

# Gender-Related Violence and Young People: An Overview of Italian, Irish, Spanish, UK and EU Legislation

Pam Alldred and Barbara Biglia

Senior Lecturer, Brunel University London, London, UK

Agregada interina, Universitat Rovira i Virgili, Tarragona, Spain

*Do laws regarding violence against or sexual exploitation of young people recognise gendered and other power dynamics? Cross-national comparison of legal texts can illustrate the benefits of framing issues of violence/gender/youth in certain ways and offer critical reflection on particular legal frameworks or cultural understandings. This policy review is based on an analysis of select laws regarding gender-related violence (GRV) as relates to young people in Italy, Ireland, Spain and the UK. Here, GRV is defined as sexist, sexualising or norm-driven bullying, harassment, discrimination or violence whoever is targeted. It therefore includes gender, sexuality and sex-gender normativities, as well as violence against women and girls. A tension emerges between granting young people agency and recognising the multiple, intersecting power relations that might limit and shape that agency. This article draws out the implications for the UK in particular, highlighting the absence of preventative measures and the need for a broader approach to combat GRV. © 2015 The Authors. Children & Society published by National Children's Bureau and John Wiley & Sons Ltd.*

**Keywords:** gender, young people, gender related violence, sexual exploitation, sexual agency, law.

## Introduction: This review and its purpose

This policy review draws on a mapping of policy on gender-related violence (GRV) in four European countries (Biglia, Olivella-Quintana, and Cagliero, in press).<sup>1</sup> The review was undertaken to develop a new training project (Alldred and David, 2014)<sup>2</sup> which sought to support professionals in England (UK), Italy, Ireland and Catalonia (Spain), who have everyday contact with general populations of children and young people ('youth practitioners') to better: recognise GRV; intervene to challenge it (and the values that underpin it); and refer those individuals affected by violence to appropriate services.<sup>3</sup> The project adopted a broad definition of 'GRV' as *sexist, sexualising or norm-driven bullying, harassment, discrimination or violence whoever is targeted*. The definition therefore encompasses violence against women and girls (VAWG) and homophobic and transphobic violence, and saw gender inequality and the gender order (gender norms and the binary system itself) as at the core of each of these types of violence.<sup>4</sup>

The four countries analysed have in common the European Union (EU) equalities and international (United Nations) human rights frameworks. However, discussion in our international research meetings suggested diversity in legal concepts and their usage. The assumption was that the commonality and dialogue between these Western European states, despite their heterogeneity, make comparison intelligible and helpful: an approach to legal protection for young people in relation to GRV in one country might offer suggestions for good practice in another.

Cross-national comparisons require a broad framework to use concepts flexibly, and the project's intersectional feminist analysis (Lutz, 2011; Lykke, 2010) meant that the theoretical framework needed to be able to recognise differences within and beyond those structured by gender, including in particular, those of race, class, age, sexual orientation and ability. Robust legal protections for violence against *women* may or may not confer protection for *girls*, and legal equality irrespective of sexual orientation may or may not cover young people. Nevertheless, to consider how young people are served by the law around GRV the starting point was to examine how the law dealt with inequality, discrimination and violence in relation to gender and sexuality generally and how gender relations are recognised by law.

This review first considers the approaches taken in the legal frameworks around GRV, and then explores how young people are served by these, at least in theory. It is based on a linguistic/content analysis of legal texts for what they convey about the politics of these issues in different locations, rather than in a study of their legal functioning (which would indeed be valuable). After interviewing key experts,<sup>5</sup> a limited number of legal documents were identified as relevant to the broad concept of GRV because they addressed discrimination and/or violence based on sex (gender) roles and norms or sexual orientation.<sup>6</sup> In the Spanish context, those of the region in which the project was developed (Catalonia) were also analysed, and for the UK, the focus was on UK-wide legislation as this was most relevant for practitioners based in England (despite the four countries that make up the UK having their own legislatures for devolved matters). Table 1 below, lists the legal documents reviewed and their code when used in this review. An initial analysis painted the broad picture at national/regional level, then a content analysis of 'substantive, operative and symbolic dimensions'<sup>7</sup> was conducted of specific pieces of legislation (indicated in bold in the table). Symbolic dimensions included the terminology, the definition of the problem/s, whether a gender-neutral or gender-sensitive (specifically recognising the potential for gendered dynamics of power) approach is employed, the agency attributed and the degree to which intersectionality was recognised.

### The emergence of GRV legislation in four EU states

The EU's commitment to gender equality (and women's rights), and sexual orientation equality (and lesbian, gay, bisexual and transgender and intersex [LGBTI] rights), is seen in multiple soft policies that do not have the legal status of Directives, but nevertheless impact on Member States (Fábián, 2010; Krizsan and Popa, 2010; Montoya, 2009; Takács, 2006). Therefore for Ireland, it was entry into the European Economic Community (EEC) in 1973, combined with the economic growth of the 1980s and pressure from feminists, opened up space for progressive equality agendas (Equality Authority, 2012; Nash, 2013). For the UK too, gender equality rights were formalised, particularly in employment, equal opportunities and the creation of new equality institutions, after joining the EEC the same year (Bashevkin, 1996; Millns and Skeet, 2013). For Spain, it was not until democracy in 1977 that a rapid shift towards European norms began (Dema, 2008), with the modification of the fascist legal framework and implementation of a Constitution.

More specifically in relation to GRV, during the 1960s and 1970s, second wave feminist movements fought to get VAW on the political agenda in England (Harwin, 2006), Italy (Creazzo, 2008) and Ireland (Connolly, 2002). The first law in any of these countries, that enabled women — whether married or not — to get protection from violence, was the English (and Wales) Domestic Violence and Matrimonial Proceedings Act in 1976 (Harwin, 2006). A few years later, protection against some forms of GRV was first addressed in Italy with a 1981 law that abolished the euphemistically named 'rehabilitating marriage' (of a man to a woman he had previously raped) and recognised the possibility of sexual violence within marriage.

Table 1: Legislation reviewed

Jurisdiction	APA citation	Abbreviation in the text (Country-Law)	
European Union	Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (Official Journal of the European Communities 2000 L 303, 16–22)	EU-EQ2000	
	Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between women and men in the access to and supply of goods and services (Official Journal of the European Union, L 373, 37–43)	EU-EQ2004	
	Charter of Fundamental Rights of the EU (Official Journal of the European Union. C 326, 391–407)	EU-CFR	
	Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (Official Journal of the European Communities 1976, L39, 40–42)	EU-EQ2006	
	Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (Official Journal of the European Union 2011, L 335, 1–14)	EU-SEXAB	
	Directive 2011/99/eu of the European Parliament and of the Council of 13 December 2011 on the European protection order (Official Journal of the European Union 2011, L 338, 2–18)	EU-EUPROT	
	Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210)	EU-VAWC	
	Directive 2012/29/eu of the European Parliament and of the council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (Official Journal of the European Union 2012 L 315, 57–73)	EU-VCRIM	
	Italy	Law 66/1996 of the 15 February, Norms against sexual violence (GU n.42 del 20-2-1996)	It-SV
		Law 154/2001 of the 4 April, Measures against violence in the family relationships (GU n.98 del 28-4-2001)	It-VFR
Legislative decree 216/2003 of 9 July, Realization of the directive 2000/78/CE for the parity of treatment in subject of occupation and conditions of job (GU n. 187 del 13-8-2003)		It-PT	
Law 228/2003 of 11 August, Measures against human trafficking and the reduction in slavery (GU n.195 del 23-8-2003)		It-TRAF	
Law 7/2006, of January 9, Dispositions pertaining to the prevention and the prohibition of the practices of female genital mutilation (GU n. 14 del 18-1-2006)		It-FGM	
Law 38/2009, of January 29, Conversion in law, with modifications, of the decree-law February 23, 2009, n. 11, bringing “urgent measures in public safety subject and of contrast to the sexual violence and stalking’ (GU n.95 del 24-4-2009)		It-ST	
Law 77/2013 of 27 June, Ratification and implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence, made in Istanbul on 11 May 2011 (GU n.152 del 1-7-2013)		It-CI	
Law 119/2013, of October 15, Conversion in law, with modifications, of the decree-law August 14, 2013, n. 93, bringing “urgent dispositions in safety subject and for the contrast of gender violence, as well as’ in theme of civil protection and compulsory administration of the provinces.” (GU n. 242 del 15-10-2013)		It-GV	

(continued)

Table 1 (continued)

Jurisdiction	APA citation	Abbreviation in the text (Country-Law)	
Ireland	<b>Criminal Law (Rape) Act, 1981 (Irish Statute Book 1981, num 10).</b>	Ir-R	
	<b>Criminal Law (Rape) Act (amendment), 1990 (Irish Statute Book 1990, num 32).</b>	Ir-Ra	
	<b>Child Care Act, 1991 (Irish Statute Book 1991, num 17).</b>	Ir-CC	
	<b>Domestic Violence Act, 1996 (Irish Statute Book 1996, num 1).</b>	Ir-DV	
	<b>Equal Status Act, 2000 (Irish Statute Book 2000, num 8).</b>	Ir-ES	
	<b>Equality Act 2004 (Irish Statute Book 2004, num 24).</b>	Ir-Esa	
	<b>Criminal Law (Sexual Offences) Act 2006 (Irish Statute Book 2006, num 15).</b>	Ir-SO	
	<b>Criminal Law (Sexual Offences) (Amendment) Act 2007 (Irish Statute Book 2007, num 6).</b>	Ir-SOa	
	<b>Criminal Law (Female Genital Mutilation) Act, 2012 (Irish Statute Book 2012, num 11).</b>	Ir-FGM	
	Spain	<b>Organic Law 10/1995, of 23 November, on the Penal Code (Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal) (B.O.E. 2004, 21760).</b>	Sp-CP
<b>Organic Law 1/2004, of December 28, on Integrated Protection Measures Against Gender Violence (B.O.E. 2004, 21760).</b>		Sp-VdG	
<b>LAW 13/2005, of July 1, amending the Civil Code on the right to marry (B.O.E. 2005, 23632- 23634).</b>		Sp-Matr	
<b>Law 3/2007, of March 15, amending the registration of a person's gender (sex assigned at birth) B.O.E. 2004, 21760).</b>		Sp-Reg-Sex	
<b>Organic Law 3/2007, of March 22, for the effective equality of women and men (Ley Orgánica 3/2007, de 22 de marzo, para la igualdad efectiva de mujeres y hombres) B.O.E. 2004, 21760).</b>		Sp-Ig	
<b>LAW 5/2008, of 24 April, on the Right of Women to Eradicate Machista Violence (Ley 5/2008, de 24 de abril, del derecho de las mujeres a erradicar la violencia machista) B.O.E. 2004, 21760).</b>		Sp-VM_Cat	
<b>Organic Law 10/2011, of 27 July, amending Articles 31 bis and 59 bis of the Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration (Ley Orgánica 10/2011, de 27 de julio, de modificación de los artículos 31 bis y 59 bis de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social B.O.E. 2004, 21760).</b>		Sp-Extr	
<b>Law 11/2014, of 10 October, to guarantee the rights of lesbian, gay, bisexual, transgender and intersex people and to eradicate homophobia, biphobia and transphobia. B.O.E 2014, 11990.</b>		Sp-Hom_Cat	
UK		<b>The Family Law Act 1996 (The Stationery Office 1996, Chapter 27)</b>	UK-Fam
		<b>Protection from Harassment Act 1997 (The Stationery Office 1997, Chapter 40)</b>	UK-Har
	<b>The Sexual Offences Act 2003 (The Stationery Office 2003, Chapter 42)</b>	UK-Sex	
	<b>Female Genital Mutilation Act 2003 (The Stationery Office 2003, Chapter 31)</b>	UK-FGM	
	<b>Domestic Violence Crime and Victims Act 2004 2003 (The Stationery Office 2004, Chapter 28)</b>	UK-DV	
	<b>The gender Recognition Act 2004 (The Stationery Office 2004, Chapter 7) (UK)</b>	UK-GR	
	<b>The Forced Marriage (Civil Protection) Act 2007 (The Stationery Office 2007, Chapter 20)</b>	UK-FM	
	<b>Equality Act 2010 (The Stationery Office 2010, Chapter 15)</b>	UK-Eq	
<b>Marriage (Same Sex Couples) Act 2013 (The Stationery Office 2013, Chapter 30)</b>	UK-Same		

Laws in bold were subjected to a more detailed analysis.

Legislation continued to be passed but could not be included in the analysis e.g. the UK's *Anti-Social Behaviour, Crime and Policing Act 2014* which criminalises forced marriage and the breach of a Forced Marriage Protection Order.

In Ireland, Mary Robinson's Presidency raised the profile of VAW (Kearns and others, 2008) leading to the approval of the Irish Domestic Violence Act in 1996. In Spain, feminist activism just after the dictatorship focused on reclaiming rights lost under Franco and on combating rape and sexual abuse (López and others, 2007). Twenty years later, in 1999, the Spanish Penal Code was finally modified to expressly protect victims of domestic violence. In the same year, but with notable delays in some Member States, EU-level debate first addressed VAW as a human rights issue, then as a health problem, and finally targeted 'violence against children, young person and women' together (Lombardo and Maier, 2007).

Sexual orientation equality has taken longer to work through into national law, but pressure from Europe (which first included non-discrimination for sexual minorities in the Amsterdam Treaty of 1997) helped produce a landscape that has eventually largely equalised LGB rights with those for heterosexuals. The first inclusion of this protection from discrimination is in the 1995 Spanish Penal Code. It was then more comprehensively addressed in the 1998 Irish Employment Equality Act, in 2003 Spanish legislation and in the UK's 2010 Equality Act.<sup>8</sup> Italy is the only country where, despite a strong LGB/LGBTI movement, it has not yet been possible to achieve equality, and protection from discrimination only applies in the workplace. Same-sex marriage became legal in Spain in 2005<sup>9</sup> (civil union having been recognised in regions such as Catalonia since 1998), the same year that the UK recognised civil partnerships. In England and Wales same-sex marriages have had full status since 2014 and the 2015 Irish referendum will guarantee this status too. Only Italy does not grant this right, although same-sex civil unions are gaining recognition this year. However in Italy, like in the UK and Spain, gender reassignment is recognised, whilst it is forbidden in Ireland.

### The law on GRV

There is no comprehensive coverage of GRV by EU Directive; however, there is a convention, sponsored by the Council of Europe that aims to prevent violence, prosecute perpetrators and protect women from all forms of violence. To date, of these countries, only Italy and Spain have ratified it, while the UK has only signed, and Ireland has not even signed it.<sup>10</sup> One form of GRV on which the EU explicitly legislated is sexual abuse/exploitation and child pornography. This problem is nationally regulated by penal law characterised by gender neutrality, with the same approach used in relation to forced marriage in UK and trafficking in Italy. This gender neutrality might have seemed a progressive step for UK policy in the 1990s (Alldred, 1999) — and is essential post-Equalities Act (2010), but it means that the law cannot take into account gendered relations of power in either the diagnosis nor the prognosis of the problem.<sup>11</sup> The only legislation in which, for obvious reasons, the 'victim' is gendered in all countries is those relating to protection from, and punishment of those conducting, female genital mutilation. Moreover, GRV is often included in national legislation that tackles different kinds of violence, and are therefore not able to attend the specificity of GRV (and see Furness and Ganzle (2012) and Gerard and Pickering (2014) on the use of gender violence for 'security' ends).

While the concept of domestic violence, frequently associated with GRV, is common in British and Irish legislation, it appears only occasionally in Italian or Spanish legislation, and is not necessarily gender-sensitive. In the laws examined, offender and victim are described in gender-neutral terms and there is no mention of possible unequal power relations in the home. Concern with dynamics of power linked to gender may appear in *practice* (not the focus of our analysis), rather than in legislation. For instance in the UK, there is an explicit reference to 'controlling, coercive or threatening behaviour' in the government definition of 'domestic violence and abuse' (Rights of Women 2014). Therefore in some

countries, legal *practice* relies on policy that lacks the full status of law, a point we return to later.

Spain is the only country analysed that has specific (national and regional) laws entirely concerned with GRV framed as a social and cultural problem relating to the construction of gender and associated power relations. Although the diagnosis of the problem is clearly gender-sensitive, the legal remedies offered fall back into constructing GRV as violence exercised by a man in relation to a woman partner, with a slightly wider understanding of it in the Catalan legislation (Biglia and others, 2014).

The Spanish/Catalan laws on GRV are also the only ones that include considerable preventive measures,<sup>12</sup> for instance, stipulating 'promoting research on GRV', asserting that professionals involved in GRV-related processes (health workers, police, lawyers, schools), trade unions and employers must be trained; that schools/universities must provide comprehensive training for trainee teachers to combat sexism; and requiring companies applying for government grants to indicate their means to prevent, detect and intervene in workplace gender discrimination/violence. This preventative angle is absent from UK and Italian legislation, and Irish law addresses prevention only in broad terms, specifying institutional figures with responsibility for prevention, but without associated powers or strategies.

Spanish and Italian legislation provides less protection from GRV for those in same-sex relationships, while, in the UK and Ireland, LGTBI individuals are protected either because the laws explicitly apply to people in same-sex relationships, or because gender neutrality allows the inclusion of same-sex relationships or behaviour. In these countries, this protection is also included in equality law in line with EU legislation, while in Italy this is only the case if the discrimination occurs within the labour market. In Spain, there is no national law recognising homo/lesbo/trans-discrimination, but Catalonia is one of the regions setting progressive standards for this.

Legislation analysed in all four countries, fails to recognise the experience of gender violence as intersecting with race, class, age, ability, social status, etc.), and in many cases, lacks awareness of multiple discrimination too. However, we can trace an incipient multi-discrimination approach in Ireland that recognises that different forms of discrimination might operate simultaneously. Nonetheless, the apparent neutrality of the law fails to recognise that discrimination might impact differently on subjects according to their location in other structures of privilege and power. In fact, even when specific groups are identified as facing discrimination (e.g. when it specifies a person with a disability, member of the Traveller Community, etc.), there is no consideration of the particular needs they might have.<sup>13</sup> Catalan legislation differs slightly in suggesting that particular care should be taken with respect to 'LGBTI people, who can face multiple discrimination, to avoid situations of vulnerability'. However, it does not explain how multiple discrimination may operate, and simply emphasises the needs of this group, which risks reinforcing the image of 'the tragic gay' (Monk, 2011).

## Young people in legislation on GRV

### *Young people as a constituency*

Many different terms are used to describe young people<sup>14</sup> in the EU legislation analysed. The most common is 'child/children' (not specified by age in EU-CFR), but defined as any person below the age of 18 in penal law (EU-SEXABU and EU-VCRIME). This is also the most common usage in UK law, while in UK-DV, child refers to a person under 16 years, because 16- and 17-year-olds can be seen as experiencing violence in their own interpersonal or sexual relationships. The UK-Sex is more precise a tool than the EU law in the way it applies differ-



ent penalties for sexual activity with children under 13 and under 16, but in other respects it retains the usual notion of 'children or young people' as under 18s. This latter definition applies to the Irish legislation too, with one specific and interesting exception: a child is understood as 'a person under the age of 18 other than a person who is or has been married'. The child's right to protection is rescinded when marrying, presumably because a spouse then assumes from the state the role of protector.

The Italian GRV legislation gives young people no special attention. The only reference to them appears with the use of 'minors' to include them in the category of those who might be victimised/offended against. This illustrates the invisibilisation of young people as legal subjects. The concept of minor, not precisely defined in most jurisdictions, means below the age of majority or adulthood, although it can be used more specifically as people below a particular age-defined right (e.g. of criminal responsibility, of consent, of compulsory school attendance) or at which legally binding contracts can be entered into, and each of these may differ. The use of this term, also adopted in some EU and Spanish legislation, underscores their position as subjects without full rights.

The terms mentioned above are ungendered, and the term 'girls' is only rarely used in law, having one specific, prominent usage in legislation on genital mutilation and to identify a group with special needs in Spanish equality law. Some Catalan legislation, to differentiate from most Spanish GRV law that does not specifically refer to young people, specifies that the law is also valid for 'girls and adolescents'. It is interesting that it makes the point of specifying girls even though the Spanish plural masculine term for teenagers ('adolescents') is also gender-neutral. As this legislation is not gender-neutral, specifying women/girls as victims and men as offenders and then referring to young people, the purpose of this curious formulation is to recognise that boys can also be victims.

The only real example of the law differentiating between boys and girls is a specific gender exclusion found in the Irish legislation, whereby girls under the age of 17, unlike their male peers, cannot be found guilty for simply engaging in a sexual relationship with a minor. This might be taken to indicate recognition of likely gendered and other power dynamics. However, it might be instituting heterosexist assumptions about who that sexual relationship is with, be reproducing the assumption of an active sexuality and desire for boys that is not assumed for girls, or be otherwise failing to recognise potential abuses of power that might not follow dominant gendered patterns. This illustrates the genuine dilemma of gender-specificity or neutrality.

### *Victims and perpetrators, 'needs' and agency*

In the laws examined children and young people are mostly viewed as a vulnerable group (e.g. EU-PROT, Sp-VdG, Sp-IG) that deserve special protection, or as a specific group of potential victims, who might experience violence (EU-VAW). In particular, the Irish legislation appears to frequently associate the term 'victim' with children, as the 'victim' of: sexual abuse, domestic violence or female genital mutilation. The critique of the term 'victim' for constructing a passive subject has led to the preferred adoption among feminists and service providers of 'survivor' (Radford and Russell, 1992), but this is rarely, if ever, applied to children. EU, Italian<sup>15</sup> and Spanish law attends to children as sons or daughters of violent relatives which also risks constructing them as passive, especially as witnesses of violence in the home.<sup>16</sup>

On the other hand, children are rarely explicitly described as possible perpetrators of violence, for example in sexual violence legislation in Italy and Ireland. The Spanish Penal Code does not explicitly recognise that a child could be an offender, but notes that they are likely

to have fewer 'penal responsibilities and obligations' (and will be sentenced less harshly), and so we can assume that they are recognised as potential offenders.

Children's rights are specifically protected in the EU's Charter of Fundamental Rights, which also prohibits child labour and establishes young people's rights as workers. There is *some* recognition that young people might experience age discrimination: in EU legislation, being young is viewed as a risk factor for discrimination that should be recognised and prevented (EU-EQ2000), and this specific vulnerability is also acknowledged by Irish and Italian equalities laws and in the UK-Fam and UK-DV when explaining the role of youth courts. However in the UK, only over 18s are given full legal protection from unlawful age discrimination; under-18s are only protected against age discrimination in relation to work, although they are covered in relation to other forms of discrimination (Children's Rights Alliance for England, n.d.). For Catalonia, it is specified that culture, leisure and sports services for young people must avoid discriminating against LGBTBI people, and that young people who are made homeless must be supported by social, and where relevant, specific LGBTBI services

While the EU recommends a child-sensitive approach and that young people are informed about the specific protections available to them (EU-VCRIM, Art. 1), this does not appear to lead to full recognition of young people's agency in Member States. Limited or specific versions of agency are evident in the fact that, say, in UK law children can report a crime at any age, have right to express their views freely, but in the other legislation analysed here there were no other cases of this. The principle — of granting young people subject status — is compromised by the fact that young people cannot take decisions on some of the important issues in their lives and that their age still limits what they can and cannot do. For instance, people under 18 do not have the right to be recognised as their preferred gender when this is possible for adults in the UK.

One specific area in which the law might be examined to consider whether young people's agency is recognised is in terms of an autonomous sexuality. The recognition of agency in the sexual sphere might be asking something more of Western societies than, say, in relation to decision making in matters of residency in the case of parents who are separating, in which it might be more readily accepted that their views ought to be heard ('on matters that affect them', UK Children Act 1989) (e.g. UK-Fam). Sexuality might constitute a special case, but it seems that an impressively nuanced picture of young people's agency is developed, for instance, in the UK. While the age of consent is 16 for intercourse with a heterosexual or same-sex partner (UK-Sex), the law grants some agency to young people recognising that not all sex among 13- to 15-year-olds is non-consensual. It therefore penalises less harshly 'sexual activity with a child' (i.e. under 16 years old), where there is no suggestion by any party that it is non-consensual (although that sexual activity is still against the law) and so allows a judgement to be made about whether there is exploitation or only underage sex involved for 13- to 15-year-olds. Thus, 13-year-olds and above are granted some agency and a degree of autonomous sexuality: they are generally considered able to consent to sex although that sex is not legal (Rights of Women 2014).

The same pattern applies in other countries. While the age at which sexual consent is lawful varies between Italy, Ireland, Spain and the UK (at 14, 17, 16 and 16 years respectively), they each have some form of 'close in age exception' and tiers of offence (e.g. Ireland has 'defilement of a child under 17' and 'defilement of a child under 15', with harsher penalties for the latter). In Spain, the age of consent was 13 until 2015, and new legislation allows people below the age of 16 to consent to sex with someone close in age or (a vaguely defined) close in 'development or maturity', as judged by a court. Similarly for Italy, under 13s cannot give consent, but sex with consenting 13- and 14-year-olds by someone no more than 3 years older is not punishable (but the agency of the 13/14-year-old is not recognised)



and from 14, young people are seen as agents in their sexual relationships. Three of the four countries raise the age of consent if someone is in a position of authority, trust or influence over the young person (to 16 for Italy and to 18 for Spain and the UK) and Ireland increases the penalties in this case. This suggests that where the law does not explicitly recognise gendered power differentials, it recognises other forms of power and here specifies status/role and age differentials. These are a welcome attempt, but 'close in age' is perhaps clumsier than requiring that the power dynamics in a specific context ought to be considered. In effect, a fixed form of intersectionality of age and power is being attempted here.

## Discussion

The complexity of cross-cultural comparison, perhaps particularly regarding something as culturally embedded and interwoven as law, alert us to the limitations of attempting to explain the differences we see. Instead we stick to describing them and reflecting on the constructs, discourses or political framing they offer, as a way of trying to see more critically the legal framework we speak within or identifying more progressive legal strategies. However, as the discussion above of current definitions of domestic violence and abuse in the UK illustrates, the comparison of law between countries is problematic because what some countries resolve in law, others address in policy. The result in terms of legal outcomes might be the same, or might not, but legal practice must be studied by means other than the textual analysis of laws although analysis of the laws themselves can reveal the conditions of possibility for the law and its practice (Krizsan and others, 2007).

Gender tends not to be acknowledged in policy concerned with adults, and policy regarding children and young people even more regularly fails to acknowledge it (Firmin, 2014). Like previous research, we find that the EU and its Member States (with the exception of Spain) 'mainly treat domestic violence as a human rights, criminal justice or public health issue and rarely a specific gender equality problem' (Krizsan and others, 2007: 164). For example, the EU, UK, Irish and Italian legislation reviewed uses gender-neutral language. This strategy is justified in the name of equality, but, as previously mentioned, prioritising the treatment of all people equally means avoiding mention of diversity or power relations. Unsurprising though, there are mixed consequences of gender neutrality (e.g. Alldred, 1999; Krizsan and Popa, 2010). On the one hand, it can be a barrier to improving responses for gang-associated women and girls (Firmin, 2014) and can hide the tendency for violence in peer relationships to have a harsher impact on girls than boys (Barter and others, 2015). On the other hand, overlooking diversity paradoxically meant that the LGBT community received more protection because gender neutrality allowed the inclusion of same-sex couples before the law explicitly asserted this, as happened in the UK. However, those who best meet popular imaginaries of subject and relationship ideals (i.e. White, able-bodied, financially solvent or otherwise privileged subjects and monogamous romantic couples) might most easily benefit from the legal recognition of same-sex relationships. Thus, gender-neutral language might aim to be inclusive and does helpfully avoid essentialising, but is limited in helping to think through intersectionality, inequality and differential power in all its complex detail.

Our view is that the legislation examined does not deal with GRV in a comprehensive way. It is mainly treated as an individualised matter, and as occurring only in the private sphere, so legislation frequently misses important structural and normalised cultural forms of violence. Moreover, while Spanish and Catalan laws are the most feminist/gender-sensitive, there is the issue of whether strong statements in law translate effectively into practice (Biglia and Olivella-Quintana, 2014). Only in documents focused on rights — or in the Spanish and Catalan legislation — does the understanding of GRV extend beyond the private

sphere to directly tackle public institutions and services. For children and young people, the understanding of GRV as more than an individual family problem is vital, as what happens at home may constitute an unproblematised norm for young people or something private and shameful to cover up. Similarly, an understanding of GRV as systemic makes it political and offers a far stronger tool for problematising specific incidents themselves. It is only when young people link together the incidents they may experience that they are likely to identify a political problem or critique the power relations around them. Therefore, this broader understanding is necessary to promote and support other efforts to achieve the social change that is needed.

Overall, the Italian and Irish legislation examined for this review tends to treat young people as special subjects whose vulnerability is key (although admittedly the Italian sexual consent law grants greater agency), while the UK tends to grant more agency and there is greater inclusion of young people in anti-discrimination law. In terms of the coverage of young people by GRV legislation it is perhaps unsurprising that this review finds a tension between the aim of *protection*, which has dominated the law concerning children in Europe for the past century, and that of *empowerment*, a relatively recent concern associated with civil rights frameworks in the West (Archard and Macleod, 2002; Jenks, 2004). Scholars have described these two discourses that frame understandings of youth and the points at which empowerment and protection may conflict. Legislation on violence, sexual abuse and discrimination clearly must protect young people, yet without disempowering them. It needs to 'support', 'defend' and 'enable them to access protection' — terms that recognise agency more than does 'protection'.

If this protection/empowerment tension regarding children and young people is a general issue, and the dilemma of dependency versus autonomy has broadly framed the development of laws concerning children (Archard and Macleod, 2002) and Western childhoods generally (Burman, 2007), then issues of sexuality might intensify this. Indeed the UK age of consent amendment discussion in 2001 saw positions polarise according to this tension, as children's charities foregrounded *protectionist* discourses which allied them with religious groups (against an equal age of sexual consent for same-sexual and heterosexual activity) and youth organisations foregrounded an *empowerment* argument, aligning with the equality lobby (Waites, 2005). The former tended to present under 18s as 'children', non-sexual and as passive victims of the sexualities of abusive adults, versus an account of young people as potentially sexual themselves, whose autonomous sexualities (and thus perhaps practices) might not always be problematic. Thus, the distinction between children and young people is pivotal, rhetorically, if not legally. The provision of comprehensive sex and relationship education similarly rests on seeing young people as sexual subjects (Allen, 2005), although a protectionist argument could support a minimal sex education in order that children can recognise and report sexual exploitation (Alldred and David, 2007). Young people do not need to be denied an autonomous sexuality to be spared being culpable for their abuse (Kitzinger, 1988). Agency should not be pitted against innocence.

This in turn is a version of a wider cultural phenomena: the dilemma about whether to address children as citizens, which can leave them largely invisible in an adult-centric world, or to highlight their special status, which usually means constructing them as vulnerable, dependent and passive (Jenks, 2004). Accounts that attempt to recognise children's agency, and present them as adept cultural actors, risk presenting them as 'little aliens' (James and others, 1998) and emphasising their Otherness. However, a broader framework that allows for different types of difference, including age (child–adult status) would meet these and other calls for intersectionality to be recognised.

The granting of subjecthood means that the law must address children or young people as having agency in relation to sexual activity, criminal activity or violence — and also in terms of their compliance with the law or legal process. Logically, the law needs to address them as not only victims but also as potential perpetrators of violence. Doing so while allowing for the weight of power and responsibility in the majority of cases is the challenge, but it is a challenge that needs meeting to properly recognise young people's abuse by their peers (Barter, 2011), as well as by adults.

The recognition that violence among adults frequently has a gendered dimension needs explicit recognition in law before it can be carried through to consideration of children and young people. Similarly the legal framework needs to recognise other dimensions of power in the emergence of violence and its impact. In addition young people should be positioned in legislation as active in the dismantling of GRV. Therefore, 'child-sensitive' (or better still, child-centred) educative and preventive measures should be included in the legislation. More effort is needed to involve young people in the policy process as 'the right to have a voice in the framing of a policy issue is connected strictly to matters of power, and related to the actual inclusion or exclusion of actors in/from the political debate' (Verloo and Lombardo, 2007: 27).

Research demonstrating that *adults* live gendered lives tends to give more emphasis to their active involvement in, and individual agency in relation to the reproduction of gender than does research evidencing that *children* live gendered lives (Firmin, 2014). While children and young people are understood as distinctly different from adults, their inclusion in anti-violence measures will be tenuous. This special case status also inhibits their automatic inclusion in equalities provision. Not always being granted a sexual identity sadly does not protect young people from abuse on the basis of their (actual or perceived) sexual orientation or gender identity. Perhaps we cannot hope to have legislation that fully addresses GRV in the lives of young people until it is fully addressed in the lives of adults. Or perhaps, when it comes to sexuality there is a greater challenge to ensure that the dimension of age (youth) is not neglected even once other dimensions of power are recognised.

## Notes

1 Barbara Biglia coordinated the review, while Maria Olivella analysed the EU, UK, Irish and Spanish legislation and Sara Cagliero, the Italian legislation.

2 Supported by the EU's Daphne-III Programme, 'GAP Work: Improving gender-related violence intervention and referral through youth practitioner training' (JUST/2012/DAP/AG/3176). Coordinated by P. Alldred at Brunel University London, UK. The views here reflect those of the authors and not the funders.

3 Resources for training 'youth practitioners' and the evaluation of these training pilots are available in the five languages of the project at (<http://sites.Brunel.ac.uk/gap>).

4 The type of anti-essentialist, post-identity thinking it embodied can be read in Alldred and Fox (2015), for example.

5 We are grateful to the legal experts who gave interviews for the project. They are acknowledged by name in Report 2 and Report 3 on <http://sites.Brunel.ac.uk/gap>.

6 Barbara Biglia coordinated it, while Maria Olivella analysed the EU, UK, Irish and Spanish legislation and Sara Cagliero, the Italian legislation.

7 Adapting the IGOP (Institute of Government and Public Policies, Universidad Autonoma Barcelona, Spain) model (e.g. Adelantado and others, 2013).

8 This was the first UK comprehensive anti-discrimination law although there were slightly earlier protections on specific issues (e.g. lifting the ban on serving in the military in 2000, equalising the age of consent 2001, protection from discrimination in the workplace in 2003; Civil Partnership Act 2004).

9 The third country in the world to allow same-sex couples to marry, after the Netherlands and Belgium.

10 At 31/05/2015 this remains the case, meaning the UK agrees in principle but that neither the UK or Ireland can be held to the terms of the treaty (<http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=210&CM=&DF=&CL=ENG>).

11 We adopt the concepts of diagnosis and prognosis of Critical Frame Analysis in Verloo (2007).

12 That is measures that focus on preventing GRV from its roots (also called primary prevention), not those that ensure specific GRV offences will not be repeated, like the protective orders that most legislations have to protect individuals.

13 For example, a disabled woman might have difficulty accessing support services independently, which might limit her access, compromise her privacy and if her carer is abusive, enable additional forms of abuse (Munson, 2011).

14 Our project employed the term young people to explore precisely the issue of protecting from violence or sexual exploitation those who might be engaging in sexual relationships of their own.

15 Italian legislation does not have specific offences against children or young people. Instead committing an offence against a minor is considered merely an 'aggravating circumstance', in the sense that it intensifies how a crime is viewed and the severity with which it is punished.

16 According to Katz (2015) domestic violence research tends to replicate the idea that only the adults have real agency, and that children's is a result of mother's agency (e.g. her leaning too much on them).

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Correspondence to: Pam Alldred, Brunel University London, London, UK. E-mail: [pam.allred@brunel.ac.uk](mailto:pam.allred@brunel.ac.uk)