

Submission for the GIGESC Consultation
by Life Network and Gift of Life Foundation- Malta

A Bill entitled An Act for the recognition and registration of the gender of a person and to regulate the effects of such a change, as well as the recognition and protection of the sex characteristics of a person.

The proposed law may seem to apply to a minority group, however the way that the law is worded and the implications thereof will affect the whole population. Some of the most salient parts of the law and their application are listed (in bold) below:

(2) Without prejudice to any provision of this Act (a) a person's rights, relationship and obligations arising out of parenthood or marriage shall in no way be affected; and

(b) the persons rights arising out of succession, including but not limited to any testamentary dispositions made in one's favour, and any obligations and, or rights subjected to or acquired prior to the date of change of gender identity shall in no way be affected.

Transfers/liabilities:

What about transfers/liabilities acquired inter vivos prior to change of sex and name as per article 11(1)?

Penal charges:

What happens if there is a change in gender in the period between committing a crime and being charged for it? Would the charge be considered null and void, because the particulars do not correspond to the particulars listed on the charge?

Why should one be permitted to change one's gender on the basis of one's 'experience of gender', but not one's birth date if one feels that one 'should' be a different age?

4. (1) It shall be the right of every person who is a Maltese citizen to request the Director to change the recorded gender and, or first name in order to reflect that person's self-determined gender identity.

Security:

What happens if the gender chosen does not correspond to the person's bodily appearance? Is this safe or even legal? The law will demand new practices in the identification of people.

Example: What happens at airport security if there is a mismatch? Will the police be allowed to investigate? What about international security?

Gender change registration in cases of gender dysphoria:

It is well known that gender dysphoria may be a symptom of schizophrenia and of other mild psychoses. There are several gender dysphoria syndromes that may result in a temporary altered gender identity and reassignment of gender in these persons, at least, is not only harmful to themselves but also to society. (Levine and Lothstein J Sex Marital Ther. 1981;7:85-113; for a summary of a more recent paper, see the end of this document). More generally, for the protection of the individual and of society, there should be more attention to the psychiatric and psychological assessment of those with gender dysphoria before any official change of gender is contemplated.

Expenses:

Will the individual have the right to have the cost of expensive gender reassignment surgery and hormonal therapy met by the government as a result of official recognition of gender change?

Gender change registration:

How many times is one allowed to register a change?

4. (2) The request shall be made by means of a letter which makes clear reference to the public deed published in accordance with article 5.

Legal loophole: The request is to be made by means of a letter which makes clear reference to a public deed. A true copy of the public deed must be attached to the covering letter as proof.

Also, there is room for abuse, since in Malta the Public Registry (Acts of births+ deaths) and the Public Registry (Assets and Liabilities/ transfer of immovable property) are not in any way linked or intertwined.

5 (2) The Notary shall explain to the applicant the legal implications of the change of the assigned gender and shall require the applicant to declare understanding of such implications.

Notarial duties: Since when are Notaries trained to explain that the legal implications will also have psychological, medical and social implications to mention but a few?

6 (3) The Director shall cause an index of the Gender Register to be made and kept in the Public Registry Office in Malta and in Gozo; and no-one shall be entitled to search that index.

This is not acceptable or in the public's best interest. Birth certificates are available to any and all – they are public documents, and that is why the Registry is public.

Note: Articles 8 and 15 both refer to Protection of minors

8. (1) The persons exercising parental authority over the Minors. minor or the tutor of the minor may file an application in the registry of the Civil Court (Voluntary Jurisdiction Section) requesting the Court to change the recorded gender and first name of the minor in order to reflect the minor's gender identity.

(2) Where an application under sub-article (1) is made on behalf of a minor, the Court shall:

(a) Ensure that the best interests of the child as expressed in the Convention on the Rights of the Child be the paramount consideration; and

(b) in so far as is practicable, give due weight to the views of the minor having regard to the minor's age and maturity.

Protection of minors

The Act recognizes a "minor" as a person who has not as yet attained the age of eighteen years. Adolescence is one of the most difficult phases of the life cycle of human beings during which a child/adolescent goes through different stages in how he or she understands his or her body (including for some, a feeling, which will often have begun much earlier, that their physical characteristics do not reflect their "real" gender).

Helping children and young people to mature should be a matter of helping them understand and appreciate their body and physical sex, rather than seeing their body as something "wrong" which needs to be "corrected" or "rectified" through surgery.

The Bill refers to the "right to bodily integrity" (31 (d)) but does not uphold the right to bodily integrity in practice where a child's physical sex is unambiguous, but the child is experiencing difficulty in coming to terms with it.

A holistic approach is required to address the diverse needs of the child during such a traumatic and vulnerable time.

While it is always a questionable response to gender dysphoria to agree with the person that his or her physical sex needs "correction" or "masking" by dress, those under 18 in particular should be protected from well-meaning attempts of parents or doctors to "correct" what does not in fact need correction (the body and the way it is presented to society), rather than addressing the young person's emotions in themselves.

Gender reassignment of children who are physically healthy (as opposed to "intersex" children who are born with ambiguous physical sex) is difficult to defend in relation to the UN Convention on the Rights of the Child including article 8 which refers to the child's right to preserve his or her identity, article 19 referring to protection from physical injury and article 37 referring to inhuman or degrading treatment.

Penal Liabilities

Surgical intervention and any gender reassignment treatment, particularly if this treatment is irreversible, should at the very least be postponed until the minor reaches the age of majority. The law should stipulate penal liability for professionals who conduct any irreversible therapy on the child before age eighteen.

9. (1) Accessibility to the full act of birth shall be limited solely and exclusively to the person who has attained the age of eighteen years and to whom that act of birth relates or by a court order.

This is highly discriminatory with respect to the rest of the population since full acts of birth of the rest of the population can be attained.

13. (1) A person who in the course of the discharge of official duties was involved with a matter relating to this Act may not unlawfully disclose such matter in accordance the Professional Secrecy Act and the Data Protection Act.

(2) Whosoever shall knowingly expose any person who has availed of the provisions of Act, or shall insult or revile a person, shall, upon conviction, be liable to a fine (multa) of not less than one thousand euro (€1000) and not exceeding five thousand euro (€5000).

Does this apply to marriage bans? Wouldn't this be "discriminatory to the innocent party"? What if institutions are called on to explain why a particular person is considered male or female by them and therefore not suitable for a position reserved to one or other sex (such as the priesthood in the case of the Catholic Church)?

14. (1) Every norm, regulation or procedure shall respect the right to gender identity. No norm or regulation or procedure may limit, restrict, or annul the exercise of the right to gender identity, and all norms must always be interpreted and enforced in a manner that favours access to this right.

This does not respect children's need for a mother and a father or existing social institutions that try to meet that need. This can be abusive and result in coercion of those who do not accept the normalisation of (for example) same sex/transgender marriage or use of surrogates and donors by those in same sex/transgender unions who wish to have a child.

In many countries, where similar laws were enacted, this has resulted in court cases against parties who in principle cannot support such lifestyles. Parents who were morally opposed to gender mainstreaming have been incarcerated and penalised for trying to protect their children.

There are examples citing such discrimination and attacks on the right to religious tolerance on many websites. The following is one such site:

HUMAN RIGHTS VIOLATIONS AGAINST THE CHRISTIAN COMMUNITY (IN CANADA AND the US) <http://www.christianpositivespace.com/discrimination-cases.html>

Reproduction requires a male and a female in nature, and, in the best interests of the offspring born of this union. The Embryo Protection law applies to heterosexual couples, and is not only oriented to achieving a pregnancy but towards embryo protection. It should also be noted that this law took a lot of discussion and finally agreement from both sides of the House to come to fruition. It cannot just be altered to accommodate anyone who now wants to change it.

14 (2) The public service has the duty to ensure that unlawful sexual orientation, gender identity, gender expression and sex characteristics' discrimination and harassment are eliminated, whilst its services must promote equality of opportunity to all, irrespective of sexual orientation, gender identity, gender expression and sex characteristics.

How will this be interpreted as regards application to public education and education in schools?

Will comprehensive sex education become mandatory?

Will parents be allowed to opt out for their children, or will they be silenced, coerced, or even imprisoned, as we have seen happening in other countries?

Two recent examples are included:

1. **Germany : Mandato d'arresto a genitori "non allineati"** Sta suscitando polemiche la vicenda dei coniugi Martens, ai quali è stato notificato un arresto perché non hanno acconsentito alla presenza della figlia a scuola durante le "lezioni di gender"
2. **Italy:Parents united against gender, "emergency social and anthropological** An initiative promoted by Italian parents to stem the 'gender' teaching in schools. *Rome, November 24, 2014 (Zenit.org) Federico Cenci*

Church Schools and the Right to Religious Freedom:

Can the state declare that the Right to Religious Freedom will be upheld?

- **Gender ideology goes against basic tenets of the faith. It fails to acknowledge God as the Supreme Creator. It does not accept Natural law i.e. that part of the moral law that can be accessed by human reason alone. It does not accept marriage as made up of the exclusive union of one man and one woman. It negates the complementary nature of male and female (which today is even scientifically backed by brain scan technologies). Motherhood and fatherhood, so essential for the optimal holistic development of the child is also denied.**

Catholic Church schools and institutions, and practising Catholic individuals, cannot accept Gender mainstreaming.

15. (1) It shall be not be lawful for medical practitioners or other professionals to conduct any sex assignment treatment and, or surgical intervention on the sex characteristics of a minor which treatment and, or intervention can be deferred until the person to be treated can provide informed consent.

15. (2) In exceptional circumstances treatment may be effected once there is an agreement between the Interdisciplinary Team and the persons exercising parental authority or tutor of the minor who is still unable to provide consent:

Provided that medical intervention which is driven by social factors without the consent of the individual concerned will be in violation of this Act.

Protection of minors

It is not clear whether 15.2 would protect children from medical intervention which is in fact “social” rather than medical but is not admitted to be social (that is, the child is physically healthy but the child’s self-perception is seen as causing psychological problems which gender assignment is proposed to “treat”).

17(6) The members of the working group shall review the current medical treatment protocols in line with current medical best practices and human rights standards and shall, within one year from the date of their appointment, issue a report with recommendations for revision of the current medical treatment protocols.

Which protocols would need to be changed to be in line with this proposed law? Is this referring to the The Embryo Protection Law?

Objects and Reasons

The objects of this Bill are to provide for the recognition and registration of the gender of a person and to regulate the effects of such a change, and due recognition and protection of the sex characteristics of a person.

This proposed law is imbued in human rights language and presents itself as protecting minority rights. However in its legal application it violates not only the rights of, in particular, children with gender dysphoria (as explained above) but also the rights of those without gender dysphoria. According to Gabriele Kuby, embracing gender mainstreaming means a whole different world view which can encompass when translated into policy:

- **“An”equality” between men and women built on a false premise.**

More “equality” leads allegedly to greater justice. It is never questioned whether we are in fact enforcing equality or “sameness” between that which is not the same but is different and/or complementary.

- Subversion of the identity of man and woman by destroying “gender-stereotypes”, beginning in schools.
- Deregulation of normative standards of sexuality: Any kind of sexual practice or self-perception – be it lesbian, gay, bi-sexual or transgender (LGBT) – has to be accepted by society as equivalent to heterosexuality. And this would have to be taught to children at school.
- Early sexualisation of children through obligatory comprehensive sexual education.

The gender ideology attempts to create a new man, whose freedom would include the choice of his sex and sexual orientation. This means to arbitrarily decide whether he or she wants to be man or woman, heterosexual, gay, lesbian, bisexual or transsexual (GLBT). This view of freedom and sexuality, according to the will of the UN, EU and most European governments is to be imprinted onto the minds of children from the nursery onwards.” (Ref Kuby G, *Gender Mainstreaming — The Secret Revolution*)

Camille Paglia, a lesbian and self-described “notorious Amazon feminist” comments negatively on the gender ideology. She “sees a connection between society's attempts to paper over the biological distinction between men and women pushing a version of feminism that says gender is nothing more than a social construct”.

State parties are duty bound to protect minors. It has been amply proven that minors from single parent families suffer from the absence of a missing parent. Mother and father figures are essential to the holistic child development.

This law will have the effect of destroying society’s recognition of the need for these role models. Children are likely, in the future, to be bombarded with presentations of all sorts of different sexual relationships from an early age, and eventually encouraged to choose. Any attempts by parents to teach their children about the traditional heterosexual marriage, based on biology and on children’s real needs, will suffer the full brunt of the law. This goes against the fundamental human right to family life, which right is supposed to be exercised and enjoyed without undue interference from the state.

According to Article 8, Chapter 319 Laws of Malta

(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country,

for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Ref: Article 8, Chapter 319 Laws of Malta .This is a constitutional source of law and is supreme to all other laws of the land, which prevails if in conflict with another law.

This Bill if enacted will be imposed on an absolute majority of heterosexual people to accommodate a minority of gay, lesbian, homosexual or transgender people, whose own genuine interests are not obviously served by the Bill.

Babies are biologically born either male or female. Their sex is anatomically visible at birth. In very rare cases, intersex babies are born. In these cases scans and karyotyping would determine which sex organs are present or most developed, and remedial surgery could be performed at an appropriate age if it is truly in the person's interests. This law applies not to the biologically intersex person alone but to those whose biological sex is absolutely clear but who have difficulty accepting that sex and need psychological support.

A paper entitled "The Psychopathology of "Sex Reassignment Surgery": Assessing its Medical, Psychological and Ethical Appropriateness" (NCBQ Spring 2009) whose main authors are psychologists and family therapists, reached the following conclusions about such surgery, based on a wide review of the available scientific literature:

Sexual Reassignment Surgery (SRS) violates basic medical and ethical principles because a) it mutilates a healthy, non-diseased body and therefore violates the medical principle "first do no harm".

Demands for SRS result from a misperception of the self and SRS therefore offers a surgical solution to psychological problems (which may include failure to accept the goodness of one's masculinity or femininity, lack of secure attachment relationships in childhood with same-sex peers or a parent etc.).

SRS does not accomplish what it claims to accomplish because it cannot, in fact, "change" a person's sex and cannot benefit the person in the way sought.

Finally, SRS is a "permanent", effectively unchangeable and often unsatisfying surgical attempt to change what may be only a temporary (i.e psychotheapeutically changeable) psychological/psychiatric condition.

As can be seen, the enactment of this law will change the concept of society as we know it. Although the law ostensibly applies to a minority group, the way that the law is worded and the implications thereof will affect the whole population. As well as failing to protect the right of children with gender dysphoria to bodily integrity and to genuine psychological support, the Bill will limit the rights of the majority without gender dysphoria, including parents wishing to teach their children about the body, sex and

marriage. As is amply demonstrated from court cases abroad, this results in a minority dictatorship which is in fact in no-one's interests.

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