

International Policy audit

Introduction

The purpose of this audit is to outline existing policy (September 2016) on sexual violence at universities in Europe and to highlight policy elsewhere that may prove useful in furthering the aims and ambitions of the USVSV project. It summarises key findings from the national policy audits conducted by project partners in Greece, Italy, Spain, and the UK, and discusses provisions made available under Title IX and the Clery Act in the United States. The audit concludes by highlighting some additional considerations to bear in mind when developing new policy.

While the focus throughout is on policy of immediate relevance to addressing sexual violence in Higher Education (HE), it is worth highlighting the existence of wider policy frameworks which already inform and can be used to shape policy specific to the university context. At an international level, relevant policy frameworks include the Universal Declaration of Human Rights (UDHR) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). Within Europe, the European Convention on Preventing and Combating Violence Against Women and Domestic Violence – known as the Istanbul Convention – is a key framework.

The European context

Greece

The national policy audit conducted by USVSV partners in Greece finds that sexual violence at universities in Greece is largely ignored both publically and institutionally. It is therefore unsurprising that there are no university-specific frameworks in place for dealing with such cases when they arise. While a small number of institutions are working towards the inclusion of guidelines on sexual harassment or violence as part of university regulations, these have not yet been implemented. Counselling services available at Greek universities rarely make explicit reference to sexual violence when outlining the services they provide. The Centre for Gender Studies at Panteion University recently produced a set of recommendations for the implementation of policy on sexual harassment, taking forward the EU Directive on Equal Treatment's definition of sexual harassment as: "any form of uninvited verbal, non-verbal, or physical behaviour of a sexual character that is either performed intentionally or has as a result the offence against a person's dignity, especially when it creates for him/her an environment that is threatening, hostile, undermining, insulting, or derogatory".

Italy

Project partners at the University of Turin report that both the University Code of Conduct and the Ethical Code work to promote a culture of equality and guard against any form of discrimination. Specifically, Article 3 of the University of Turin Code of Conduct defines sexual harassment as a violation of dignity and refers to it as ‘any unwanted conduct of a sexual nature, or other sexual-based type of behavior that offends the dignity of men or women in the workplace, including attitudes unwelcome physical, verbal or non-verbal (EEC Recommendation of 27/11/91). Where cases occur, independent and impartial counselling services (Comitato Unico di Garanzia –CUG- and the Councillor of Trust) are available. In most Italian universities there are no specific services for victims of sexual violence, but there are more general services for victims of discriminations and of harassment. In some universities courses are organized for sanitarian and public operators who can deal with victims of sexual violence.

Spain – Basque country

Partners at UPV/EHU identify two regulatory texts on issues of sexual violence. The first of these is a protocol against gender based violence which came into effect in 2011 under the Equality Office and based on Spanish law on gender based violence. The second protocol is concerned with sexual violence, understood as a particular manifestation of gender based violence. There are, however, contradictions in how gender based violence and sexual violence are defined within each of these protocol. With regard gender based violence, it is implied that a prior relationship between victim and aggressor must exist, and it is assumed that this will take the form of a romantic or sexual relationship. By contrast, sexual violence is defined as “any type of act of a sexual nature out of consent, including imposition, through force or intimidation [...] with independence of the perpetrator and the victim being involved in any type of relationship”. This protocol is also lacking insofar as it gives no consideration to the broader social and cultural context in which sexual violence is perpetrated. The Basque report further notes the existence of an agreement taken up by UPV/EHU with a number of unions on the issue of harassment and which makes references to sexual harassment. However, given that agreement is concerned with harassment in the workplace, it is unclear what implications, if any, this agreement has for students who experience harassment or violence at university.

Spain – Catalonia

University policies on sexual violence in Catalonia are based on a range of laws and codes elaborated by the governments of Catalonia and of the Spanish State. The Universities Act of Catalonia actively promotes equality of opportunity and seeks to eliminate all forms of discrimination. A protocol framework for coordinated

action against gender violence, established in 2009, sets out the legal framework on gender based violence as well as monitoring and evaluation instruments. The Catalan government administration also has protocol on sexual harassment on grounds of sex, sexual orientation, and/or gender identity specific to the workplace. These protocols include mechanisms for reporting and resolving cases of harassment, gender violence, or *violencia machista*. It is expected the universities will take appropriate corrective and preventative measures, and will do so regardless of whether or not judicial procedures are also invoked. The specific procedures involved in filing a report differ across universities: some universities have dedicated commissions or groups to which complaints can be made, others have appointed experts or instructors, while elsewhere mixed systems are in place. All protocols recognise the importance of training on issues of sexual violence as a preventative measure. Alongside these protocols, Catalan universities also have Actions Plans for Equality Between Women and Men, some of which include measures to address sexual violence.

UK

The main policy frameworks of relevance in addressing sexual violence at universities in the UK are the Human Rights Act (1998) and the Equality Act (2010). However, guidelines in place at many universities predate both pieces of legislation, and are informed instead by a 1994 document produced by the Committee of Vice Chancellors and Principals (CVCP). Commonly referred to as the Zellick report or Zellick guidelines, this document outlines a series of recommendations for how universities should handle reports of sexual violence. Perhaps the most contentious of these is the widely adopted recommendation universities take no internal action unless victims are willing to go through a formal police investigation, and that any such internal action is delayed until juridical proceedings are complete. Over the past few years there have been repeated calls for UK universities to revisit their policies on sexual harassment and violence. These issues came to the fore in 2011 when an Oxford university student, Elizabeth Ramey, sought to overturn the university's policy not to take internal action in cases of rape and sexual assault. Ramey's case was supported by the Equality and Human Rights Commission and the End Violence Against Women Coalition (EVAW), but was ultimately denied the right to a full judicial review. Since then, EVAW and the National Union of Students (NUS) have each published legal briefings questioning whether the Zellick guidelines are fit for purpose and highlight in particular the obligations universities have to protect students under the Public Sector Equality Duty (PSED) as part of the Equality Act. Contrary to the recommendations of the Zellick report, both NUS and EVAW contend that universities are obligated to take internal action in cases of sexual violence, regardless of whether or not these are reported to and/or investigated by the

police. In 2015, the UK government commissioned Universities UK (UUK) to convene a task force on sexual violence. Their full report is due in Autumn 2016 and is expected to inform future policy developments in this area.

The view from the US

At an international level, universities in the US appear to have the most robust policies on sexual harassment and violence. This is not to overlook the fact that there are significant problems with how such policies function in practice, not least because research suggests that the vast majority of universities in the US fail to comply with existing policy¹ and university faculty active on these issues frequently face personal and professional retaliation.²

The central pillar of US policy on sexual violence in HE is Title IX, a federal civil right which prohibits discrimination on the basis of sex in education and has a wide range of applications.³ Title IX consists of the statement: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance”. This statement has been interpreted broadly in decisions made by the US Supreme Court and in guidance provided by US Department of Education, such that American universities are legally obliged to address sexual harassment and violence.

In order to be compliant with Title IX – and therefore to receive federal funding – Title IX mandates that universities must:

- Implement policy which clearly prohibits sex discrimination, including sexual harassment and violence
- Employ a dedicated Title IX coordinator, responsible for coordinating investigation and disciplinary procedures
- Have clear grievance procedures outlining the complaint, investigation and disciplinary process, which must be conducted in a timely and equitable manner
- Train school employees to address sexual violence, including first response training

¹ <http://america.aljazeera.com/opinions/2014/2/title-ix-sexual-assaulttrapecollegecampuscriminaljusticegatto.html>

² http://jezebel.com/colleges-silence-and-fire-faculty-who-speak-out-about-r-1586169489?utm_campaign=socialflow_jezebel_facebook&utm_source=jezebel_facebook&utm_medium=socialflow

³ <http://knowyourix.org/title-ix/title-ix-the-basics/>

- Investigate complaints of sexual harassment and violence in a prompt manner, with a recommended timeframe of 60 days
- Facilitate reporting options for students, making clear that victims have the right to choose whether or not they make a report to the police
- Make all reasonable accommodations (e.g. changing academic or extracurricular schedules) to ensure victims can continue their studies without undue distress
- Apply the appropriate standard of evidence during disciplinary hearings, which is based on a 'preponderance of evidence' standard (i.e. the event is 'more likely than not' to have occurred)
- Ensure an equitable complaint process for accuser and accused, with neither party being required to sign a non-disclosure agreement
- Protect individuals who report sex discrimination, harassment or violence against any potential retaliation
- Address hostile educational environments, for example through education and awareness programmes on sexual discrimination, harassment and violence.⁴

Students who experience sexual violence can file a report with their school by speaking to a Title IX coordinator or to a member of the counselling team. Students who believe their school is in violation of Title IX have the option to file a Title IX complaint with the US Department of Education and/or to pursue a Title IX lawsuit. Title IX ensures that universities not only have obligations to victims, but to the university community more widely to address sexual harassment and violence. A related piece of legislation in the US is the Clery Act, a federal law which requires universities to record and make public crimes that occur 'on campus' (broadly defined). The Clery Act also requires universities to issue 'timely warnings' when there is a known risk to public safety on campus.⁵

Title IX as a model for change

There are a number of features which set Title IX apart from existing policy frameworks in Europe and which USVSV partners may want to bear in mind going forward. These include the following:

- Title IX specifies that in cases where students decide to file a complaint of sexual harassment or violence, the university must investigate the case regardless of whether or not a report is made to the police. This is in sharp contrast to current policy in the UK, for example, as shaped by the Zellick report.

⁴ <http://knowyourix.org/title-ix/title-ix-in-detail/>

⁵ <http://knowyourix.org/clery-act/the-basics/>

- Title IX specifies that where complaints of sexual harassment or violence are made the university must conduct its own investigation within one semester (or 60 days). European guidelines rarely call for such an expedited process or indeed provide a clear timeline at all.
- Title IX specifies that internal investigations must be conducted in accordance with a 'preponderance of evidence' standard. By contrast, European policies often fail to specify a standard of evidence or lean towards a criminal standard ('beyond all reasonable doubt'). Lack of clarity over the appropriate standard of evidence to be applied during internal investigations has been raised as a major problematic in recent cases occurring in the Canadian context.⁶
- Title IX applies to all instances of sexual harassment and violence at universities, whether perpetrated by students, employees or third parties. This is at odds with much existing policy on sexual harassment and violence at universities in Europe. For example, policies in the UK generally apply only to students and fail to include guidelines for cases of sexual harassment and violence against students by staff. However, there are examples of good practice in Europe, such as the tendency in Catalonia protocol to address the 'university community' at large.
- Title IX prohibits the use of non-disclosure agreements in cases of sexual violence. By contrast, non-disclosure agreements have been aggressively enforced by university administration in response to recent cases of sexual harassment involving university staff at Goldsmiths, University of London. This is unlikely to be an isolated example in the UK or in Europe more widely.
- Title IX requires universities to support victims by making necessary accommodations (e.g. to housing or class scheduling); protecting victims from retaliation by the accused or by third parties; and issuing no contact directives to prevent the accused student from contacting the victim. Whether or not universities in Europe have similar obligations to victims is unclear.
- Under Title IX universities may also be expected to award financial compensation to victims who incur economic loss as a result of the violence they experienced. This is something that needs to be given greater consideration when developing policy in the European context, especially in light of the rising costs involved in attending university.
- Title IX makes clear that all persons are to be protected from sex-based discrimination, harassment and violence, regardless of gender identity or

⁶https://www.academia.edu/11203878/An_Open_Letter_to_York_University_RE_YORK_UNIVERSITY_POLICY_ON_SEXUAL_ASSAULT_AWARENESS_PREVENTION_AND_RESPONSE

expression. While the issue is subject to debate, terms such as ‘sexual harassment’ and ‘sexual violence’ are arguably more inclusive than terms such as ‘violence against women’.

Outstanding issues

Sexual violence as a ‘PR’ problem

Many universities may be reluctant to implement clear guidelines or policies on sexual violence for fear that doing so may somehow create the impression that the problem is worse at their institution than elsewhere. However, given that the issue of sexual violence in HE is coming to greater attention, there is potential for this logic to be turned on its head. As Alison Phipps argues: “The problem of sexual violence against students is going to persist and has now achieved a high profile in the media. If they are not already, prospective students and their parents will soon be asking questions at open days, wanting to know if the university environment is safe and what support is in place if the worst should happen [...] Surely, it now looks better for institutions to show they are doing something rather than sweeping the matter under the carpet”.⁷

Policy ‘credentials’

The lack of policy on sexual violence at many universities is clearly a problem. However, in working towards the development of such policies, it is important to be aware of how the existence of policy can be used to mask the existence of the problem the policy is designed to address. This issue has recently been drawn attention to by Sara Ahmed, who earlier this year resigned from her post at Goldsmiths, University of London, over the institution’s failure to address the problem of sexual harassment. Following her resignation, Goldsmiths released a statement highlighting various events and activities taking place at the university in an attempt to demonstrate the administration’s commitment to addressing sexual harassment.⁸ Writing in response to this statement, Ahmed highlights how the administration not only attempts to take credit for the work being done at Goldsmiths by feminist students and staff to address the problem of sexual harassment, but do so in a manner that effectively denies that any such problem exists. Ahmed writes: “Feminist work in addressing institutional failure can be used as evidence of institutional success. The very labour of feminist critique can end up supporting what is being critiqued. The tools you introduce to address a

⁷ <https://www.theguardian.com/higher-education-network/2015/feb/02/universities-reluctant-tackle-sexual-violence-fear-pr-fallout>

⁸ <http://www.gold.ac.uk/governance/official-responses/statement-on-sexual-harassment/>

problem can be used as indicators that a problem has been addressed. The work you do to expose what is not being done can be used as evidence of what has been done”.⁹

Disclosure and non-disclosure

The procedural and embodied dynamics of disclosure are of central concern to the USVSV project.¹⁰ However, it may also be worth thinking about the issue of non-disclosure, specifically in relation to the project’s policy aims. Again, recent events at Goldsmiths highlight how the use of non-disclosure or confidentiality agreements by universities when dealing with cases of sexual harassment and violence – especially those involving university staff and so-called ‘star academics’ – effectively serve to conceal the problem of sexual harassment and violence in HE. The use of such agreements by university administration as a means to move problematic individuals on while protecting their reputations must be addressed if we are to eliminate rather than simply redistribute sexual harassment and violence.

Prepared by Universities Supporting Victims of Sexual Violence, 2016

⁹ <https://feministkilljoys.com/2016/06/10/equality-credentials/>

¹⁰ <https://genderate.wordpress.com/2016/05/18/disclosure-and-exposure/>