AN BILLE UM CHIORRÚ BALL GINIÚNA BAINEANN 2010
FEMALE GENITAL MUTILATION BILL 2010

EXPLANATORY MEMORANDUM

Purpose of Bill

Female genital mutilation (FGM) in a variety of its forms is practised in Middle Eastern countries, including the two Yemens, Saudi Arabia, Iraq, Jordan, Syria, and Southern Algeria, and in Africa, where it is practised in the majority of the continent including Kenya, Nigeria, Mali, Upper Volta, Ivory Coast, Egypt, Mozambique and Sudan. Although FGM is prevalent in countries with a mostly Islamic population, it is not an exclusively Islamic practice.

FGM is often referred to as female circumcision. However, while it and male circumcision both include the removal of well-functioning parts of the genitalia and are quite unnecessary, FGM is far more drastic and damaging than male circumcision. The term FGM covers three main varieties of genital mutilation:

1. ''Sunna'' circumcision, which consists of the removal of the prepuce and/or the tip of the clitoris;

2. clitoridectomy (also referred to as excision), which consists of the removal of the entire clitoris (both prepuce and glans), and the removal of the adjacent labia; and

3. infibulation (also referred to as pharaonic circumcision), which is the most extreme form and consists of the removal of the clitoris, the adjacent labia (majora and minora) and the joining of the scraped sides of the vulva across the vagina, where they are secured with thorns or sewn with catgut or thread. A small opening is kept to allow passage of urine and menstrual blood. An infibulated woman must be cut open to allow intercourse on the wedding night and is closed again afterwards to secure fidelity to the husband.

Beyond the obvious initial pains of the operation, FGM has long-term physiological, sexual, and psychological effects. The unsanitary environment under which FGM takes place results in infections of the genital and surrounding areas. Some health consequences of FGM include primary fatalities as a result of shock, haemorrhage or septicaemia.

Long-term complications include sexual frigidity, genital malformation, delayed menarche, chronic pelvic complications, recurrent urinary retention and infection, and an entire range of obstetric complications whereas the foetus is exposed to a range of infectious diseases as well as facing the risk of having his or her head crushed in

the damaged birth canal. In such cases the infibulated mother must undergo another operation whereby she is ''opened'' further to insure the safe birthing of her child.

FGM is entering developed countries with some immigrants who are holding on to their customs and identity. So, while between eight and ten million women and girls in the Middle East and in Africa are at risk of undergoing one form or another of genital mutilation, it is estimated that in the United States there are about ten thousand girls at risk of being subjected to this practice.

FGM could not be performed in this country by a medical practitioner acting in accordance with Medical Council guidelines, since it amounts to a form of surgical disfigurement which has no therapeutic value whatsoever and endangers the health of women. The only risk, therefore, is that is might be carried out in a clandestine way.

The United Nations, UNICEF, and the World Health Organization consider FGM to be a violation of Human Rights and have made recommendations to eradicate the practice. FGM is now outlawed in the United States (at federal level and in several states), in some European countries (Britain, France, Sweden and Switzerland) and also in some African countries (Egypt, Kenya and Senegal).

In other countries with a common law tradition such as Australia and Canada, it has traditionally been argued that existing offences such as, for example, assault causing serious harm, are sufficient to outlaw FGM.

In Ireland the crime of assault is now set out in statutory form, in the Non-Fatal Offences against the Person Act 1996. That legislation preserves, without re-stating, the various defences to that offence recognised by the common law. Precedents from previous judgments, including both those given by the Irish courts and by courts in other common law jurisdictions, must therefore be examined, since this area of the law has not been codified.

The issue is whether the common law would recognise, as a defence to a charge of assault causing serious harm, a defence that the victim of FGM had consented to a ''surgical treatment'' or, in the case of a minor, that her parents had given consent on her behalf.

At common law, precedent suggests that it is not possible to consent to an assault which causes actual bodily harm. However, there are exceptions to the general rule — games and sports, lawful chastisement by parents, dangerous exhibitions, reasonable surgical intervention, and so on. There is no clear cut rule. A person charged with an offence in such circumstances might seek to make comparisons with body piercing, tattooing, cosmetic surgery and the like.

In 1985 the UK Parliament decided the best way to deal with the issue was to legislate directly, rather than waiting on the uncertain outcome of future cases. The Prohibition of Female Circumcision Act 1985, was passed, in order to outlaw the practice, whether conducted by medical practitioners or others. It was later replaced by the Female Genital Mutilation Act 2003 (UK).

It is also the case that legislation which seeks to deal directly with a particular issue is enshrining the normative values of the community which enacts it and has a broad educational value.

The purpose of legislation would be bring certainty into an area of the law where there is at present uncertainty.

Finally, in June 2008 the Women's Health Council (a statutory body that advises the Minister for Health and Children on all aspects of women's health) published a report on the issue that called on the State to adopt a proactive approach to prevent the emergence of female genital mutilation, including legislative reform. The Council called for specific legislation similar to the Prohibition of Female Genital Mutilation Bill 2001 to be enacted, to provide legislative protection to women.

Provisions of Bill

Section 1 provides a definition of ''medical practitioner'' and of ''woman or girl''.

Section 2(1) provides that a person who performs any procedure for the genital mutilation of a woman shall be guilty of an offence and shall be liable on conviction on indictment to a fine or to imprisonment for a term not exceeding 14 years, or to both.

Subsection (2)(a) clarifies the issue of consent. By that provision, in a prosecution for an offence it is not a defence to prove that a consent (including, where relevant, a consent of a parent, guardian or other person having responsibility in relation to a person who has not attained the age of 16 years) was given by or on behalf of a woman to her genital mutilation.

Subsection (2)(b) provides a defence of necessary surgical intervention. In order to avail of the defence, it must be shown that the procedure was a surgical operation performed by a registered medical practitioner (within the meaning of the Medical Practitioners Act 2007) and that the medical practitioner honestly believed, on reasonable grounds, that the operation was necessary to safeguard the life or health of the woman concerned or to correct a genital abnormality or malformation.

Subsection (3) defines genital mutilation as including any procedure for the excision, infibulation or any other form of mutilation, in whole or in part, of the external, or vulvar, female genitalia (including the labia majora, labia minora and clitoris) that is calculated or liable to cause serious disfigurement or substantial loss or impairment of any or all of the normal functions of those organs, including functions in relation to urination, menstruation, sexual intercourse and childbirth, or to cause pain, whether in relation to those functions or chronically. It is also made clear that ''woman'' means a female person of any age.

Section 3 provides for the legislation to have extra-territorial effect.

Section 4 provides that the consent of the DPP will be necessary before the institution of any proceedings under this Act.

Section 5 provides for the short title of the Bill.

Senator Ivana Bacik,
Aibreán, 2010.

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