

## **Submission on *Gender Recognition Act 2015***

from Jillian van Turnhout, former Senator, children's rights advocate

My submission is in relation to the following

- a) Arrangements for children aged 16 to 17 years;
- b) Arrangements for children aged under 16 years; and
- d) Arrangement for intersex people (with regard to children)

As a children's rights advocate, I am profoundly disappointed that children under the age of 16, and given the onerousness of the process for 16-18 year olds we can say in effect ALL children, have been excluded from the provisions of the *Gender Recognition Act 2015*, which enables a person to apply for formal legal recognition of their preferred gender.

I believe Article 42A, titled "Children", in the Constitution makes it incumbent on the Oireachtas, in any legislation directly impacting the lives of children, to ensure the best interests of the child are the paramount consideration; the views of the child are heard when key decisions are made about their lives; and the evolving capacity of the child is facilitated.

Gender recognition is an established human right to which children, as individual rights holders (Article 42A(1) of the Constitution), should be entitled. The Yogyakarta Principles (2006), which consolidated international human rights law, treaties and standards relating to sexual orientation and gender identity, is widely accepted as the authoritative legal statement and fully supported by Ireland at the International for a, defines gender identity as "each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth". Principle 3 goes on to say: "Each person's self-defined sexual orientation or gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom."

The voices, opinions and lived realities of trans children were deafeningly silent throughout the legislative process. I do not know of a single trans youth who was consulted by Government but through my role as then Senator I heard directly from many young people and their families about how significant a mechanism through which their preferred gender could be formally recognised in their childhood would be to them practically but also in terms of their mental and emotional well-being.

It is fundamentally wrong that the Act does not provide a mechanism for legal recognition, even on an interim basis, of gender for trans children under 16 who seek it, where there is parental consent, support of the child's GP and agreement that this is in the best interests of the child. I tabled an amendment seeking such a compromise, an Interim Gender Recognition Certificate, at Report Stage of the Bill in the Seanad.

It is important to stress that an Interim Gender Recognition Certificate for children is completely distinct and has no bearing on any decision that might be taken by a trans person to pursue medical intervention, such as hormone replacement therapy or to undergo gender reassignment surgery at a later stage in their lives. I do not support or advocate surgery on any child and I have not heard anyone advocating for children to do so.

I sincerely hope the Review Group is prepared to deal with the question of trans children. We have this opportunity to make a massively positive impact on the lives of trans children in Ireland and to ensure, unlike too often in the past, that we are not compounding and ignoring the needs of our most vulnerable citizens.

An Interim Gender Recognition Certificate for children would allow the rights and best interests of trans children to be promoted and protected, and for evidence gathering around models of best practice for a permanent arrangement, in the period before the issue is revisited in the two year review.

There are few groups in Ireland more vulnerable than our transgender (trans) children and young people. We don't know exactly how many trans children we have in Ireland but we do have compelling anecdotal evidence from the groups supporting them that their number is significant; they live all around Ireland; there has been a notable increase in the numbers of trans children and their families contacting support groups for advice over the last few years; and in LGBT awareness training in schools the vast majority of teachers have questions around trans issues and trans identification. This is not a remote issue. We are talking about real children throughout Ireland right now. Many of these children are living a nightmare from as early as between three and five years of age when their gender identity is likely developed, where their gender identity doesn't match the sex they were assigned at birth and therefore indicated on their birth certificate. These children and their parents face numerous challenges as so many of our services are driven by our birth certificates.

Schooling is a classic example of the barriers trans children face in trying to live their young lives in the gender they identify with. We have a predominantly single-sex school system in Ireland where enrolment is predicated on a birth certificate. And so, we can have a 6 year old child who has clearly articulated that he identifies as a boy. His parents, friends, extended family and community all accept and support his lived reality. Is this young child, a boy, really going to be forced to go through a girls' school, wearing a girl's uniform, using the wrong name and personal details in order to access the education available in his locality? Are we really prepared to stand over legislation that in this case would allow unnecessary distress, embarrassment, humiliation and potentially serious psychological harm prevail in this boy's life for 10 years before he is eligible to apply to have his gender identity recognised?

Some paediatric specialists put the age of gender identity in children, whether transgender or not, at two or three. Other research cites gender identity development as occurring between three and five years of age.

I believe Ireland could learn from legislation in other countries, for example Malta:

- Application by a legal minor is regulated in analogy through a court procedure. Thus, parents or legal guardians of an underage person can apply. The best interest of the child and the views of the minor have to be given due consideration.
- The Maltese Bill foresees that parents or guardians may decide to postpone the inclusion of a gender marker on the birth certificate until the child's gender identity is determined. This has to be welcomed as it allows for time the child to make an informed decision about it.

Any review of the Gender Recognition Act also needs to address intersex rights and in relation to children a workable approach is needed to give life to Article 42A, to ensure the best interests of the child are the paramount consideration; the views of the child are heard when key decisions are made about their lives; and the evolving capacity of the child is facilitated.

I would be open to present to the Review Group my experience and knowledge from working in this area both with and for young people and their parents.

Additional notes:

- Senator van Turnhout's Committee Stage contribution to the Gender Recognition Bill 2014 in the Seanad on 3 February can be found at <http://www.jillianvanturnhout.ie/gender-recognition-bill-2014-2/>
- Senator van Turnhout tabled an amendment at Report Stage of the Bill in the Seanad on 17 February 2015 seeking an Interim Gender Recognition Certificate for children under 16 years of age. <https://www.kildarestreet.com/sendebates/?id=2015-02-17a.114#g161>
- Senator van Turnhout's Report and Final Stages contribution in Seanad on 15 July 2015 can be found at: <http://www.jillianvanturnhout.ie/tag/gender-recognition/>
- Senator van Turnhout's amendment tabled at Committee Stage of Children First Bill on 23 September 2015: <https://www.kildarestreet.com/sendebates/?id=2015-09-23a.349#g378>

Note: Whilst the amendment on Gender Recognition for children was ruled out of order the then Minister for Children James Reilly said: "I believe we are agreed on the need to learn as much as possible so that we can develop a robust and effective policy which both supports and protects transgender children and young people and their families."

- Keynote by Jillian van Turnhout: Evolving Identities in a Changing World at the Early Learning conference, a collaborative event between Child Care in Practice journal, the Early Years Organisation and the Pasco Hernando Early Learning Coalition in Newry, 15 October 2016 <http://www.jillianvanturnhout.ie/advocacy-training/evolvingidentities/>