

CONSENTING OR NOT? WHAT THE LAW SAYS

Sexual health
 Consent
 Sexual activity
 Masturbation
 Oral sex
 Alcohol
 Sexual coercion
 Gender-neutral
 Sexual orientation
 Gender
 Rape
 Sexual assault

- ✓ 1. To understand the importance of consent in sexual activity.
- ✓ 2. To discuss sexual boundaries, and understand that comfort levels vary greatly from person to person.

45 Mins

- ★ 1. **Worksheet 1: Statements - CONSENT (GO!) or NO CONSENT (STOP!) (provided)**
- ★ 2. **Worksheet 2: Scenarios - CONSENT (GO!) or NO CONSENT (STOP!) (provided)**
- ★ 3. **Signs: Consent (green) / No Consent (red) (provided)**
- ★ 4. **Information Sheet: 'TRUTH AND MYTHS ABOUT SEXUAL VIOLENCE' (provided)**

PROCEDURE

- 1 Begin the lesson by asking learners what **consent** with regard to sexual activity means to them. You can ask for volunteers to share their opinions.
- 2 Now give learners the definition of **consent** from the GLOSSARY as follows:

CONSENT: The clear, unmistakable and voluntary agreement between people to participate in a **sexual activity** (including fondling, **masturbating** each other or **oral sex**). In terms of South African law, someone cannot consent if they are asleep or under the influence of **alcohol** or drugs.

Tell the class that the **Sexual Offences Act** clearly defines situations where consent cannot be given. These include when someone is:

 - Asleep, unconscious or in an altered state of consciousness (under the influence or drugged) to the extent that their judgment is adversely affected.
 - Mentally disabled.
 - Below the age of 12.
 - Persuaded to give consent under false pretences or fraudulent means.
 - Threatened (or someone they know is threatened).
 - The victim of an abuse of power or authority.
- 3 Tell learners that it is very important to ascertain consent before proceeding with any sexual activity with a partner(s). Remind them that consent should never be assumed. You cannot assume that someone is consenting based on their behaviour, or appearance. You also cannot assume that someone is consenting because the person has consented in the past. Emphasise that everyone has the right to stop any sexual activity whenever they want, regardless of what has happened up until that point, or in previous sexual encounters.
- 4 Tell learners that awkwardness is often part of sex, including talking about it, and the potential for rejection is always there. However, remind them that the risks of not asking for consent are far greater than the risks of asking for consent. Emphasise that communicating before, during and

after sexual activity is extremely important to make sure that everyone is comfortable with what is happening, and that everyone feels safe and is consenting. Clear communication and consent is also the best way to ensure that your sexual relationship develops and improves.

- 5 Give each learner a set of signs: 'Consent / Not Consent'.
- 6 Read a list of statements (provided) that may be said by either partner during sexual activity. For each statement, the learners should hold up their cards as follows:
 - 'Consent' (green) card if they think that the statement indicates that consent could be given.
 - 'Not Consent' (red) card if they think that the statement indicates that consent could not be given.
- 7 The teacher should affirm the learners' correct choices after each statement. If learners put up the incorrect sign for a certain statement, ask them why they chose that response, and explain why it is incorrect.
- 8 Once the class has completed and discussed all statements, then tell them they will be doing the same thing again with longer scenarios (provided).
- 9 After reading each scenario, have volunteers discuss their answers and reasoning. Ask at least one learner with a correct response and one with an incorrect response (if there are any) to discuss their answer to stimulate debate. Make it clear which are the correct responses and explain why. Refer to the notes on the scenario sheet for more guidance.
- 10 Finally, learners can also come up with their own consent scenarios. In groups of 4 or 5 they could come up with one scenario where consent was given through effective communication between partners, and one scenario where consent was not given due to a lack of communication. Ask learners to focus on situations where consent could be tricky. This should not take longer than 10 minutes.
- 11 Ask volunteers to share their scenarios, and ask the rest of the class if they agree with whether the scenario was consensual or not. Again, make sure to clarify the correct answer and explain why.

- 12 Explain to learners that there are scenarios where consent, or the lack of consent, can be tricky or unclear. It is necessary for the person initiating sexual activities to ask for consent before going ahead, whatever the situation. Also be clear about how the law defines consent.

TEACHER TIPS

General

Learners may act silly or make jokes, mock each other or withdraw because of the overt sexual content in the exercise which adolescents might find amusing or uncomfortable. You can minimise this by preparing the class for the sexual content before the exercise. Tell them that you will be talking about sex, and even though they may find it amusing, the discussion of negotiating sex and sexual coercion is really important and serious. For this reason you would like them to focus on the exercise and give the issues their full attention. You may want to re-emphasise this before asking learners to read their responses aloud, and add that it is important to show respect, and to be non-judgmental when listening to other's efforts.

Whenever discussing sexual activities with learners, it is important to use the term 'partner' rather than 'boyfriend' or 'girlfriend'. By staying gender-neutral, you ensure that no one of a different sexual orientation

or gender in the classroom is alienated, which is especially important when asking learners to discuss touchy topics such as intimacy and sexual boundaries.

If learners ask about the gender of Alex, tell them that Alex is a **gender-neutral** name and it was specifically chosen so that they did not know if the scenario involved a same-sex or opposite-sex couple. This is because it does not matter - the point of the activity is that all couples and partners need to openly discuss consent, regardless of sexual orientation.

Making the Link with Gender & Violence

It is very important for learners to understand how to negotiate consent to promote healthy sexual relationships and prevent rape and sexual assault. Rape and sexual assault often occur when the victim is under the influence of drugs or alcohol, so it is important to emphasise that legally, consent cannot be given by someone who is under the influence of drugs or alcohol. Learners need to begin talking about consent and communication in relationships from a young age.

Assessment Ideas

Ask learners to write a short reflective piece that defines consent, explains why consent is important in sexual relationships, and provides specific examples of how to ask for consent.



STATEMENTS - CONSENT (GO!) OR NO CONSENT (STOP!)

Read out each of the following statements and ask learners to use their cards to indicate whether the correct response is to 'Consent' and 'No Consent'.

STATEMENT	CORRECT RESPONSE
1. "That hurts."	NOT
2. "That feels so good!"	CONSENT
3. "I am so drunk right now."	NO
4.Silence.....	NO
5. "Keep going, I love that."	CONSENT
6. "Would you mind doing ..."	CONSENT
7. The partner is asleep or passed out.	NO
8. "No."	NO
9. "I don't feel like it."	NO
10. "I don't think I want to do this anymore..."	NO



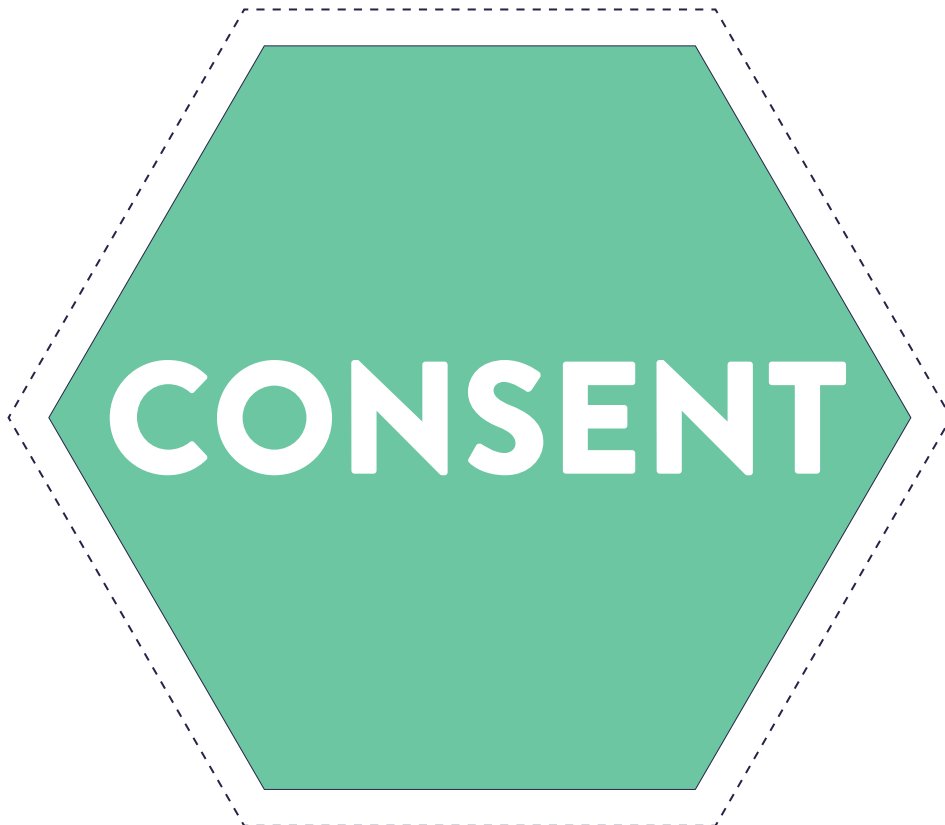
SCENARIOS - CONSENT (GO!) OR NO CONSENT (STOP!)

Read out each of the following scenarios and ask learners to use their cards to indicate whether the correct response is to 'Consent' and 'No Consent'.

SCENARIO	CORRECT RESPONSE
1. Lulu and Jo have been dating for a few months; Lulu would like to remain a virgin until marriage and has told Jo this. One day, when they are making out, both partners touch each other's genitals, and take off each other's clothes. Jo begins to rub his body against Lulu's and she seems to enjoy it. After a while Jo begins to push his penis into Lulu, and she tells him she thinks they should stop. He says she must have known what was going to happen when she took her clothes off.	NO CONSENT. Anyone has the right to withdraw consent at any time. As soon as Lulu told Jo to stop he should have done so.
2. Marco and Pumi have been dating for a few weeks. Marco is 3 years older than Pumi, who is 11, but they get along very well. When they are making out at Pumi's house one evening, Marco pushes his hand into her pants. Pumi isn't sure that she wants him to do that, but in the end she doesn't say anything and goes along with what Marco wants.	NO CONSENT. Pumi is under 12, and can therefore not consent to sexual activity under the law.
3. Wesley and his friends are drinking at a friend's house. Wesley gets very drunk and his friend takes him to his room and puts him to bed. They begin talking and Wesley kisses his friend, and they start taking each other's clothes off. After a little while Wesley passes out on the bed naked. His friend proceeds to have sex with him.	NO CONSENT. Wesley cannot consent to sex because (1) he has been drinking and (2) he is unconscious.
4. Aalia (age 13) and Alex (age 14) are fooling around, and decide to try oral sex. Aalia's dad walks in and tells them that he is going to have Alex arrested for statutory sexual assault.	CONSENT. Despite what Aalia's dad says, Aalia and Alex both consented to trying oral sex. Because both Alex and Aalia are between the ages of 12-15, and consented, there is nothing Aalia's dad can do.
5. Kaya and Mandisa are both 16 years old. They decide to have sex and go to the clinic to get protection. Kaya's aunt is a nurse at the clinic and phones Kaya's mother to tell her that her daughter is having sex. Kaya's mother is furious and threatens to take them to the police because they are still children under the law and can't consent to sex.	CONSENT. Kaya's mom is right that both Kaya and Mandisa are still considered children under the law (defined as under 18 years of age). However, the Sexual Offences Act sets the age of consent at 16 years old, which means that both Mandisa and Kaya are able to consent to sex. They are also old enough to get contraception from the clinic under the law.
6. Olivia's mother has lost her job and can't afford school fees. The principal calls Olivia in one day and tells her that if she agrees to have sex with him he will make sure that the school fees are paid for her and her brothers. She agrees, even though she doesn't really want to.	CONSENT. Even though Olivia (reluctantly) consented, the principal has coerced and manipulated her through abuse of power.
7. Rodney (17) and his friend Walton (14) have been attracted to one another for a long time. At a friend's party, they finally get the courage to act on their feelings. They kiss and one thing leads to another, and they end up having sex.	NO CONSENT. There is an age gap of more than two years, and one partner is defined as a child, while the other is not. There can be no consent.

SIGNS: CONSENT / NO CONSENT

Print and cut out signs for each learner:



INFORMATION SHEET: TRUTH AND MYTHS ABOUT SEXUAL VIOLENCE (DATA SOURCE)

MYTH	FACT
<p>Women who wear provocative or revealing clothing are 'asking for it'.</p>	<p>Rape happens to all kinds of people, regardless of what they were wearing, how old they are, or what they look like. While there are many men who are aroused by women's clothing or appearance, in fact very few of those men rape. Rape is the fault of the perpetrator alone.</p>
<p>Rape is a crime of passion.</p>	<p>Rape is not a crime of passion, it is a crime of violence. It is often well-planned, and is used to humiliate and hurt the victim, and to make the perpetrator feel more powerful.</p>
<p>Women/girls report rape when they 'change their minds' afterwards, when their parent catch them having sex, or when they want to 'get even' with a man.</p>	<p>Rape is the only crime where we routinely blame the victim for what happened to them. Cases which are seen as so-called 'false reports' are more likely cases where the victim no longer wanted to participate in the legal process or where the victim was being threatened or intimidated to withdraw the case. Cases are withdrawn by the state where there is not enough physical evidence or where there are inconsistencies in reports/evidence. This is not the same as false reporting – it simply means that the prosecution was not confident in their ability to secure a conviction.</p>
<p>Women who are drunk are willing to engage in any kind of sexual activity.</p>	<p>The fact that a woman has been drinking does not imply consent. Under our law, people who are under the influence of alcohol and drugs cannot consent. Some perpetrators use alcohol to render potential victims helpless. They often prey on people who are already drunk. Alcohol is not a cause of rape; it is only one of many tools that perpetrators use.</p>
<p>Only women get raped.</p>	<p>This is not true. While we know that the majority of victims in South Africa are women, there are a sizeable number of men who are victims of sexual violence. Men who get raped are also not necessarily gay men.</p>
<p>People with disabilities don't get raped.</p>	<p>People with disabilities are often abused by people who are in a position of trust, such as caregivers.</p>
<p>Most rapists are strangers.</p>	<p>Most survivors of a sexual offence know, or are at least acquainted with, the perpetrators. Most perpetrators are friends, friends of friends, family members, partners, community members, and the like.</p>
<p>Most rapes are inter-racial (e.g. black men who rape women of other races).</p>	<p>Most rapes in South Africa involve persons of the same race.</p>
<p>Most sexual offences occur at night in strange and unfamiliar places.</p>	<p>Most rapes are committed by people that are known to the survivor, and often take place in the home, at a party or in a car.</p>

INFORMATION SHEET: TRUTH AND MYTHS ABOUT SEXUAL VIOLENCE (DATA SOURCE)

MYTH	FACT
Sex workers can't be raped.	Sex workers have the same right as any other person to refuse sexual activity.
If the survivor was really raped, then there will be injuries.	A woman need not be physically hurt in order for her to have been raped. Most men are physically stronger than most women and need not use violence to coerce a woman into doing what she is told to do.
Gang rape is rare.	In fact, roughly 40% of rapes in South Africa are perpetrated by more than one person.
Women falsely accuse or cry rape when they regret having had sex.	False reports are very rare. Although many cases are dropped for lack of evidence, this is not the same thing as false reporting.
A husband can't rape his wife.	When someone does not consent to sex it is rape, regardless of the relationship that exists between them.
You can't be raped if you were drinking or had taken drugs.	The law in South Africa says that if you have been drinking or are under the influence of drugs you cannot consent to sex. Some perpetrators use alcohol/drugs to render potential victims helpless. They often prey on people who are already drunk/high. Alcohol/drugs are not a cause of rape; they are tools that perpetrators use.
Rape is just a case of sex that went a little too far.	Rape is a premeditated act of violence, not a spontaneous act of passion.
Rape is mostly just an isolated incident.	Most rape is not an isolated incident, but is instead perpetrated many times by the same perpetrator.
Most women have a secret desire to be raped.	No woman fantasises about being raped. Sexual assault is a brutal attack, it is humiliating and sometimes victims are badly hurt. No person wants or enjoys sexual assault.
Once a man is sexually aroused he is unable to control himself.	Every person – regardless of how sexually excited they are – can choose to stop what they are doing and wait for the feeling to subside. Sexual offenders choose not to do so, but rather choose to exert power and control over their victim by sexually violating them. Most men become sexually aroused, and do not commit rape or other acts of sexual violence. Most men respect their partner's boundaries.
Women say 'no' when they mean 'yes'.	When a woman says "NO" she means, NO. If a sexual partner does not stop at the time a person says "No", this is a sexual offence.

INFORMATION SHEET: TRUTH AND MYTHS ABOUT SEXUAL VIOLENCE (DATA SOURCE)

MYTH	FACT
<p>If she didn't want to have sex then she shouldn't have gone home with him.</p>	<p>Rape is a terrifying, violent and humiliating experience that no woman wants or asks for. Legally a person has the right to change their mind about having sex at any point of sexual contact. If a sexual partner does not stop at the time a person says "No", this is sexual assault.</p>
<p>Real rape is when a woman is surprised and raped by a man she doesn't know.</p>	<p>Most rapes occur either in the victim's home or the home of the perpetrator. Often victims have met the offender or they are well known to the victim and were in relationships that one would normally assume trust, i.e. intimate partner, friend, acquaintance or family member.</p>
<p>Most 'real' rapes are reported.</p>	<p>Rape is the most underreported crime. Victims often feel shame, humiliation, or embarrassment, fear retaliation from the perpetrator, fear that people won't believe them, fear upsetting people if they have an existing relationship with the perpetrator (for example, if he is a friend, or a parent etc.) Some survivors don't know that what happened to them is rape because of all the myths and stereotypes about rape, or if they were unconscious or intoxicated at the time of the offence.</p>