

Children's rights from a gender and sexuality perspective: A scoping review

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Abstract

This study presents a scoping literature review aimed at exploring and understanding the current state of the art regarding how children's and adolescents' rights are represented in relation to gender and sexuality. Studies were selected through a process consistent with the Preferred Reporting Items for Systematic Reviews and Meta-Analyses (PRISMA). These were analysed to highlight relevant issues and to provide a synthesis of children's rights from a gender and sexuality perspective. Five main themes emerge: 1) the construction of childhood: universality and innocence; 2) children's rights and women's rights; 3) childhood, gender, and sexuality; 4) children's rights and bodies; 5) education. This scoping review provides several insights into recognising children as holders of gender and sexuality rights and emphasises the importance of working towards their acknowledgement.

Keywords: children's rights, UNCRC, gender, sexuality, education.

Introduction

The United Nations Convention on the Rights of the Child (UNCRC, 1989) is the document that recognises individuals under 18 as rights-holding social actors, granting them the right to participation and autonomy, and acknowledging that they are not merely passive recipients of adult protection.

At the same time, the Convention was established precisely because children are recognised as a social group exposed to specific forms of vulnerability linked to their age and to conditions of

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social and economic dependence (Frödén and Quennerstedt, 2020). The objective of this document is therefore to ensure their protection while promoting their agency and participation. Nevertheless, despite these efforts, the practical implementation of the UNCRC has frequently prioritised safeguarding and protection measures over the recognition of children's participation and autonomy. While the UNCRC aspires to universality and equal opportunities for all, a critical examination of how factors such as gender, sexuality, class, race, and others are addressed in practice remains necessary.

The UNCRC is part of the broader human rights framework established since the Universal Declaration of Human Rights (UDHR, 1948), the International Covenant on Civil and Political Rights (ICCPR, 1966) - and the two Optional Protocols – and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966)¹. Although this framework aims to establish rights for all individuals, a critical examination of its universalist aspirations reveals that the prototypical person to whom this document refers – and produces – is assumed to be a white, heterosexual, cisgender, without disabilities, neurotypical, middle-class, middle-aged² man. These rights do not adequately capture, or at least do not fully encompass, all other subjectivities that deviate from the human-normal ideal.

The necessity of producing *ad hoc* laws, conventions, treaties, and broader legal discourses that guide educational, pedagogical, therapeutic, political, and other professional practices for categories of people at risk of being marginalised and rendered vulnerable stems from the concept of *humanness* (Rajah, 2018) constructed through the discourse of international human rights law (IHRL).

According to Judith Butler (2006), human rights discourse constructs “the conditions of intelligibility by which the human emerges, by which the human is recognized [...], without which we cannot think the human at all” (p. 183). These conditions of intelligibility are shaped by structures of power – including classism, racism, sexism, ableism, adultism and cis-heteronormativity – that reproduce the idea of ‘normal’ humanity.

The norms and practices of IHRL profoundly influence the category of ‘human’, by excluding those who do not align with abstract and normative ideals of normality and dignity (Rajah, 2018). Indeed, as Butler (2004) reminds us, not all lives are equally recognised as *grievable* or worthy of protection and rights; for instance, trans* and non-normative subjects have historically been excluded from full human recognition (Juang, 2006). This is the reason why it is crucial to stress that all persons, bodies and subjectivities – regardless of their departures from dominant norms - must be able to enjoy the same rights associated with being recognised as human.

¹ These three documents are known as the International Bill of Human Rights. For further information, refer to the United Nations website: <https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights>.

² And other characteristics associated with social privilege/normativity.

Against this background, this study aims to examine and understand the current interpretation of children's rights from a gender and sexuality perspective, adopting the standpoint of gender and sexual minorities, including women as a political minority.

After outlining the article selection process, this scoping review explores how gender and sexuality intersect with broader human and children's rights frameworks, shaping discourses on childhood and informing professional practices that engage with diverse bodies and subjectivities.

Method

The present literature review adopts a broader exploratory perspective, therefore using the scoping review methodology (Arksey & O'Malley, 2005) as it is suitable for focusing on issues that have been little investigated in the literature, which are the subject of the review. Nevertheless, a more systematic methodology is employed in the selection of articles, with the PRISMA 2020 guidelines being followed (Page et al., 2021).

The search was limited to peer-reviewed studies; however, due to the limited number of studies on the topics of interest, no restrictions were applied concerning the language or the year of publication to maximise the breadth of the results. The following databases were utilised for the search: The Education Collection, which encompasses the ERIC and Education Databases and Education Research Complete from EBSCO and Scopus.

The keywords used refer to the following main concepts: the United Nations Convention on the Rights of the Child (UNCRC), children's rights, gender, queer³, and LGBTQIA+⁴. After testing various keyword combinations and identifying the keywords pertinent to the research question, it was determined that the full-text search frequently returned content irrelevant to the review question. Consequently, the keyword search was limited to abstracts only. The search string was constructed using Boolean operators and by entering a range of terms capable of representing the complexity of the gender and sexuality universe: abstract ("child* rights" OR "rights of children" OR "the rights of the child") OR abstract (UNCRC OR "United Nations Convention on the Rights of Child") AND abstract (gender) OR abstract (queer) OR abstract (LGBT* OR 2SLGBTQIA+ OR lesbian OR gay OR homosexual OR bisexual OR "sexual minority") OR abstract (transgender OR transsexual OR transexual OR "gender variant" OR "gender non-conforming" OR "gender-queer") OR abstract

³ In this paper, I will use the word "queer" as synonym of LGBTQIA+ or to refer to a specific subjectivity that challenge gender binarism.

⁴ This acronym refers to gay, lesbian, bisexual, trans*, queer, intersex, asexual subjectivities. The "+" is useful to "point out how the list can continue with other expressions of gender and sexuality (gender fluid, gender queer, gender creative, non-binary, pansexual, demisexual, etc.)" (Bernini, 2021, p. 2).

(intersex OR intersexuality OR intersexual OR DSD OR “disorder of sex development” OR VSC OR “variations of sex characteristics”).

Eligibility criteria

To identify articles pertinent to the review’s objective, centred on the issues of interest, a series of inclusion criteria were established: 1) The article examines the rights of children and adolescents, including the UNCRC, from the perspectives of gender and sexuality; 2) The article reflects on theories and practices concerning children, linking the dimensions of gender and sexuality to those of rights; 3) The article considers how children’s rights can be reconsidered and reinterpreted from these perspectives.

The following exclusion criteria were identified: (1) The article reflects on issues not directly related to children’s rights or the UNCRC but rather introduces a broader range of topics; (2) The issues of interest are addressed in a limited manner within the paper.

Study selection

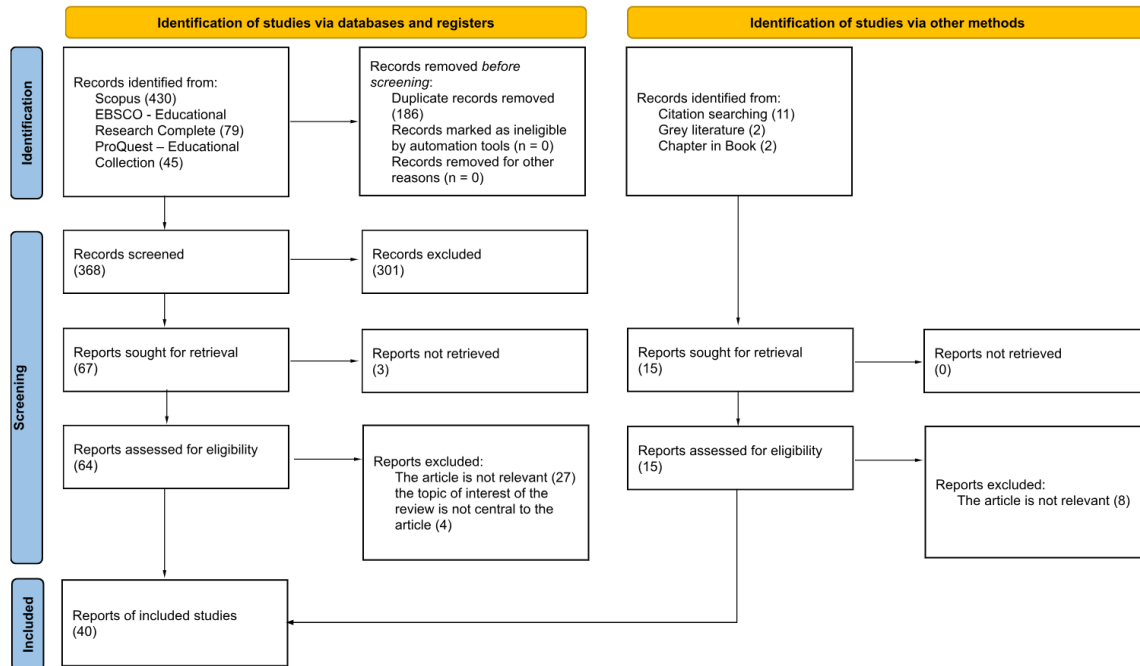
The papers reviewed are from the period preceding the last database consultation on 23 April 2024.

As illustrated in the flow chart (Fig. 1), the articles retrieved from the databases were 430 on Scopus, 79 on EBSCO (Education Research Complete), and 45 on ProQuest (Educational Collection). Following the removal of duplicates, the number of remaining articles was 369. The initial selection phase entailed an analysis of the title and abstract. The initial selection reduced the eligible articles to 67, of which three were not located.

The second stage entailed a comprehensive analysis of the remaining studies’ full texts, which led to the selection of 33 articles. Given the complexity of the review topic and the limited number of relevant articles, the bibliographies of the selected studies were analysed, and 11 articles were identified as potentially eligible for inclusion in the review based on their titles. The same selection process was then applied to the articles identified in the bibliographies, including three additional studies.

Furthermore, grey literature, particularly Google Scholar, was consulted. However, most of the studies identified were deemed irrelevant to the review’s subject matter. Many of the eligible studies were already present in the databases. Consequently, only two additional articles were included in the review. Finally, two additional articles found in a book but not in the databases were selected, giving 40 articles.

Figure 1. Flow diagram (Page et al. 2021)



Research bias

One of the research biases concerns the difficulty of selecting studies for inclusion in the review. First, my position as a queer person may have influenced my interpretation of the scientific texts (Korteling & Toet, 2021); second, the topic of interest is rarely addressed as a primary concern in the articles in the literature, with many of them dedicating a section or a portion of their discussion to the dimensions of gender and sexuality, but not focusing their analysis on these issues. By following the eligibility criteria and thus discarding articles in which the issues of interest were marginal, relevant data and information may have been lost. However, without these preliminary screening operations, it would not have been possible to have an acceptable number of texts to carry out a literature review.

Study characteristics

This literature review shows that the issues are mainly explored through theoretical reflection (87.5%), with less empirical research (12.5%). The selected studies (see Tab. 1) mostly fall within the broad disciplinary field of gender studies, queer theories, and children's rights studies. Despite this, some specificities exist in the disciplinary scope of the studies and those who conducted them. These include education, international human rights law, psychology, sociology, political science, cultural studies, bioethics, and medicine. This gives the present research an interdisciplinary, if not transdisciplinary, character (Marzocca, 2014).

Results

The summary table (tab. 1) highlights the complexity and richness of the findings of this review. Interestingly, most of the studies are written in English (90%), while only two are in Italian, two in Spanish. This fact highlights the international character of most of the selected contributions, although a significant portion (40%) concerns reflections linked to specific geographical contexts, which nevertheless raise relevant considerations for the international community. The table also shows the main themes dealt with in the various studies. Starting from these, this contribution will be organised into an analysis of the emerging issues and will be structured as follows: 1) the construction of childhood: universality and innocence; 2) children's rights and women's rights; 3) childhood, gender, and sexuality; 4) children's rights and bodies; 5) education.

Table 1. Overview of the selected paper

Reference	Subject Area	Study Design	Country - Setting Analysis Context	Language
Ammaturo (2016)	Law	Theoretical	International	English
Ammaturo (2019)	Law	Theoretical	International	English
Ammaturo & Moscati (2021)	Law	Theoretical	International	English
Bhana (2007)	Education	Qualitative ethnography	South Africa	English
Burman (2008)	Interdisciplinary	Theoretical	International	English
Carpenter (2023)	Bioethics	Theoretical	Australia	English
Cornu (2016)	Education	Theoretical	International	English

De Graeve (2015)	Interdisciplinary	Theoretical	International	English
De Souza et al. (2022)	Interdisciplinary	Theoretical	Brazil	English
DeLeat (2012)	Law	Theoretical	US	English
Fathalla (2000)	Obstetrics	Theoretical	International	English
Fraser (2016)	Law	Theoretical	US	English
French (2001)	Law	Theoretical	International	English
Frödén & Quennerstedt (2020)	Interdisciplinary	Theoretical	International	English
Gauché Marchetti & Lovera Parmo (2019)	Law	Theoretical	Cile	Spanish
Gillett-Swan & Van Leent (2019)	Education	Theoretical	International	English
Biemmi (2020)	Education	Theoretical	International	Italian
Isailovic (2017)	Law	Theoretical	International	English
Jones (2017)	Law	Theoretical	International	English
Joosten (2024)	Law	Theoretical	International	English
Josenhansa et al. (2020)	Interdisciplinary	Theoretical	International	English
Kakuru (2007)	Education	Qualitative ethnography	Uganda	English
Kon (2015)	Bioethics	Theoretical	International	English
Lehr (2005)	Law	Theoretical	US	English
León Ortiz (2020)	Law	Theoretical	Mexico	Spanish
Leonelli (2020)	Education	Theoretical	Italy	Italian
Linde (2019)	Political Science	Theoretical	International	English
Lorenzetti (2022)	Law	Theoretical	Italy	English
Maunsell et al. (2023)	Education	Theoretical	Ireland	English
Mills & Thompson (2020)	Law	Theoretical	International	English
Paakkanen (2019)	Law	Theoretical	International	English
Pechter (2021)	Interdisciplinary	Theoretical	International	English
Sandberg (2015)	Law	Theoretical	International	English
Schneider (2013)	Psychology	Theoretical	International	English
Sørli (2015)	Law	Qualitative - interviews and case study	Norway	English
Sreenivas (2010)	Cultural studies	Theoretical	India	English

Taefi (2009)	Law	Theoretical	International	English
Tetteh (2011)	Sociology	Mixed method	Ghana	English
Webb (2019)	Education	Qualitative ethnography	UK	English

The construction of childhood: Universality and innocence

The first issue that arises from the analysis of the studies pertains to the process of constructing childhood within the international discourses surrounding it. Two interrelated constructs emerge that position this age group within a specific framework.

Despite the UNCRC's stated aim to recognise universal rights and address the specific needs of all individuals under 18 – recognising their active role as subjects and participants in decision-making processes that affect them, acknowledging instances of abuse, exploitation, and neglect, and proposing concrete and indeed universal solutions through the governance of various states – its implementation has often been guided by a hegemonical understanding of childhood.

As pointed out by Robyn Linde (2019), “the child was treated as *if it were* universal through the language in the CRC and the child rights governance regimes that emerged in response to its ratification” (p. 730).

In this view, childhood has been portrayed as defined by ‘universal’ conditions that are “generally implicated in abstract, internationalist notions of child rights and remain disengaged from the historical contexts that shape children’s lives” (Sreenivas, 2010, p. 268).

The construction of ‘universal childhood’ or ‘universal child’ (Ammaturo & Moscati, 2021; De Graeve, 2015; De Souza et al., 2022; Linde, 2019; Sreenivas, 2010), therefore, “transcends race, gender, nationality, ethnicity, culture and wealth” (Linde, 2019, p. 729), thus obscuring other forms of discrimination and disadvantage (aside from age). This conception of childhood, rather than encompassing the multiplicity of children’s lived experiences across diverse contexts, operates through a normative and regulatory idea of what a child is. In doing so, it reiterates and legitimises broader power structures – classism, racism, sexism, ableism, and cis-heteronormativity – that sustain hierarchical orders of value and belonging. Consequently, childhood becomes a monolithic and universalised construct that erases plurality, collapsing heterogeneous childhoods into a singular, idealised imaginary aligned with dominant social norms.

Closely related to the previous one, the second construct that emerges from several studies included in the review (Ammaturo, 2019; Ammaturo & Foscati, 2021; Bhana, 2007; Bourke et al., 2022; Burman, 2008; De Graeve, 2015; De Souza et al., 2022; Gillett-Swan & Van Leent, 2019;

Joosten, 2024; Linde, 2019; Maunsell et al., 2023; Sreenivas, 2010) is that of ‘childhood innocence’. These studies draw on a shared theoretical framework to conceptualise this notion as a socially and historically constructed discourse. Foundational contributions, such as those by Jenny Kitzinger (1989), Diana Gittins (1998), Kerry Robinson (2008; 2013) and Michael Wyness (2015), are used to reconstruct and challenge the idea of innocence as a mechanism that creates and maintains the distinction between childhood and adulthood.

Within this framework, childhood is framed as a condition of cognitive immaturity and moral purity that must be preserved through ignorance of sexuality. The ensuing *moral panic* (Robinson, 2008, 2013) emerges from the cultural construction of sexuality as inherently corrupting and dangerous to children’s presumed innocence. This panic legitimises adult authority over their access to information, particularly concerning bodies, genders, and sexual expressions.

In addition, this ideology also has deeply ambivalent effects. While it appears to be a discourse of care and protection, it actually reduces childhood to a passive object of control and pity (Kitzinger, 1989). Within this framework, only those perceived as completely ‘innocent’ – young, asexual, and without desire or agency – are recognised as legitimate victims. Older children, adolescents, or those who are aware of their own bodies or sexuality are often excluded from the victim paradigm or even held partially responsible for the violence they experience.

Building on this theoretical understanding, Gillett-Swan and Van Leent (2019) apply the concept of innocence to analyse its operation within contemporary educational and rights discourses. They argue that underage people embody an innate purity, which is preserved through their ignorance of concepts such as sex, gender and sexuality (including sexual orientation and gender identity/expression).

This myth of innocence not only defines childhood as a desexualised period (Linde, 2019; Joosten, 2024) but also justifies increased intervention and protection by adults, who shield children from information about sexual and gender diversity in the name of safeguarding. As will be further explored below, such a perspective restricts sexuality education interventions, leading to serious consequences, particularly in contexts significantly impacted by HIV/AIDS (Bhana, 2007).

Moreover, “hinders children’s ability to create, foster and nurture sexual expression and gender identity apart from [cis]heteronormative expectations” (Linde, 2019, p. 732). In this sense, the innocence of childhood becomes a tool to direct children towards a future that conforms to binary gender expectations and heterosexuality as the norm (Ammaturo, 2019; De Souza et al., 2022).

Children's rights and women's rights

The primary issue arising from the literature analysis concerns the relationship between women's and children's rights. Erica Burman (2008) has set out to explore these complex relationships. The author criticises existing models that treat women and children as a single entity ('womenandchildren') or pit them against each other ('women vs children'). Burman argues that these models are both conceptually and practically inappropriate. The 'womenandchildren' approach tends to infantilise women and deprive both them and underage people of agency, treating them as victims in need of protection and supporting the notion of the girl/boy as a not-yet-woman/man (Burman 2008).

On the other hand, the 'women vs. children' model conflates the rights of these two categories of people without adequately considering the interactions and tensions between these groups. Burman suggests moving beyond these paradigms and asking, "*which woman?*" and "*which children?*" (Burman, 2008, p. 187) to recognise the specificities and differences of each woman or child. The author refers to the theoretical framework of intersectionality (Crenshaw, 1989), also deployed in other studies included in this review (Ammaturo, 2019; Ammaturo & Moscati, 2021; De Graeve, 2019; De Souza et al., 2022; Frödén & Quennerstedt, 2020; Josenhans et al., 2020; Taefi, 2009).

Intersectionality allows for "an understanding of childhood as plural, depending on the positioning of a child on different and interrelated axes of social stratification" (De Graeve, 2019, p. 148) and is useful for addressing "social inequality and injustice [which] are seldom caused by one single factor but by interactions between various categories of difference" (Frödén and Quennerstedt, 2020, p. 146). Nura Taefi (2009) argues that intersectional analysis is essential to understand the unique marginalisation of girls, who face dual oppression as children and women. Ignoring adult (age-based) and male (gender-based) dominance undermines critical analysis of this oppression. Moreover, adopting an intersectional perspective would facilitate the recognition that

children are not only persons under the age of 18. They are girls and boys with a wide range of different nationalities, living in disparate social circumstances, differing in bodily (dis-)abilities and sexual orientations, which inescapably affect children's experiences of various levels of human rights transgressions (Frödén & Quennerstedt, 2020, p. 147).

Other research also examines the relationship between women's and children's rights. Rather than adopting an intersectional framework, these studies are grounded in gender studies approaches, focusing specifically on issues concerning women and girls. For example, studies by

Joan French (2001) and Irene Biemmi (2020) aim to eliminate gender discrimination from childhood onwards. Promoting women's rights is recognised as crucial not only for their well-being but also as a strategic lever to improve the status of children. Mohamed Mahmoud Fahmy Fathalla's (2000) study highlights critical health and social issues affecting girls in the Global South, noting gender-based differences and the importance of closely observing specific socio-cultural contexts.

Finally, it's crucial to move away from the equation of *gender* = *woman*, which may obscure the discrimination against both sexual minorities and boys. While discussions on sexual exploitation often focus on girls, boys are also vulnerable yet overlooked in policies and research due to gender norms that ignore their experiences of violence (Josenhansa et al., 2020).

Childhood, gender, and sexuality

To frame the complex relationship between childhood, gender, and sexuality, it is essential to start from the international legal level. Studies by Sara Frödén and Ann Quennerstedt (2020) and Frederique Joosten (2024) indicate this direction. The former seeks to demonstrate the interconnectedness of gender and age within the UNCRC and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (UN, 1979). The latter provides an interpretation of the UNCRC through the lens of queer theories. Their work highlights that, in the UNCRC, the primary status of rights holders consists of individuals under 18. This has led to an age-only approach that risks overlooking other situations of injustice and subordination (Frödén and Quennerstedt, 2020) and standardising all childhoods. Indeed, as Frödén and Quennerstedt (2020) and Joosten (2024) state, there are no explicit references to the gender dimension within the Convention. The text attempts to adopt a gender-neutral stance by using the terms 'his' and 'her', but this choice excludes non-binary subjectivities (Frödén and Quennerstedt, 2020; Joosten, 2024). While the gender dimension is not explicitly addressed in the text of the UNCRC, numerous references to gender appear in the 27 General Comments (UN 2001-2024) and implementation support (UNICEF 2003, 2007, 2009). Although more attention is given to the specific experiences of girls than boys, and a binary logic of gender persists (Joosten 2024), gender is becoming a "central dimension to be considered in understanding children's human rights and encompasses a range of rights issues that are gendered" (Frödén & Quennerstedt 2020, p. 149).

The situation regarding sexual identity is different. As Joosten (2024) points out, there are no references to this aspect in the text of the UNCRC. The only provisions of the Convention that address the sexual dimension are Articles 19 and 34, which focus on protection from abuse. Thus, the UNCRC identifies sexuality in a "negative light" (p. 218) and exclusively within a 'protectionist'

framework. To remedy this shortcoming, the UN Committee on the Rights of the Child has begun to include sexual orientation and gender identity as grounds for discrimination, as seen in General Comments 2, 3, 20, and 25 (UN Committee on the Rights of the Child 2002; 2003; 2011; 2016). In particular, General Comment 20 of 2016, which covers the implementation of children's rights during adolescence (UN Committee on the Rights of the Child 2016), emphasises the significance of sexual awareness and the exploration of sexuality. It addresses the persecution faced by LGBTQIA+ children. In a passage cited by Joosten (2024), "the Committee 'emphasises the rights of all adolescents to freedom of expression and respect for their physical and psychological integrity, gender identity and emerging autonomy,' and urges states to ban conversion therapies or invasive treatments" (Joosten, 2024, p. 219). The author underscores the importance of these developments in interpreting the CRC but notes that the space allocated for LGBTQIA+ issues is too limited and pertains solely to adolescents. This leads to a failure to recognise the existence of younger LGBTQIA+ people and, in fact, to 'asexualise' them.

In relation to CEDAW, the subjects addressed in the Convention primarily concern adult women, who are granted equality with adult men. Girls and young women are mentioned only in a few articles, and it is only since 2010 that there has been an increased focus on their specific circumstances in the interpretative guidelines (Frödén & Quennerstedt, 2020). Although the situation has improved, the pertinent issues harken back to a narrative of victimisation and vulnerability of women and girls that is often ascribed to non-Western cultures (Joosten, 2024).

When considering the gender and sexuality issues that arise in the analyses of the UNCRC, it is essential to note that the entire text of the Convention is characterised by the tension between "care and liberation" (Joosten, 2024, p. 220). This coexistence implies, on one hand, the denial of children's self-determination, as they are deemed not mature enough to make significant decisions, and on the other hand, an attempt to counter excessive paternalism by allowing a space for the child's voice and participation. This is particularly pertinent regarding gender and sexuality rights because, within the UNCRC, a protectionist logic prevails, which considers children as vulnerable and restricts their sexual agency (Ammaturo, 2019; Bhana, 2007; De Souza et al., 2022; Joosten, 2024; Lehr, 2005; Linde, 2019). This term refers to "the ability to consent, to express a sexual and gender identity, and to engage in sex" (Linde, 2019, p. 724). The UNCRC acknowledges children's right to actively participate in decisions affecting them, but ignores the dimension of gender and sexuality. This exclusion stems from the need to protect underage persons as much as possible from sexual abuse and violence. In Article 34 of the UNCRC, subsections 'a' and 'b' articulate protection from the risk of being *induced or coerced into engaging in unlawful sexual activities and exploitation*. Linde (2019) reconstructs the debate among nations that led to the choice of the phrase 'illegal sexual activities'. This wording "seems to suggest that the drafters concluded that lawful sex was possible and that sex involving children could be something other than exploitative

or abusive” (Linde, 2019, p. 728). This space of openness must be safeguarded, as it risks becoming a breeding ground for abusers. Still, it also shifts the focus of the debate concerning the age of consent and opens the possibility of recognising the gender identity and sexuality dimension of underage persons and their sexual agency.

Another problematic issue that emerges from this review is the strong binary and heteronormative imprint present in conventions, which limits the recognition of children’s gender and sexual identities beyond the assumption of naturally heterosexual males or females. This normative system also influences professional practices, re-producing restrictive and oppressive understandings of genders and sexualities. In this sense, the significant study by Kristen Sandberg (2015), alongside the other selected studies, allows us to outline the possibility of recognising the existence of LGBTQIA+ children and their rights.

The issues relevant to this group pertained specifically to the right to non-discrimination (Article 2), privacy (Article 16), health (Article 24), and identity (Article 8). The latter closely relates to the right to self-determination (Ammaturo & Moscati, 2021; DeLeat, 2012; Gauché Marchetti & Lovera Parno, 2019; Joosten, 2024; Schneider, 2013; Sørli, 2015; Isailovic, 2017; León Ortiz, 2021), which, for non-heterosexual children, entails “the right not to have a mainstream sexual orientation [- heterosexuality -] imposed on you and to have the freedom to decide who you want to be with and to be open about your orientation” (Sandberg, 2015, p. 338). Regarding trans⁵ and intersex⁶ children, “the issue concerns self-determination in relation to one’s gender identity, this may or may not include access to medical treatment” (Sandberg, 2015).

In line with Sandberg, the analysis proposed by Ivana Isailovic (2017) focuses on the *best interests principle* (Article 3), the right to education (Article 29) and the right to participation (Article 12). The author notes that the *best interests principle* is central to the UNCRC, as it stipulates that any decision affecting a child must be made with the primary consideration of what is best for the child. Nevertheless, its vagueness could be problematic, particularly concerning gender and sexuality: “While it can be used to promote LGBTI children’s and adults’ rights, it may also have the opposite effect and be used to impede rights of [queer children] and their families” (p. 193). The UNCRC suggests that the best can be “determined from an external perspective” (Josteen, 2024, p. 221), and this, as shown above, risks constructing childhood within cis-heteronormative categorisations.

Furthermore, as Carrie Peacher (2021) notes, conflicting decisions are being made about intersex and trans* people based on *best interests*. The former are given early medical

⁵ The word trans* is used as an umbrella term to include all people who do not identify with the sex assigned to them at birth, who have begun or completed a process of gender affirmation, or who identify outside the gender binary (non-binary people).

⁶ Intersex refers to a person whose sexual characteristics do not fit the binary norms of sex because they have Variations in Sex Characteristics (VSC).

interventions and hormones without their consent (see next section), while trans* people are denied the same practices necessary for self-determination.

With regard to Article 12 on the right to participation, Isailovic (2017), as well as Francesca Romana Ammaturo and Maria Federica Moscati (2021), emphasise its inadequacies in addressing the lived realities of LGBTQIA+, trans*, and non-binary children. Isailovic (2017) contends that the prevailing procedural interpretation falls short of safeguarding intersex children from non-consensual medical interventions. In contrast, Ammaturo and Moscati (2021) put forward a proposition to transcend the status quo of passive participation, advocating for a shift towards ‘protagimismo infantil’⁷, a concept that emphasises the importance of listening and validating

children’s voices on these issues need to be brought infrom the margins to the centre in order to fully empower trans and non-binary children, and to make the law a frontier. Protagonismo infantil indicates processes whereby children actively produce knowledge and take a leading role in decision-making (p. 147).

Both perspectives demand a substantial reinterpretation of participation that places (LGBTQIA+) children’s autonomy, voice, and self-determination at the core of human rights law. In this sense, the study proposed by Anniken Sørli (2015) is extremely interesting in that it seeks the views of trans* children through qualitative methods, narrating their life experiences and their processes of gender affirmation, especially in relation to legal gender.

Concerning the right to education, limitations and inadequacies in education that fail to take the experiences of LGBTQIA+ people into account are noted (see the last section below).

Children’s rights and bodies

The findings of the selected studies indicate that the bodies of people under the age of 18 are subjected to gender coding from the moment their sex can be determined (Frödén & Quennerstedt, 2020). This process involves the establishment of a legal gender, which risks limiting self-determination, particularly for trans* children, by confining their bodies and subjectivities within a binary system (Sørli, 2015). Furthermore, the literature reveals differential treatment of bodies based on whether they are assigned male or female gender or present intersex characteristics.

United Nations and research on children’s rights recognise female genital mutilation (FGM), or female genital cutting (FGC), as a major concern regarding gender rights (De Graeve, 2015; DeLeat,

⁷ Children’s protagonism.

2012; Fathalla, 2000; Fraser, 2016; Frödén & Quennerstedt, 2020; Taefi, 2009). Female genital mutilation (FGM) is defined as “traditional practices that involve disfiguring or removing part, some parts, or the whole of the particularly sensitive area of female genitalia” (Jones, 2017, p. 398). The United Nations has emphasised that girls and women who undergo FGM suffer significant psychological and physical trauma (Fathalla, 2000; Frödén & Quennerstedt, 2020). Consequently, they have strongly condemned the practice.

While this approach to FGM is important in addressing non-consensual practices affecting female bodies – often compromise sexual health – it has been criticised as a “condescending and paternalistic form of neocolonialism that does not take the importance of culture into account” (DeLeat, 2012, p. 568) (see also Ammaturo, 2016). Furthermore, an analysis of the literature uncovers a double standard that distinguishes the perception of FGM from that of male genital mutilation and practices involving intersex bodies. Eeva Katariina Paakkanen (2019) analyses the differing applications of human rights to male circumcision and female genital mutilation (FGM). The author examines the justifications for the distinction between male circumcision and FGM, affirming that it is commonly argued that FGM is more harmful. She affirms that this distinction overlooks the fact that less severe forms of FGM are similar to male circumcision. Furthermore, male circumcision is justified on cultural and religious grounds, whereas FGM is perceived as entirely oppressive.

Based on this analysis, Paakkanen (2019) states that these differences reflect gendered and heteronormative power structures within Western cultural norms that construct men as social actors and women as victims requiring protection, rather than being based on an objective evaluation of the severity of the procedures.

Another example of genital mutilation is Intersex Genital Mutilation (IGM) (Jones, 2017), also referred to as normalisation surgeries (Ammaturo, 2016; Carpenter, 2023; Fraser, 2016; Lorenzetti, 2022; Kon, 2015; Mills & Thompson, 2020; Schneider, 2013). Performed on newborns with variations of biological sex (VDS), these procedures ‘normalise’ the appearance of their genitalia to align with the sex assigned to them at birth. Furthermore, intersex individuals may spend years undergoing hormone therapy after the intervention. These practices are frequently undertaken without valid medical justification and have been demonstrated to harm the health of those subjected to them. IGM is purely aesthetic, as intersex conditions can only be altered in terms of the appearance of the internal and external genitalia, but not, for instance, chromosomes (Lorenzetti, 2022). These practices are coercive medical practices (Ammaturo, 2016) and represent a form of epistemic injustice, as biomedical authorities have continued to implement harmful medical practices against intersex people despite evidence and calls for reform (Carpenter, 2023).

The differing standards for assessing various types of genital mutilation are not grounded in medical factors but instead arise from the binary and heteronormative structure of our society

(Ammaturo, 2016; Fraser, 2016; Lorenzetti, 2022; Mills & Thompson, 2020; Paakkanen, 2019; Schneider, 2013). This structure creates an asymmetry between the two sexes/genders it recognises, conceptualising them in terms of mutual attraction. Furthermore, intersex individuals are rendered invisible through interventions that force them into a binary and heteronormative logic, which demands a sufficiently long penis or a sufficiently wide vagina to allow for future heterosexual intercourse (Fraser, 2016).

Mills and Thompson (2020) point out that “Article 5 of the CRC [...] obliges Member States to provide appropriate direction and guidance that will enable parents to make the best possible decisions on behalf of their children” (Mills and Thompson, 2020, p. 566). To do this, it is important to “create a society that appreciates the complexities of being born intersexed” (*Ibid.*) and considers their bodies “as a normal variance of human beings” (Lorenzetti, 2022, p. 120). The authors agree that intersex children must be protected from unnecessary medical interventions carried out before the child has had the opportunity to express their opinion (Ammaturo, 2016; Fraser, 2016; Lorenzetti, 2022; Mills & Thompson, 2020; Paakkanen, 2019; Schneider, 2013).

The findings highlight that to respect the rights of intersex children, alongside those of boys and girls, it is vital to apply the best interest principle and the right to be heard, as well as to participate in upholding their right to bodily integrity (Ammaturo, 2016; Fraser, 2016; Paakkanen, 2019; Peachter, 2021; Sandberg, 2015; Schneider, 2013), and the right to genital autonomy (DeLaet, 2012; Fraser, 2016). Such rights suggest the need to reduce the decision-making power of medicine and parents, recognising that *children's best interest* lies in the possibility of self-determination and autonomous choice regarding their bodies, guaranteeing them the “right to an open future” (Kon, 2015, p. 340).

Education

The right to education, as outlined in the CRC (Arts. 28 and 29), along with educational practices in general, emerges from the literature as pivotal to the realisation of the gender and sexuality rights of underage persons. They contribute to the empowerment of these individuals, enabling them to exercise the rights enshrined in the Convention, particularly the right to self-determination, participation, and protection (Gillet-Swan & Van Leent, 2019; Maunsell et al., 2023).

First, the work of Frödén and Quennerstedt (2020) is pertinent because they report, based on UN reports (UN, 1986-2018; UNICEF, 2007) and other research, that - in some parts of the world - girls have less access to education and tend to attend lower-quality schools than boys and poor

families tend to invest more in boys' education. Additionally, girls are frequently compelled into domestic work under conditions akin to slavery and at risk of abuse (Tetteh, 2011), which diminishes the time available for learning and often leads to dropping out of school due to early marriage and pregnancy, thereby perpetuating female poverty. In contrast, boys enjoy better educational opportunities but are frequently obliged to leave school for work, exposing them to various dangers such as working on farms, in factories, begging, or being recruited as child soldiers (Frödén & Quennerstedt, 2020). Lastly, corporal punishment – even if it is not admitted all over the world – in schools tends to be more prevalent and severe for boys.

Isailovic (2017) emphasises that Article 29 does not adequately protect LGBTQIA+ children within education systems. These systems prove incapable of combating discrimination and bullying and often offer discriminatory school curricula that compromise children's right to a quality education. This limitation is further reflected in the lack of sexuality education in schools that recognise young children as competent on issues of gender and sexuality.

This absence not only perpetuates the myth of childhood innocence and asexuality but also limits the ability to inform and prevent sexually transmitted diseases such as HIV/AIDS (Bhana, 2007; Kakuru, 2007). Bhana's (2007) ethnographic research shows that even primary school children are aware of sex and HIV/AIDS and emphasises the need to train teachers to address these issues appropriately in the classroom to "moving away from the preservation of sexual innocence and broadening the scope of young children's knowledge of HIV and AIDS, their vulnerability and their sexual and health rights" (Bhana, 2007, p. 322).

Second, the analysis reveals the significance of schools in adopting policies and practices that move beyond a neutral approach to issues of gender and sexuality. This neutrality perpetuates binary and heteronormative norms that restrict authentic self-expression in children (Bhana, 2007; Webb, 2019) while maintaining the idea of childhood innocence. As noted by Gillet-Swan and Van Leent (2019), sex education begins at home in early childhood and extends into formal educational environments. A lack of intentionality and the 'neutral' setting of sex education merely reinforces the cis-heteronormative order. Therefore, there is a strong emphasis on the necessity for sex education that subverts such constraints.

Schools are also regarded as the first line of defence against the bullying of LGBTQIA+ subjectivities. This phenomenon, which is extremely prevalent in many countries worldwide, significantly impacts the psychological and physical health of those who endure it. Negative consequences include increased truancy, school dropouts, and a decline in performance quality (Cornu, 2016).

Several proposals emerge from the literature to build a school environment that respects these rights for all bodies and subjectivities from a gender and sexuality perspective. Silvia Leonelli suggests establishing an "integrated educational system that is gender-sensitive" (Leonelli, 2020,

p. 109), which would form a network among the various actors with educational roles concerning children. Cornu (2016) emphasises the need for training school professionals and developing curricula that incorporate gender and sexuality issues.

Another relevant proposal that integrates the previous ones within a rights-based framework is Comprehensive Sexuality Education (CSE). UNESCO (2018) defines CSE in its guidelines as a “curriculum-based process of teaching and learning about the cognitive, emotional, physical and social aspects of sexuality, delivered in a manner that is scientifically accurate, incremental, age- and developmentally appropriate” (Bouke et al., 2022, pp. 273-274). This is grounded in the intersection of four elements:

an underlying principle that youth [, including children,] have sexual rights; an expansion of programmatic goals beyond reducing unintended pregnancy and sti; the broadening of curricula to include issues of gender norms, sexual orientation, sexual expression and pleasure, violence, and individual rights and responsibilities in relationships; and a participatory teaching strategy that engages youth in critical thinking about their sexuality and sexual choices (Bouke et al., 2022, pp. 273-274).

Findings show that CSE is not only considered a right in itself (Maunsell et al., 2023) but also supports the right to education and sexual health, as well as promoting children’s well-being, protection, participation, agency, identity and equality (Bourke et al., 2022; Gillet-Swan & Van Leent, 2019; Isailovic, 2017; Maunsell et al., 2023).

Conclusion

The present scoping review of the literature shows that the UNCRC (1989), despite its limitations in language and explicit acknowledgement of gender and sexuality dimensions, serves as a significant starting point for recognising the rights related to gender and sexuality for young people of all ages (Frödén & Quennerstedt, 2020; Joosten, 2024; Sandberg, 2015). However, the successful implementation of these references depends on the ability of states to integrate them into their legislation and practices, thus aligning them with the established norms of international legal discourse and ensuring their practical application *in reality* (Sørle, 2015). Before legal discourse, education serves as a pivotal foundation for fostering cultural transformation, ensuring that rights are guaranteed more equitably and inclusively (Bourke et al., 2022; Gillet-Swan & Van Leent, 2019; Maunsell et al., 2023).

There is a significant lack of consideration for the perspectives of people under 18, particularly queer children, regarding how they experience and perceive their rights related to gender and sexuality (Bhana, 2007; Sørli, 2015). The absence of such perspectives not only limits understanding of the issue but also impedes the development of genuinely inclusive policies.

In this context, it is essential to promote research avenues that centre on the experiences and perspectives of children, especially those on the margins, such as queer children and adolescents. Indeed, starting from the margins allows for the exploration of new possibilities for understanding and interpreting human existence, thereby expanding the concept of humanity (Rajah, 2018). According to Butler (2004):

To assert sexual rights, then, takes on a specific meaning against this background. It means, for instance, that when we struggle for rights, we are not simply struggling for rights that attach to my person, but we are struggling to be conceived as persons. And there is a difference between the former and the latter. If we are struggling for rights that attach, or should attach, to my personhood, then we assume that personhood as already constituted. But if we are struggling not only to be conceived as persons, but to create a social transformation of the very meaning of personhood, then the assertion of rights becomes a way of intervening into the social and political process by which the human is articulated (Butler, 2004, pp. 32-33).

This review highlights the significance of expanding the discourse surrounding the relationship between gender, sexuality, and children's rights by embracing the complexities and contradictions that arise. It aims to deconstruct the universal and innocent notion of childhood, challenge cis-heteronormativity, and foster environments, societies, and communities where rights are not merely privileges for the few but a heritage belonging to all.

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