



**Briefing Paper on  
Female Genital Mutilation (FGM): A Children's Rights Issue**

**August 2010 (Second edition)**

This Briefing Paper examines the practice of Female Genital Mutilation (FGM) in the context of children's rights.<sup>1</sup> This paper explores the legal and policy environment relating to FGM in Ireland, and recommends legal reform to ensure that children living in Ireland are fully protected from FGM.

The FGM procedure is typically performed on a girl during her early childhood.<sup>2</sup> It involves the partial or total removal of the external female genitalia for non-medical reasons. FGM is an internationally-recognised human rights violation of women and girls. The practice has been strongly denounced by the World Health Organization (WHO), the United Nations Population Fund (UNFPA) and other international medical and health organisations as a violation of numerous human right treaties and contrary to medical ethics. FGM is a gross violation of children's rights as well as being a form of gender-based violence, with horrific and lifelong consequences.

In 2010, important steps have been taken to develop legislation to ban FGM in Ireland; and these are to be warmly welcomed:

- March 2009: Minister for Health and Children, Mary Harney, TD, announced that she was examining the possibility of introducing specific legislation to ban FGM in the context of the UN Committee on the Rights of the Child.
- May 2009: Labour TD Jan O'Sullivan, introduced the Prohibition of Female Genital Mutilation Bill 2009 into the Dáil. This Bill fell.
- April 2010: Senator Ivana Bacik, introduced the Female Genital Mutilation Bill 2010 on behalf of the Labour Party during private members' time. This Bill fell.
- April 2010: During the Seanad debate on the 2010 Bill, Minister Mary Harney committed to publish the Heads of a Bill to ban FGM within three months.
- July 2001: The Department of Health and Children issued a *Consultation Paper regarding new Legislative Proposals to Prohibit Female Genital Mutilation* to seek the views of key stakeholders.

The Children's Rights Alliance warmly welcomes the Department's work on developing legislation to prohibit FGM in Ireland, and the personal commitment shown by the Minister for Health and Children's, Mary Harney TD to this important issue. Legislative reform will bring Ireland into line with its international obligations, under the UN Convention on the Rights of the Child and with best practice among its European counterparts.

---

1 This paper draws on material published in *International Day of Zero Tolerance to Female Genital Mutilation: Briefing Paper on FGM and National Steering Committee Progress for Ireland* (4 February 2010). This briefing paper, issued by the National Steering Committee of Ireland's National Plan of Action to Address Female Genital Mutilation, explores in detail FGM as a human rights issue and contains a comprehensive review of international developments, and an update on the progress of the Committee since its establishment in 2008  
<http://www.childrensrights.ie/files/Briefing%20FGMSteeringCtteeSeminar040210.pdf>

2 Detailed information relating to the definition, prevalence and consequences on FGM is contained in Appendix 1.

## 1. FGM and Children's Rights in Ireland

### Risk of FGM for Children in Ireland

FGM is a serious, children's rights, and child protection issue with real implications for children living in Ireland. It is estimated that over 2,585 women resident in Ireland have experienced FGM.<sup>3</sup> However, there is little data or understanding of how prevalent the practice of FGM may be in Ireland in relation to children, or how significant any future threat might be. There is currently no specific legal prohibition against FGM in Ireland; and neither is there legislation to protect a child from being removed from Ireland to have the procedure carried out overseas.

The Alliance is concerned that there are girls living in Ireland who may be at risk of undergoing the procedure because they are born into families that practise FGM. There are two scenarios in which children are at risk:

- The procedure could take place in Ireland.
- Girls may be brought from Ireland to their parents' countries of origin to have FGM performed. Families from FGM-practising regions have reported serious pressures from overseas families to bring daughters back to have the procedure carried out.<sup>4</sup>

### UN Convention on the Rights of the Child

FGM breaches a number of articles of the UN Convention on the Rights of the Child, which Ireland ratified in 1992:<sup>5</sup>

- Article 19(1): the State is obliged to protect children from all forms of maltreatment including physical violence, injury or abuse.<sup>6</sup>
- Article 24(3): the State shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.<sup>7</sup>
- Article 37(a): the child has the right to freedom from torture or other cruel, inhuman or degrading treatment or punishment.<sup>8</sup>

In its Shadow Report to the UN Committee on the Rights of the Child in 2006, the Alliance called for legislation be introduced to outlaw FGM.<sup>9</sup> In their review on Ireland, the UN Committee on the Rights of the Child criticised the State for its failure to comprehensively address the issue and makes recommendations:

*The Committee notes with concern that some immigrant communities continue to practice female genital mutilation (FGM) in Ireland. The Committee strongly emphasizes that FGM is a violation of the Convention. The Committee urges the State party to continue its efforts to end the practice of FGM, for example, through prohibiting FGM by law, including the possibility of extra-territorial jurisdiction, and implementing targeted programmes which sensitize all segments of the population about its extremely harmful effects.<sup>10</sup>*

The Alliance calls on the Government to meet its obligations under the Convention in advance of the next examination of Ireland by the UN Committee on the Rights of the Child which is expected to take place in 2011.

3 This figure was estimated by AkiDwA based on the 2006 Irish Census, and calculated by country of origin and age group. <http://www.akidwa.ie/>

4 Information provided by AkiDwA.

5 The full Convention can be accessed at <http://www.childrensrights.ie/files/UNCRC-CRC1989.pdf>

6 UN Convention on the Rights of the Child, 1989, Article 19: '1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.'

7 UN Convention on the Rights of the Child, 1989, Article 24(3) "States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."

8 UN Convention on the Rights of the Child, 1989, Article 37 (a): "States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment..."

9 Children's Rights Alliance (2006) *From Rhetoric to Rights, Second Shadow Report to the United Nations Committee on the Rights of the Child*, p. 39.

10 UN Committee on the Rights of the Child (CRC/C/IRL/CO/2, p. 12 para. 55-6 (29 September 2006).

## Beyond Legislation

Protecting girls from FGM requires the enactment, and enforcement, of legislation. Legislative change should be accompanied by prevention, education and awareness-raising measures among communities where FGM may be practised and among relevant service providers, such as medical personnel, Gardaí, social workers and teachers. In addition, understanding the reasons why families may continue to support the practice of FGM is essential to developing sensitive and effective intervention strategies to support parents to abandon the practice. In addition, girls who have undergone the FGM procedure will require a range of supports, including medical and, in some cases, psychological, supports.

## Child Protection Policy

FGM is not specifically named in *Children First: National Guidelines for the Protection and Welfare of Children* which were published in 1999.<sup>11</sup> Unfortunately, neither is it referenced in the updated version of the Guidelines which were posted on the OMCYA website in December 2009 (but which are not yet operational). Since 2006, the Alliance has repeatedly advocated for a reference to FGM to be included in the revised Guidelines.<sup>12</sup> The inclusion of a specific reference to FGM within *Children First* would ensure that relevant professionals are trained to recognise and deal with FGM. The Alliance calls for the 2009 Guidelines to be amended prior to publication to include a reference to FGM as a child protection issue.

## National Steering Committee

*Ireland's National Plan of Action to Address FGM* was launched in 2008 by a National Steering Committee comprising governmental and non-governmental organisations, including organisations representing new communities in Ireland, Irish Aid and the HSE.<sup>13</sup> The *National Plan of Action* sets out key goals to prevent the practice of FGM in Ireland and provide high-quality appropriate health care and support for women and girls who have undergone FGM.<sup>14</sup> The National Steering Committee continues to work to promote the implementation of the *National Plan of Action*; and has compiled a detailed briefing paper on FGM: *International Day of Zero Tolerance to Female Genital Mutilation: Briefing Paper on FGM and National Steering Committee Progress for Ireland* <http://www.childrensrights.ie/files/Briefing%20FGMSteeringCtteeSeminar040210.pdf>

Unfortunately, unlike the experience in other EU countries, Ireland's Plan has yet to be adopted by the Irish Government, nor has responsibility for its implementation been assigned to any government department or agency.

The Alliance is an active member of the National Steering Committee of Ireland's National Plan of Action to Address Female Genital Mutilation. Other Coalition members include AkiDWA, Amnesty International (Irish Section), Barnardos, Cairde, Children's Rights Alliance, Christian Aid, Comhlamh, The Integration Centre, Integration of African Children in Ireland, Irish Family Planning Association, National Women's Council of Ireland, Somali Community in Ireland, Somali Community Youth Group and UNICEF.<sup>15</sup>

---

11 Office of the Minister for Children and Youth Affairs, *Children First: National Guidelines for the Protection and Welfare of Children* (December 2009) <http://www.omc.gov.ie/documents/childcare/ChildrenFirst.pdf>

12 *Children's Rights Alliance: Submission to the Review of Children First Guidelines by the Office of Minister for Children*, 28 April 2006, p. 8 <http://www.childrensrights.ie/files/SubReviewChildrenFirst06.pdf>

13 The Plan was partly funded by the European Commission through EuroNet-FGM, a European network dedicated to the prevention and eradication of harmful traditional practices that affect the health of women and children. 15 EU countries participated in the Euronet-FGM project and each launched their respective National Actions Plans on 25 November 2008, International Day for the Elimination of Violence against Women.

14 *Ireland's National Plan of Action to Address Female Genital Mutilation* (2008) <http://www.akidwa.ie/FGM%20Plan%20of%20Action%20Report.pdf>

15 The Women's Health Council were members of the Steering Committee from 2008-2009 until their role was subsumed into the Department of Health and Children.

## 2. The Case for the Introduction of FGM-Specific Legislation in Ireland

To ensure girls and women are protected from FGM, there is a need to introduce an explicit legal prohibition against FGM in Ireland; including measures to protect a child from being removed from Ireland to have the procedure carried out overseas.

### 2.1 Specific Prohibition of FGM

The Alliance believes legislation should be enacted to create a specific prohibition of carrying out, aiding, abetting, counselling, procuring or inciting a person to carry out FGM – or for attempting or assisting a person to do so. We believe that the Non-Fatal Offences Against the Person Act 1997 is insufficient as an instrument for prosecution and thus does not sufficiently protect against the practice of FGM. The enactment of FGM-specific legislation would provide clarity in law and bring Ireland into line with its international obligations. Many other states have passed specific legislation against FGM, including the UK, Spain and Canada.<sup>16</sup>

The legislation should recognise FGM as a violation of women's and girls' human right to bodily integrity; and acknowledge the severity of the crime and the conditions under which the crime is committed.<sup>17</sup> It should provide additional powers to the State to enable it to protect children at risk. FGM specific legislation with firm penalties would act as a deterrent to the continuation of the practice and be seen as a legitimate way for parents to refute family pressure to submit their daughters to the practice.<sup>18</sup> It would deliver a clear preventive message to the public.

### 2.2 Definition of FGM

We believe the legislation should include a clear definition of the FGM practice to be prohibited. The scope and wording of this definition is very important. The Female Genital Mutilation Bill 2010 introduced in the Seanad in April 2010 offered a comprehensive definition, appropriately broad to cover the specific, traditional practice of FGM. Any diminution of the impact of a less 'severe' form of FGM risks reinforcing the cultural acceptability of the practice.

### 2.3 Extraterritorial Element

We believe the legislation should include an extraterritoriality element which will enable the prosecution of FGM carried out in another jurisdiction. The inclusion of an extraterritorial element is a vital to preventing children resident in Ireland being taken out of the country to undergo FGM in another jurisdiction; a very real risk that exists at present. It will enable parents to counter family pressure to submit their daughters to FGM, act as a deterrent to the continuation of the practice, and deliver a clear preventive message. Currently, Ireland is one of only three countries (Luxembourg and Greece are the others) within the EU 15, without an extraterritorial element in their legislation covering FGM.<sup>19</sup>

*Ireland and UK Discrepancy:* There is particular concern about the discrepancy between the current UK legislation, covering Northern Ireland, and our own. The Female Genital Mutilation Act 2003 in the UK introduced extraterritoriality, making it an offence for UK nationals or permanent UK residents to carry out FGM abroad, or to aid, abet, counsel or procure the carrying out of FGM abroad, even in countries where the practice is legal. This provision, along with increased sanctions, further weakens the position of the Republic of Ireland in the Common Travel Area.

16 Others include Austria, Canada, Denmark, Italy, New Zealand, Norway, United States (Federal Government and 17 States) and Australia (6 out of 8 States).

17 Siobhán Mullally and Tanya Ní Mhuirthile (June 2010) *Reforming Laws on Female Genital Mutilation in Ireland: Responding to Gaps in Protection*, p. 12.

18 AkiDwA: *Female Genital Mutilation – Information for Health Care Professionals Working in Ireland* (January 2009), p. 6.

19 Not all of the other 12 countries have enacted legislation specific to FGM, but rather have ensured that their legislation, in whatever form, protects against the possibility of girls being taken out of the country to undergo the practice. Countries that have incorporated the principle of extraterritoriality include the UK (including England, Wales and Northern Ireland), France, Spain, Portugal, Italy, Austria, Belgium, Netherlands, Germany, Denmark, Scotland, Sweden, Norway, Finland and Cyprus.

## 2.4 Defence of 'Culture'

We believe legislation should include an explicit prohibition on the use of a defence of 'cultural belief'. At present, we believe the Non-Fatal Offences Against the Person Act 1997 may allow a defendant to plead a defence of 'culture' to justify FGM. Under Section 3 of the Act, it is stated that a crime has not been committed if the act "is in the circumstances such as is generally acceptable in the ordinary conduct of daily life and the defendant does not know or believe that it is in fact unacceptable to the other person." In considering the interpretation of 'ordinary conduct of daily life', we refer to a 2005 case in Waterford of the death of a male infant due to circumcision in which the judge appeared to accept that different standards may apply to new/immigrant communities.<sup>20</sup> While FGM is generally recognised as a more grave violation, this case illustrates the potential use of the argument of cultural relativism in the absence of legal clarity.

## 2.5 Defence of Consent

We believe the legislation should include an explicit prohibition on the use of a defence of 'consent'. Under international human rights law (and reflected in law in other jurisdictions such as the UK) a valid consent can never be given to undergo FGM procedures.

Under the Non-Fatal Offences Against the Person Act, 1997 it is not clear whether a defence of consent could be pleaded in a case of FGM. This concern arises in light of the rights of the marital family under the Irish Constitution. A child under 16 is not in a position legally to give consent to medical treatment. Consent in such cases is provided by the child's parent(s) or guardian(s). The issue of consent is further complicated by the fact that societal pressure constitutes the trigger for practice and consent. According to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has commented that:

*With regard to the element of powerlessness it must be noted that the cutting is usually carried out before a girl's tenth birthday. In such circumstances, girls are clearly under the complete control of their parents and communities and do not have the possibility of resisting. On the other hand, adolescent girls and women very often agree to undergo FGM because they fear the non-acceptance of their communities, families and peers.*<sup>21</sup>

The inclusion of an explicit prohibition of consent would bring Ireland into line with the European Parliament Resolution of 20/09/2001. This calls on Member States to:

*regard any form of female genital mutilation as a specific crime, irrespective of whether or not the woman concerned has given any form of consent and to punish anybody who helps, encourages, advises or procures support for anybody to carry out any of these acts on the body of a woman or girl.*<sup>22</sup>

## 3. Recommendations

The Alliance calls on the Government to enact, and enforce, legislation against FGM. This legislation should:

- Create a specific offence regarding the FGM procedure
- Provide a comprehensive definition of FGM
- Contain an extraterritorial element
- Prohibit a defence of culture
- Prohibit a defence of consent

In addition, the Alliance calls on:

- The Office of the Minister for Children and Youth Affairs to include a reference to FGM under the *Children First National Guidelines for the Protection and Welfare of Children*
- The Government to assign responsibility for the implementation of the *Ireland's National Plan of Action to Address Female Genital Mutilation* to a Department or agency.

<sup>20</sup> Martin Wall, 'Death of baby prompted report on circumcision', *The Irish Times*, 1 Jan 2006.

<sup>21</sup> Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (15 January 2008) <http://www2.ohchr.org/english/bodies/hrcouncil/docs/7session/A-HRC-7-3.doc>

<sup>22</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P5-TA-2001-0476&format=XML&language=EN>

**What is FGM?** Female genital mutilation (FGM) is defined as the partial or total removal of the external female genitalia, or any practice which purposely alters or injures the female genital organs for non-medical reasons. The type of FGM performed varies with ethnicity and region.<sup>24</sup> The age at which girls undergo FGM varies by community and region, but the most common age is between four and ten years, though this can vary from birth until first pregnancy. WHO estimates that between 100 and 140 million women and girls worldwide have undergone FGM. Most of these women and girls are resident in one of 28 countries,<sup>25</sup> almost all in Africa, although there are reported cases of FGM in some countries in the Middle East and Asia.

**Why is FGM performed?** The origins of FGM are largely unknown, but the practice predates contemporary world religions. Local and cultural factors and traditions are likely to be the main reasons for the development and continuation of the practice over time. Some of the reasons put forward for the practice of FGM include:

- Sexuality – preservation of virginity until marriage.
- Marriageability – undergoing FGM improves chances of marriage in some societies.
- Economics – FGM is an income-generating activity for the women who perform it, and their profession brings them high status within their communities.
- Tradition – preserving and continuing a set of values and rituals in a community.
- Rite of passage from girlhood into womanhood.
- Religion (though no religion includes FGM as a requirement).
- Cultural aesthetic reasons – in some communities, normal female genitals are considered ugly, unclean and unattractive unless they are subjected to FGM.
- Myths and beliefs – some communities believe that the clitoris contains powers strong enough to cause harm to a man's penis or to damage a baby during childbirth.

The practice of FGM persists today for several reasons. In many instances, parents want their daughters to undergo FGM in order to avoid stigmatisation or social exclusion by the rest of the community. In practicing communities, it is strongly believed that a girl is not marriageable if she has not undergone FGM, which has serious impacts on her future financial and social status.

**Who performs FGM?** Typically, FGM is performed by an older woman in the community who has had no medical training. The use of anaesthetics and antiseptics is uncommon. Instruments used to perform FGM include razor blades, knives, pieces of glass, scissors, and scalpels. In some instances, several girls will be cut using the same instruments, heightening the risk for the spread of infections, including HIV.

**What are the health and psychological consequences of FGM?** FGM has no health benefits and involves removing and/or damaging healthy and normal body tissue. The psychological trauma arising from the procedure is more difficult to measure but it is clear that FGM can result in serious psychological trauma for those involved, including post-traumatic stress disorder, depression and anxiety. Research suggests that those who have undergone it are at an increased risk of developing psychological and emotional health problems.<sup>26</sup>

**Short-term:** The short-term health complications of FGM can include: death; haemorrhage; infection and failure of the wound to heal; injury or trauma to adjoining areas, such as the urethra and anus; shock from severe pain and bleeding; tetanus; transmission of HIV and other viruses.

23 This section draws on material which was developed by AkiDWA and Amnesty International (Irish Section) and has been published by the National Steering Committee in *International Day of Zero Tolerance to Female Genital Mutilation: Briefing Paper on FGM and National Steering Committee Progress for Ireland* (4 February 2009). <http://www.akidwa.ie/>

24 The World Health Organization's (WHO) has classified FGM into four types based on the nature of the procedure carried out.

25 This includes Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Cote d'Ivoire, Djibouti, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Guinea-Bissau, Guinea, Kenya, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Somalia, Sudan, Uganda, United Republic of Tanzania, Togo and Yemen.

26 Behrendt, A. and Moritz, S. 'Post-traumatic Stress Disorder and Memory Problems After Female Genital Mutilation', *American Journal of Psychiatry*, 162:5 (May 2005), 1001-2.

*Long-term:* The long-term health complications of FGM can include: decrease or loss of sexual sensation; difficult and complicated childbirth; increase in maternal and child mortality; dysmenorrhoea (painful menstruation); difficulties in menstruation including passing menses and/or menses retention; dyspareunia (painful sexual intercourse); incontinence and difficulty urinating; pelvic inflammatory disease (PID) and infertility; scarring (with or without keloid formation) and hardening of the vaginal tissue, causing constant pain around the genital area; and sebaceous cyst development. A major WHO study published in 2006, found a significant increase in poor obstetric outcomes, including death of the baby, for women who had undergone FGM.<sup>27</sup>

**What are the educational consequences of FGM?** FGM has an impact on a girl's opportunities to access education. It is often the case that girls who have had FGM performed on them will also be forced in to an early marriage and drop out of school.<sup>28</sup> This link can be a deciding factor for parents when considering whether or not to have FGM performed on their daughter.

## Appendix 2

### International Obligations and Developments on FGM

FGM is recognised internationally as a gross violation of human rights for girls and women.<sup>29</sup> It is a denial of their right to physical and mental integrity, their right to freedom from violence and discrimination, and in the most extreme cases, their lives. Over the last few years, there have been a number of important European and international developments recognising the gravity of FGM.<sup>30</sup> These include:

#### *European Developments*

- Resolution of the Council of Europe on Female Genital Mutilation (2001)
- Decision of the European Court of Human Rights in (2007)
- European Parliament Resolution on Combating Female Genital Mutilation in the EU (2009)
- European Parliament Resolution on the Elimination of Violence against Women (2009).

#### *UN Developments*

- Joint statement on eliminating Female Genital Mutilation by ten UN entities (2008).
- Website launched by UN Secretary-General Ban Ki-Moon to include global database of all legislation on violence against women, including FGM (2008).
- Handbook for Legislation on Violence Against Women published by Division for the Advancement of Women of the UN Department of Economic and Social Affairs (2009).
- Guidance Note on Refugee Claims relating to Female Genital Mutilation published by UN High Commissioner for Refugees (2009).

<sup>27</sup> The study involved 28,393 women at 28 obstetric centres in six African countries – Burkina Faso, Ghana, Kenya, Nigeria, Senegal and Sudan.

<sup>28</sup> Colm O’Gorman, ‘Honest debate on female mutilation vital but hysterical claims don’t help’, *The Irish Independent*, 21 April 2009.

<sup>29</sup> All of these rights are codified within international treaties, regional instruments and reinforced by political consensus documents, for complete list of documents, see *Ireland’s National Plan of Action to Address Female Genital Mutilation*, Appendix 1, pp. 21-22.

<sup>30</sup> For more detail on, and references for, these developments, see *International Day of Zero Tolerance to Female Genital Mutilation: Briefing Paper on FGM and National Steering Committee Progress for Ireland* (4 February 2009).