



**AkiDWA Briefing Paper  
for Legislation for the Prohibition of Female Genital Mutilation (FGM) in Ireland**

Specific legislation is needed to end genital mutilation of girls and young women<sup>1</sup> living in Ireland. Comprehensive legislation should include as an offence the transport of children and young women outside of Ireland to have genital mutilation performed and tough prosecution to aid in deterrence.

***What is female genital mutilation?*** The World Health Organization (WHO) defines female genital mutilation as all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons.<sup>2</sup> Reasons cited for FGM include tradition, rite of passage, religion<sup>3</sup>, marriageability, social acceptance, culture or aesthetic concerns. The procedure is usually performed with rudimentary tools and without anaesthetic and can cause serious blood loss or death. In Type III a girl's legs can be bound forty days post-procedure for scar tissue to heal (WHO classifies FGM into four types)<sup>4</sup>. FGM can result in life-threatening complications and long term health issues including an increased risk of bloodborne infections such as hepatitis and HIV/AIDs, chronic infections, reproductive damage including infertility, painful menstruation and sexual intercourse and critical health conditions during childbirth for mother and child, including death. The age at which FGM is performed varies and ranges from babies aged seven or eight days to young women. It is generally carried out on girls between the ages of four and ten. WHO estimates that in Africa approximately three million girls are at risk for FGM annually.

***Is there legislation in Ireland prohibiting FGM?*** According to the Department of Justice, Equality and Law Reform, the Non-Fatal Offences Against the Person Act of 1997 criminalises the practice of FGM in Ireland. There is no specific legislation in Ireland criminalising FGM at present. The Law Society's Law Reform Committee has recommended FGM be prohibited in legislation.

***Why do we need a new offence?*** The Non-Fatal Offences Against the Person Act of 1997 does not go far enough to stop genital mutilation of girls living in Ireland as it does not include the principle of extraterritoriality. The Act contains a defence of 'culture' which might be used to justify FGM. The everyday occurrence defence is another flaw in the Act, in terms of its application to FGM; the offences of assault, assault causing harm and causing serious harm do not appear to be specifically focused enough to cover all cases of FGM. For girls and women living in Ireland, in particular those with family from FGM

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<sup>1</sup> 'woman or girl' means a female person of any age including a female child or adult.

<sup>2</sup> <http://www.who.int/mediacentre/factsheets/fs241/en/index.html>

<sup>3</sup> No religion includes FGM as a requirement.

<sup>4</sup> For WHO FGM classifications I – IV please see <http://www.who.int/reproductivehealth/topics/fgm/overview/en/index.html>

prevalent regions abroad, the greatest risk exists in the possibility of being taken out of the country for purposes of FGM. Mothers have reported to AkiDwA serious pressure from overseas family members to bring daughters back home on holiday to have FGM performed. In some regions of African countries, extended family has traditionally had a powerful influence in family matters. In addition AkiDwA is aware of children who have been subjected to genital mutilation against one parent's wishes. Challenging FGM can cause divisions within families; in some cases the challenge itself has increased the threat. FGM legislation is not intended to demonise any community but seeks instead to aid in child protection. In AkiDwA's health promotion work on FGM, funded by the Government and supported by the Minister of Integration's Office and the Health Service Executive, medical professionals, health care practitioners and social workers have said they need a legal basis to offer preventative health and protection interventions for FGM. Current laws do not support their work in the protection of at-risk girls and do not aid in preventing female genital mutilation.

***What should be in legislation to reduce the current risk of FGM to girls and women?***

The greatest risk at present exists for young girls living in Ireland being taken abroad to have FGM performed; because of this the principle of extraterritoriality must be stipulated in legislation. Medical practitioners in Ireland cannot perform FGM as it amounts to a form of surgical disfigurement that has no therapeutic value and endangers the health of women and girls. Currently there appears to be no reported cases of FGM occurring in Ireland but subsequent to the enactment of a law with extraterritoriality, measures should be taken within existing resources to ensure societal and cultural divisions do not drive the practice underground in Ireland where it might be carried out in a clandestine way. Female genital mutilation is a critical child protection issue and legislation enacted would help agencies in Ireland, including but not limited to, GPs, nurses, social workers, teachers and community service workers.

***Calls for legislation for the prohibition of female genital mutilation in Ireland:*** On 27 January 2009 AkiDwA and the Irish Family Planning Association gave a presentation on FGM to the Joint Oireachtas Committee on Health and Children, on behalf of the Steering Committee for Ireland's National Plan of Action to Address Female Genital Mutilation<sup>5</sup>. The Committee called on the Department of Justice, Equality and Law Reform to consider introducing anti-FGM legislation with extraterritorial elements. Minister for Health and Children Mary Harney TD announced in March 2009 that she was examining the possibility of introducing specific legislation to ban female genital mutilation. Current Taoiseach Brian Cowen, as Minister of Foreign Affairs, stated in 2001 the Irish Government fully subscribes to the Beijing approach for FGM United Nation's Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action (2000)<sup>6</sup>. The 1995 declaration calls on member state Governments to develop, adopt and fully implement laws and other measures to eradicate FGM.

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<sup>5</sup> launched November 2008

<sup>6</sup> Dáil Debate, 9 May 2001

***A comprehensive approach for the eradication of female genital mutilation includes:***

- legislation (with extra-territorial provisions and serious penalties to aid in effective implementation, compliance and deterrence)
- targeted awareness-raising to support anti-FGM policy and procedure amongst decision makers, immigration authorities, medical practitioners, communities affected and migrant women.
- effective implementation of gender guidelines in immigration processes, policy and procedure.

***FGM Prevalence in Europe and Ireland*** FGM is practiced in at least twenty-eight countries in Africa and a few in Asia and the Middle East. Despite anti-FGM legislation in many countries, studies indicate many girls living in Europe with families who migrated from FGM-practicing regions are at risk for undergoing the procedure. A 2007 study by FORWARD<sup>7</sup> estimated nearly 66,000 women with FGM were residing in England and Wales in 2001 and speculated this number would increase over time. The study found 21,000 girls in England and Wales, aged eight and younger were at risk of FGM and of this 11,000 were likely to have already undergone FGM. Every year approximately 180,000 female emigrants in Europe undergo, or are in danger of undergoing, FGM.<sup>8</sup> A 2008 AkiDwA study<sup>9</sup> collated relevant population data from the 2006 Irish Census, and made calculations by country of origin and age group resulting in an estimate of over 2,585 women resident in Ireland living with FGM (this is a probable underestimate).

***International and Regional Human Rights Instrument:*** Fundamental principles of equality and non-discrimination are an integral part of all international human rights treaties Ireland has signed up to. Social, cultural, traditional and religious norms and laws affecting women in her country of origin that result in human rights violations should be assessed with reference to international human rights instruments, including:

- Universal Declaration of Human Rights
- Convention on the Elimination of All Forms of Discrimination Against Women
- Convention on the Rights of The Child
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- European Convention for the Protection of Human Rights and Fundamental Freedoms

Regional documents include:

- The African Charter on Human and Peoples' Rights

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<sup>7</sup> The Foundation for Women's Health, Research and Development (FORWARD) is an international non-governmental organisation working to advance and protect the sexual and reproductive health and human rights of African girls and women.

<sup>8</sup> From the European Parliament Resolution of 24 March 2009 on combating female genital mutilation in the EU (2008/2071(INI). Text adopted 24 March 2009 in Strasbourg.

<sup>9</sup> Please see *Female Genital Mutilation - Information for Health-Care Professionals Working in Ireland* (AkiDwA January 2009) for the complete results of this study.

- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
- African Charter on the Rights and Welfare of the Child

***Human rights violations occurring in relation to female genital mutilation include:***

- The right to be free from all forms of discrimination against women
- The right to life and physical integrity, including freedom from violence
- The right to health
- The rights of the child

The *United Nations General Assembly Declaration on the Elimination of Violence Against Women* Committee (CEDAW) and the *United Nations Committee on the Rights of the Child* have condemned the practice of female genital mutilation and made recommendations for punitive legal measures to combat it. The Committee on Economic, Social and Cultural Rights highlights training law enforcement and the judiciary to ensure effective implementation of measures to combat FGM. The Human Rights Committee has stated female genital mutilation is in breach of Article 7 of the International Covenant on Civil and Political Rights.

The ban on torture and other cruel, inhuman or degrading treatment is the most universally accepted ban internationally. The United Nations has characterised FGM as torture and has said that states have the responsibility to take all the necessary measures to eradicate it. The Special Rapporteur for the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (UNCAT)<sup>10</sup> in his second report 18 January 2008, stated “like torture, female genital mutilation involves the deliberate infliction of severe pain and suffering” and “if States fail to act with due diligence” this and other types of violence against women can be akin to torture. Ireland ratified UNCAT in 2002<sup>11</sup> of which positive obligations include to actively ensure torture, inhuman or degrading treatment or punishment is not facilitated by the State, under the Article 7 and paragraph 9 of General Comment 20 of the Covenant<sup>12</sup>. Ireland’s Criminal Justice (United Nations Convention Against Torture) Act 2000 defines torture as “an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for any reason that is based on any form of discrimination” and gives further effect into Irish law the standards in the UNCAT.

***Legislation Prohibiting FGM Worldwide*** Twelve industrialised countries receiving immigrants from FGM practicing countries have passed laws specifically criminalising the practice: Australia, Belgium, Canada, Cyprus, Denmark, Italy, New Zealand, Norway, Spain, Sweden, United Kingdom, and United States. In Australia, six out of eight states have passed laws against FGM and in the United States there is legislation at the federal level and seventeen out of fifty states have criminalised the practice. In nine of the fifteen original European Union member states FGM is prohibited under general criminal law

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<sup>10</sup> Ratified by Ireland 11 April 2002

<sup>11</sup> Ireland signed the Optional Protocol to the Convention Against Torture on 2 October 2007 and is currently in the process of ratifying it.

<sup>12</sup> General Comment 20: Replaces General Comment 7 concerning prohibition on torture, inhuman and degrading treatment or punishment (Art. 7), 10-03-1992 [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument)

provisions; these are Finland, France, Germany, Greece, Republic of Ireland, Italy, Luxemburg, Portugal and the Netherlands.

With the exception of laws in Finland, Greece, the Republic of Ireland, Luxemburg and Portugal, the principle of extraterritoriality is included in general criminal law provision. In France, existing criminal legislation enables prosecution of practitioners of FGM and parents who procure the service for their daughters; monitoring measures for deterrence have been implemented as well. Legislation with extraterritorial elements is in place in the UK, as well as monitoring procedures. FGM is practiced in at least twenty-eight countries in Africa and a few in Asia and the Middle East. Eighteen countries in Africa have enacted laws criminalising FGM: Benin, Burkina Faso, Central African Republic, Chad, Côte d'Ivoire, Djibouti, Egypt, Eritrea, Ethiopia, Ghana, Guinea, Kenya, Mauritania, Niger, Senegal, South Africa, Tanzania, and Togo. There is a specific commitment to eradicate female genital mutilation in the Cotonou Agreement, which has seventy-nine African, Caribbean and Pacific countries signed up to it, as well as partnership countries.

While there have been reports of prosecutions or arrests in cases involving FGM in a few African countries, including Burkina Faso, Egypt, Ghana, Senegal, and Sierra Leone, some of these countries have seen a trend toward medicalisation of the practice, as opposed to an overall decrease in prevalence. Legislation in some countries is regional and not national, and the low number of prosecutions and enforcement, with prevalence rates remaining firm, could mean there is not political or judicial will behind the laws. Police intervention in some countries is also low, with many considering it a private family matter rather than a crime against a child or woman. For example, the 2007 US Country Report on Human Rights Practices (March 2008) included female genital mutilation in a list of Nigeria's "most significant human rights problems". The report stated "the federal government publicly opposed FGM but took no legal action to curb the practice" and that "during the year there were no known prosecutions resulting from a 2005 Osun State law intended to punish persons who encouraged FGM" (there is no national law against it in Nigeria; some States have passed laws). In 2008 the Nigerian Ministry of Women Affairs and Social Development told the UN CEDAW Committee FGM prevalence rates in Nigeria were around 32%, with some regions as high as 65%, based on 2006 figures from the Nigerian National Bureau of Statistics.