is dangerous because it separates definitions of men and women from biological sex and undermines the recognition of women as a distinct legal category.⁵

These conflicting expert statements cannot both be correct. We argue that the second, focusing solely on biological claims to "sex," represents a normative retrogression, threatening decades of gender analysis in support of comprehensive state accountability for discrimination and gender-based violence.

As we review how norm development can be undermined by UN expert practice, we focus on a key player whose mandate has been central to accountability for gender-based violence but whose current practices threaten fragile achievements. The current UN Special Rapporteur on violence against women and girls, its causes and consequences (SRVAW) wrote the second statement cited above. Normatively retrogressive efforts by this mandate

holder include narrowing the definition of who can be protected in the category of women, restricting what constitutes gendered violence, torquing the scope of state obligations for violence by nonstate actors, rejecting the purposes of gender analysis, and selectively focusing on the limits of consent to further constrain the rights of already constrained populations.⁶

The principle of non-retrogression in human rights law prohibits states from reducing established protections, thus ensuring that advances to respect, protect, and fulfill rights are irreversible.⁷ Non-retrogression is linked to progressive realization, requiring states to work toward the full realization of rights while maintaining existing standards. These concepts are vital to the prevention of gender-based violence and the protection of health rights more generally.⁸

Human rights protection is not zero-sum. For instance, including trans women in the category of women does not diminish women's rights; rather, it expands human rights' remit. Rights advancement must not come at the expense of some, for nondiscrimination is a cornerstone of international human rights law.⁹ In other words, as human rights norms expand, prior protections remain in place, refined and better tailored to specific contexts. Thus, the principles of non-retrogression and accountability permeate guiding norms for all actors in international human rights law. And these norms are grounded in the practices of UN expert actors' research, citation, and inclusive consultation, for example. Here we apply this dual lens on accountability to a critique of the SRVAW's current work, drawing first from her report entitled "Sex-based violence against women and girls."

The SRVAW's formulation of "sex-based" rather than "gender-based" violence is a prime example of norm regression.¹⁰ Focusing solely on "sex" as the basis for prohibiting discrimination and violence limits protections to bio-essentialist functions assigned to "girls and women."¹¹

The SRVAW's efforts to reduce state accountability for gender-based violence refers to "males who identify as women and girls"—a reversion to monolithic and binary understandings of gender,

strangely echoing regressive states' efforts to undo decades of rights work at the UN and globally. As a practical matter, it also undermines the work of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity—whose mandate has extensively conceptualized and applied gender-inclusive analysis—and the gender-inclusive work of a range of UN rights-related offices, programs, and agencies over the last decade.¹²

Another SRVAW report, “Prostitution and violence against women and girls,” exemplifies both lapses in professional practice and retrogression on established norms recognizing the rights of adults to do sex work.¹³ The SRVAW references the 1949 Convention for the Suppression of the Traffic in Persons to justify use of the term “prostituted women and girls” instead of “sex worker.” This directly negates decades of sex worker-led advocacy to have their rights and legitimacy recognized. Invoking the 1949 convention also represents a retrogression that is not aligned with calls from several UN agencies, Independent Experts, and working groups to distinguish between sexual exploitation and sex work.¹⁴

These reports demonstrate unprofessional practices and reveal serious failures at a moment when various factors and individuals are threatening the UN's existence and directly targeting specific Special Procedures.¹⁵

As advocates for independence, we recognize that its safeguards depend on policies designed to prevent coercion and undue influence. These policies must be accompanied by commitments that experts do not serve the interests of governments or specific interest groups. Principles validating independence are advanced by adhering to rigorous standards of data gathering and evidence use. Independence also requires transparency and a commitment to public conversations about expert processes, ethics, and substantive claims, without fear or favor—especially unfair reprisals—for experts and civil society.

In this spirit, we propose that the Office of the United Nations High Commissioner for Human Rights (which acts as the secretariat for the Special

Procedures) take a more strategic and proactive approach to making its processes more visible, spotlight deviations from established standards, and highlight good practices among expert bodies that support the evolution of rights.¹⁶ Moreover, in our cyber-linked world, disputed, poorly sourced, or one-sided assertions, for example, are routinely called out; we ask for discussion about how to constructively use evolving technology to similarly ensure transparency and ethical practices within the UN human rights system.

We are aware that demands for oversight can be exploited by bad-faith actors, undermining the independence of UN experts and weakening the UN system, particularly its human rights framework.¹⁷ Nevertheless, we present our viewpoint in hopes of encouraging deeper reflection on accountability processes that protect against pressures by retrogressive actors on these vital and increasingly constrained independent experts. Their work is essential for strengthening rights and enhancing the UN human rights system's capacity to promote the rights of all.

References

1. M. Ellsberg and L. Heise, *Researching Violence Against Women: A Practical Guide for Researchers and Activists* (World Health Organization and PATH, 2005).
2. J. Tobin, “Seeking to Persuade: A Constructive Approach to Human Rights Treaty Interpretation,” *Harvard Human Rights Journal* 23 (2010).
3. Committee on Economic, Social and Cultural Rights, General Comment No. 3, UN Doc. E/1991/23 (1990), para. 9.
4. Human Rights Council, “Joint Statement by UN Special Procedures Mandate Holders: Reaffirming the Centrality of Gender as a Tool for Advancing Equality and All Human Rights” (August 8, 2025), <https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/statements/2025-08-28-joint-statement-reaffirming-the-centrality-of-gender.pdf>.
5. Human Rights Council, Sex-based violence against women and girls: new frontiers and emerging issues: Report of the Special Rapporteur on Violence Against Women and Girls, Its Causes and Consequences, UN Doc. A/HRC/59/47 (2025), para. 13.
6. Ibid.; see also Human Rights Council, prostitution and violence against women and girls: Report of the Special rapporteur on violence against women and girls, its causes and consequences, UN Doc. A/HRC/56/48 (2024).

7. Committee on Economic, Social and Cultural Rights (1990, see note 3).

8. Ibid., para. 9; Committee on Economic Social and Cultural Rights, General Comment No. 14, UN Doc. E/C.12/2000/4 (2020), paras. 21, 32, 48, 50; Committee on Economic Social and Cultural Rights, General Comment No. 22, UN Doc. E/C.12/GC/22 (2016), para. 38; Human Rights Committee, General Comment No. 36, UN Doc. CCPR/C/GC/36 (2019), para. 8.

9. Human Rights Council, The Law of Inclusion: Report of the Independent Expert on Sexual Orientation and Gender Identity, UN Doc. A/HRC/47/27 (2021); Human Rights Council, “Joint Statement by UN Special Procedures Mandate Holders” (see note 4).

10. Human Rights Council, “Joint Statement by UN Special Procedures Mandate Holders” (see note 4).

11. Human Rights Council, Sex-Based Violence Against Women and Girls (see note 5).

12. Human Rights Council (2021, see note 9).

13. Human Rights Council (2024, see note 6).

14. Office of the United Nations High Commissioner for Refugees and the United Nations Population Fund, *Operational Guidance: Responding to the Health and Protection Needs of People Selling or Exchanging Sex in Humanitarian Settings* (2021); Special Rapporteur on the Right of Everyone to the Highest Standard of Physical and Mental Health, the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, and the UN Working Group on Discrimination Against Women and Girls, *A Guide on the Human Rights of Sex Workers* (March 2024).

15. Coordination Committee of the Special Procedures, “‘Silence Is Not an Option’: UN Special Procedures’ Coordination Committee Condemns US Sanction on Francesca Albanese,” Office of the United Nations High Commissioner for Human Rights (July 10, 2025), <https://www.ohchr.org/en/press-releases/2025/07/silence-not-option-un-special-procedures-coordination-committee-condemns-us>.

16. See, e.g., Human Rights Council, Code of Conduct for Special Procedures Mandate-Holders of the Human Rights Council, UN Doc. A/HRC/RES/5/2 (2007), annex art. 3(a), (d); United Nations General Assembly, Implementation of Human Rights Instruments: Note by the Secretary-General, UN Doc. A/67/222 (2012), annex I paras. 5, 16.

17. Coordination Committee of the Special Procedures (see note 15).