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Explanatory Memorandum](#)

**AN BILLE UM CHEARTAS COIRIÚIL (CIORRÚ BALL
GINIÚNA BAINEANN), 2011
CRIMINAL JUSTICE (FEMALE GENITAL MUTILATION)
BILL 2011**

*Mar a tionscnaíodh
As initiated*

ARRANGEMENT OF SECTIONS

Section

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 3. Offence of removal from State for purpose of female genital mutilation.
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ACTS REFERRED TO

Bail Act 1997	1997, No. 16
Children Act 2001	2001, No. 24
Criminal Justice (Psychoactive Substances) Act 2010	2010, No. 22
Medical Practitioners Act 2007	2007, No. 25
Mercantile Marine Act 1955	1955, No. 29
Nurses Act 1985	1985, No. 18



AN BILLE UM CHEARTAS COIRIÚIL (CIORRÚ BALL
GINIÚNA BAINEANN), 2011
CRIMINAL JUSTICE (FEMALE GENITAL MUTILATION)
BILL 2011

BILL

entitled

AN ACT TO PROVIDE FOR THE CREATION OF AN
OFFENCE OF FEMALE GENITAL MUTILATION, AND
OTHER OFFENCES RELATING TO FEMALE GENITAL
MUTILATION, FOR THE BETTER PROTECTION OF
GIRLS AND WOMEN; TO PROVIDE FOR AMEND-
MENTS TO OTHER ENACTMENTS; AND TO PROVIDE
FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1. —In this Act—

Interpretation.

“female genital mutilation” means any act the purpose of which, or the effect of which, is the excision, infibulation or other mutilation of the whole or any part of the labia majora, labia minora, prepuce of the clitoris, clitoris or vagina of a girl or woman;

“midwife” means a person whose name is registered in the midwives division of the register of nurses established under section 27 of the Nurses Act 1985;

“registered medical practitioner” has the same meaning as it has in section 2 of the Medical Practitioners Act 2007.

2.—(1) A person is guilty of an offence if the person does or attempts to do an act of female genital mutilation.

Offences of female genital mutilation, etc.

(2) A person is not guilty of an offence under *subsection (1)* if—

(a) the act concerned is a surgical operation performed by a registered medical practitioner on the girl or woman concerned, which is necessary for the protection of her physical or mental health,

(b) the act concerned is a surgical operation performed by a registered medical practitioner or a midwife, or a person undergoing training to be a midwife, on the girl or woman concerned when she is in any stage of labour, or has just

given birth, for purposes connected with the labour or birth,

(c) the person is the girl or woman on whom the act of female genital mutilation is done, or

(d) the act concerned is done to a woman who is not less than 18 years of age and there is no resultant permanent bodily harm. 5

(3) For the avoidance of doubt, it is hereby declared that it shall not be a defence to proceedings for an offence under this section for the accused person to show that he or she believed that the act concerned was consented to by the girl concerned or her parents or guardian, or the woman concerned, as the case may be, or required or permitted for customary or ritual reasons. 10

Offence of removal from State for purpose of female genital mutilation.

3.—(1) A person is guilty of an offence if the person removes or attempts to remove a girl or woman from the State where one of the purposes for the removal is to have an act of female genital mutilation done to her. 15

(2) A person is not guilty of an offence under *subsection (1)* if the act is done and is—

(a) a surgical operation performed, by a person who is duly qualified to perform surgical operations under the law of the place where the act is done, or has been professionally trained to perform surgical operations, on the girl or woman concerned, which is necessary for the protection of her physical or mental health, 20 25

(b) a surgical operation performed, by a person performing functions corresponding to those of a midwife or a registered medical practitioner, on the girl or woman concerned when she is in any stage of labour, or has just given birth, for purposes connected with the labour or birth, or 30

(c) done to a woman who is not less than 18 years of age, and there is no resultant permanent bodily harm.

(3) In proceedings for an offence under *subsection (1)*, it shall be presumed, until the contrary is shown, that one of the purposes for the removal from the State by the accused person of the girl or woman concerned was to have an act of female genital mutilation done to her if— 35

(a) the accused person removed the girl or woman from the State in circumstances giving rise to the reasonable inference that one of the purposes for such removal was to have an act of female genital mutilation done to her, and 40

(b) an act of female genital mutilation was done to her after she was removed from the State and, where she subsequently returned to the State, before that return. 45

(4) For the avoidance of doubt, it is hereby declared that it shall not be a defence to proceedings for an offence under this section for the accused person to show that he or she believed that the act concerned was consented to by the girl concerned or her parents or

guardian, or the woman concerned, as the case may be, or required or permitted for customary or ritual reasons.

(5) For the purposes of this section, to “remove a girl or woman from the State” includes—

- 5 (a) arranging any part of her travel out of the State,
- (b) accompanying her for any portion of that travel,
- (c) arranging that she be met when her travel out of the State has terminated, or
- 10 (d) doing any other act that could facilitate her travel out of the State.

4.—(1) A person is guilty of an offence if the person does or attempts to do an act of female genital mutilation in a place other than the State, but only if it is done or attempted to be done— Acts etc. done outside State.

- 15 (a) on board an Irish ship within the meaning of section 9 of the Mercantile Marine Act 1955,
- (b) on an aircraft registered in the State, or
- (c) by a person who is a citizen of Ireland or is ordinarily resident in the State, and would constitute an offence in the place in which it is done.

20 (2) A person is not guilty of an offence under *subsection (1)* if—

- (a) the act concerned is a surgical operation performed, by a person who is duly qualified to perform surgical operations under the law of the place where the act is done, or has been professionally trained to perform surgical operations, on the girl or woman concerned, which is necessary for the protection of her physical or mental health,
- 25 (b) the act concerned is a surgical operation performed, by a person performing functions corresponding to those of a midwife or a registered medical practitioner, on the girl or woman concerned when she is in any stage of labour, or has just given birth, for purposes connected with the labour or birth,
- 30 (c) the person is the girl or woman on whom the act of female genital mutilation is done, or
- 35 (d) the act concerned is done to a woman who is not less than 18 years of age and there is no resultant permanent bodily harm.

40 (3) For the avoidance of doubt, it is hereby declared that it shall not be a defence to proceedings for an offence under this section for the accused person to show that he or she believed that the act concerned was consented to by the girl concerned or her parents or guardian, or the woman concerned, as the case may be, or required or permitted for customary or ritual reasons.

45 (4) For the purposes of proceedings for an offence under this section, a person shall be deemed to be ordinarily resident in the

State if he or she has had his or her principal residence within the State for the period of 12 months immediately preceding the alleged commission of the offence.

(5) Proceedings for an offence under this section may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place. 5

Punishment for offences under sections 2, 3 and 4.

5.—A person who is guilty of an offence under *section 2, 3 or 4* is liable—

(a) on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months or to both, and 10

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding 14 years or to both.

Proceedings.

6.—Proceedings may not be instituted under this Act except by, or with the consent of, the Director of Public Prosecutions.

Double jeopardy.

7.—A person who is acquitted or convicted of an offence in a place outside the State shall not be proceeded against for an offence under this Act consisting of the act that constituted the offence of which the person was so acquitted or convicted. 15

Exclusion of the public from hearing.

8.—(1) Subject to *subsections (2) and (3)*, in any proceedings for an offence under *section 2, 3 or 4*, the judge or the court, as the case may be, shall exclude from the court during the hearing all persons except officers of the court, persons directly concerned in the proceedings, *bona fide* representatives of the Press and such other persons (if any) as the judge or the court, as the case may be, may in his or her or its discretion permit to remain. 20 25

(2) *Subsection (1)* is without prejudice to the right of a parent, relative or friend of the girl or woman in respect of whom the offence is alleged to have been committed or, where the accused person is not of full age, of the accused person, to remain in court.

(3) In any proceedings to which *subsection (1)* applies, the verdict or decision and the sentence (if any) shall be announced in public. 30

Anonymity of girl or woman concerned.

9.—(1) Subject to *subsection (8)(a)*, after a person is charged with an offence under this Act, no matter likely to lead members of the public to identify a girl or woman as the girl or woman in respect of whom the offence is alleged to have been committed shall be published in a written publication available to the public or be broadcast except as authorised by a direction given in pursuance of this section. 35

(2) If, at any stage before the commencement of a trial of a person for an offence under this Act, the accused person or another person against whom the girl or woman concerned may be expected to give evidence at the trial applies to a judge of the High Court or Circuit Court for a direction in pursuance of this subsection and satisfies the judge— 40

(a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial, and 45

- (b) that the conduct of the applicant's defence at the trial is likely to be adversely affected if the direction is not given,

the judge shall direct that *subsection (1)* shall not, by virtue of the charge alleging the offence, apply to such matter relating to that girl or woman as is specified in the direction.

(3) If, at a trial of a person for an offence under this Act, the accused or another person who is also charged at the trial applies to the judge for a direction in pursuance of this subsection and satisfies the judge—

(a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial,

(b) that the conduct of the applicant's defence at the trial is likely to be adversely affected if the direction is not given, and

(c) that there was good reason for the applicant's not having made an application under *subsection (2)* before the commencement of the trial,

the judge shall direct that *subsection (1)* shall not, by virtue of the charge alleging the offence, apply to such matter relating to the girl or woman concerned as is specified in the direction.

(4) If, at a trial for an offence under this Act, the judge is satisfied that the effect of *subsection (1)* is to impose a substantial and unreasonable restriction on the reporting of proceedings at the trial and that it is in the public interest to remove or relax the restriction, he or she shall direct that that subsection shall not apply to such matter relating to the girl or woman concerned as is specified in the direction; but a direction shall not be given in pursuance of this subsection by reason only of the outcome of the trial.

(5) If a person who has been convicted of an offence and given notice of appeal against the conviction, or, on conviction on indictment, notice of an application for leave so to appeal, applies to the appellate court for a direction in pursuance of this subsection and satisfies the court—

(a) that the direction is required for the purpose of obtaining evidence in support of the appeal, and

(b) that the applicant is likely to suffer injustice if the direction is not given,

the court shall direct that *subsection (1)* shall not apply to such matter relating to the girl or woman concerned and the offence as is specified in the direction.

(6) If any matter is published or broadcast in contravention of *subsection (1)*, the following persons, namely—

(a) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,

(b) in the case of any other publication, the person who publishes it, and

- (c) in the case of a broadcast, any body corporate which transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

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shall be guilty of an offence.

(7) In this section—

“broadcast” means broadcast by wireless telegraphy of sound or visual images intended for general reception;

“written publication” includes a film, a sound track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

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(8) Nothing in this section—

- (a) prohibits the publication or broadcasting of matter consisting only of a report of legal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused person is charged with an offence under this Act, or

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- (b) affects any prohibition or restriction imposed by virtue of any other enactment upon a publication or broadcast.

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(9) A direction in pursuance of this section does not affect the operation of *subsection (1)* at any time before the direction is given.

(10) If, after the commencement of a trial of a person for an offence under this Act, a new trial of the person for that offence is ordered, the commencement of any previous trial of that person for that offence shall be disregarded for the purposes of *subsections (2) and (3)*.

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Anonymity of
accused person.

10.—(1) After a person is charged with an offence under this Act, no matter likely to lead members of the public to identify him or her as the person against whom the charge is made shall be published in a written publication available to the public or be broadcast except—

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- (a) as authorised by a direction given in pursuance of this section or by virtue of *section 9(8)(a)* as applied by *subsection (6)* of this section, or

- (b) after he or she has been convicted of the offence.

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- (2) (a) If a person charged with an offence under this Act applies in that behalf to a judge of the High Court before the commencement of the trial or to the judge at the trial, the judge shall, subject to *paragraph (b)*, direct that *subsection (1)* shall not apply to the person in relation to the charge.

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- (b) The judge shall not give the direction if it appears to the judge that, if the direction were given, the publication of any matter in pursuance of the direction might enable members of the public to identify a girl or woman as the girl or woman in respect of whom the offence is alleged to have been committed, unless he or she is satisfied that

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a direction could properly be given in relation to that person in pursuance of *section 9*.

5 (3) If, at any stage before the commencement of a trial of a person for an offence under this Act, another person who is to be charged with an offence under this Act at the trial applies to a judge of the High Court or Circuit Court for a direction in pursuance of this subsection and satisfies the judge—

10 (a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial, and

(b) that the conduct of the applicant's defence at the trial is likely to be adversely affected if the direction is not given,

15 the judge shall direct that *subsection (1)* shall not, by virtue of the charge alleging the offence, apply to such matter relating to the first-mentioned person as is specified in the direction.

(4) If, at a trial of a person for an offence under this Act, another person who is also charged at the trial applies to the judge for a direction in pursuance of this subsection and satisfies the judge—

20 (a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial,

(b) that the conduct of the applicant's defence is likely to be adversely affected if the direction is not given, and

25 (c) that there was good reason for the applicant's not having made an application under *subsection (3)* before the commencement of the trial,

the judge shall direct that *subsection (1)* shall not, by virtue of the charge alleging the offence, apply to such matter relating to the first-mentioned person as is specified in the direction.

30 (5) If, at a trial at which a person is charged with an offence under this Act, the judge is satisfied that the effect of *subsection (1)* is to impose a substantial and unreasonable restriction on the reporting of proceedings at the trial and that it is in the public interest to remove or relax the restriction in respect of that person, the judge
35 shall direct that *subsection (1)* shall not, by virtue of the charge alleging the offence, apply to such matter relating to that person as is specified in the direction.

40 (6) *Subsections (6) to (9) of section 9* shall have effect for the purposes of this section as if for references to that section there were substituted references to this section.

(7) If, after the commencement of a trial of a person for an offence under this Act, a new trial of the person for that offence is ordered, the commencement of any previous trial of that person for that offence shall be disregarded for the purposes of *subsections (2),*
45 *(3) and (4)*.

(8) If, at any time after a person is charged with an offence under this Act, the Director of Public Prosecutions applies in that behalf to a judge of the High Court, the judge, if he or she is satisfied that it is in the public interest to do so, shall direct that *subsection (1)*

shall not apply to such matter relating to the person charged with the offence as is specified in the direction.

Punishment for offences under sections 9 and 10.

11.—(1) A person who is guilty of an offence under *section 9(6)* (including an offence under that section as applied by *section 10(6)*) is liable—

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(a) on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months or to both, and

(b) on conviction on indictment to a fine not exceeding €10,000 or imprisonment for a term not exceeding 3 years or to both.

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(2) Where an offence referred to in *subsection (1)* has been committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person, as well as the body corporate, is guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

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(3) Where the affairs of a body corporate are managed by its members, *subsection (2)* applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

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Evidence in proceedings for offences outside State.

12.—(1) In any proceedings relating to an offence under *section 4* in the circumstances referred to in *subsection (1)(c)* of that section—

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(a) a certificate that is signed by an officer of the Minister for Foreign Affairs and stating that a passport was issued by that Minister of the Government to a person on a specified date, and

(b) a certificate that is signed by an officer of the Minister for Justice and Law Reform and stating that, to the best of the officer's knowledge and belief, the person has not ceased to be a citizen of Ireland,

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shall be evidence that the person was a citizen of Ireland on the date on which the offence concerned is alleged to have been committed, unless the contrary is shown.

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(2) A document purporting to be a certificate under *paragraph (a)* or *(b)* of *subsection (1)* is deemed, unless the contrary is shown—

(a) to be such a certificate, and

(b) to have been signed by the person purporting to have signed it.

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Amendment of Bail Act 1997.

13.—The Schedule to the Bail Act 1997 is amended by inserting the following paragraph after paragraph 36 (inserted by section 23 of the Criminal Justice (Psychoactive Substances) Act 2010):

“Offences relating to female genital mutilation

37. An offence under *section 2, 3 or 4* of the *Criminal Justice (Female Genital Mutilation) Act 2011*.”.

5 **14.**—Schedule 1 to the Children Act 2001 is amended by inserting the following paragraph after paragraph 9: Amendment of Children Act 2001.

“9A. An offence under *section 2, 3 or 4* of the *Criminal Justice (Female Genital Mutilation) Act 2011*.”.

15.—This Act may be cited as the *Criminal Justice (Female Genital Mutilation) Act 2011*. Short title.



**AN BILLE UM CHEARTAS COIRIÚIL (CIORRÚ BALL
GINIÚNA BAINEANN), 2011
CRIMINAL JUSTICE (FEMALE GENITAL MUTILATION)
BILL 2011**

EXPLANATORY AND FINANCIAL MEMORANDUM

Purpose of Bill

The main purpose of the Criminal Justice (Female Genital Mutilation) Bill 2011 is to prohibit female genital mutilation; along with providing for related offences — some of which apply to certain extra-territorial jurisdictions.

Financial Implications

As the offences and penalties for this Bill come under the Department of Justice and Law Reform they have informed us that it is not possible to disaggregate the cost of any specific offences, but that any costs that may arise as a result of this legislation are not expected to be significant.

Section 1 — (Interpretation)

Section 1 provides for the definition of certain terms used in the Bill.

Section 2 — (Offences of female genital mutilation, etc.)

This section criminalises the act of doing female genital mutilation; it also provides for the offence of attempting to do an act of female genital mutilation. The offences of aiding, abetting, counselling, or procuring the commission of female genital mutilation are already provided for in the general criminal law Acts on the grounds that a person is liable to be tried and punished where s/he aids, abets, counsels or procures the commission of an indictable offence; *section 5* of the Bill provides that doing or attempting to do female genital mutilation is an indictable offence. The general criminal law Acts concerned are:

- Criminal Law Act 1997;
- Criminal Justice Act 2006;
- Criminal Justice (Amendment) Act 2009.

And in a similar vein, the offence of conspiring with another person to do female genital mutilation is covered by the same general criminal law.

Subsection (2) provides for various exemptions from the offence of female genital mutilation in *subsection (1)*. Firstly, the subsection provides that a registered medical practitioner is exempt when doing

a surgical operation that is required for the protection of the physical or mental health of a girl or woman; secondly, a midwife — or a person training to be a midwife — along with a registered medical practitioner, are exempt when doing a surgical operation on a woman in labour or after she has just given birth, provided that the operation is related to the labour or birth; thirdly, a girl or woman who self-mutilates does not commit an offence — though a person who aids and abets such a girl or woman to do female genital mutilation can be tried for an offence under the general criminal law mentioned at subsection (1) above; and fourthly, a person is exempt when doing an act on a woman who is over 18 years and there is no resultant bodily harm.

With respect to the exemption for a midwife above, it is provided here that any kind of mutilation that is equivalent to female genital mutilation following delivery, such as re-infibulation — even at the request of the woman — would also constitute an offence under these provisions.

Subsection (3) precludes the possibility of invoking reasons of custom or ritual — or the consent of the girl/woman herself or her parents/guardian — in any defence to proceedings for the commission of the general offence in subsection (1).

Section 3 — (Offence of removal from State for purpose of female genital mutilation)

This section contains offences that relate to removing a girl or woman from the State for the purposes of doing female genital mutilation to her.

Subsection (1) makes it an offence for a person to take a woman or girl from the State where one of the purposes of taking her is to do female genital mutilation to her; a similar offence for attempting removal is also created.

Subsection (2) provides for various exemptions for the offence created under *subsection (1)*. Firstly, the subsection provides that a person who has been professionally trained to do surgery, or who is qualified to do so under the law of the place where the surgery is done, is exempt when doing a surgical operation on the girl or woman concerned that is required for the protection of her physical or mental health; secondly, a person who carries out functions that correspond to work done by a midwife — along with a registered medical practitioner — are exempt when doing a surgical operation on a woman in labour or after she has just given birth, provided that the operation is related to the labour or birth; and thirdly, a person is exempt when doing an act on a woman who is over 18 years and there is no resultant bodily harm.

Subsection (3) creates a presumption about the reasons a person removes a girl or woman from the State in the event of proceedings for an offence under *subsection (1)*. In effect, this provides that where it can be reasonably inferred that an accused person took a woman/girl out of the country for, among other reasons, to do female genital mutilation to her, and that an act of female genital mutilation was done to her in the related period that she was abroad, there shall be a presumption that the accused took the woman/girl out of the State in order to have female genital mutilation done to her — unless the contrary is shown.

Similar to *section 2(3)*, *subsection (4)* precludes the possibility of invoking reasons of custom or ritual — or the consent of the

girl/woman herself or her parents/guardian — in any defence to proceedings for the commission of the general offence in *subsection (1)*.

Subsection (5) defines circumstances that come within the meaning of the phrase *remove girl or woman from the State* for the purposes of this section.

Section 4 — (Acts etc. done outside State)

Section 4 relates to the issue of extra-territorial jurisdiction in relation to doing or attempting to do female genital mutilation. *Subsection (1)* provides the circumstances in which a person commits an offence of doing or attempting to do female genital mutilation outside the State; and it includes an Irish citizen or a person who is ordinarily resident in the State who does or attempts to do female genital mutilation in another jurisdiction where they constitute offences. *Subsection (4)* defines the expression *ordinarily resident in the State* as a person who has had his or her principal residence in the State for the period of 12 months preceding the alleged commission of the offence.

Subsection (2) provides for various exemptions from the offence created under *subsection (1)*. Firstly, the subsection provides that a person who has been professionally trained to do surgery, or who is qualified to do so under the law of the place where the surgery is done, is exempt when doing a surgical operation on the girl or woman concerned that is required for the protection of her physical or mental health; secondly, a person who carries out functions that correspond to work done by a midwife — along with a registered medical practitioner — are exempt when doing a surgical operation on a woman in labour or after she has just given birth — provided that the operation is related to the labour or birth; thirdly, a girl or woman who self-mutilates does not commit an offence — though a person who aids and abets such a girl or woman to do female genital mutilation under the circumstances in *subsection (1)* shall be tried for an offence under the general criminal law mentioned at *section (2)* above; and fourthly, a person is exempt when doing an act on a woman who is over 18 years and there is no resultant bodily harm.

Similar to *section 2(3)*, *subsection (3)* precludes the possibility of invoking reasons of custom or ritual — or the consent of the girl/woman herself or her parents/guardian — in any defence to proceedings for the commission of the general offence in *subsection (1)*.

Subsection (5) is a standard provision under which where proceedings are commenced for an offence committed outside the State, they may be taken in any place in the State.

Section 5 — (Punishment for offences under sections 2, 3 and 4)

Section (5) sets out the penalties for offences committed under *sections (2), (3) and (4)* of this Bill. It provides for penalties for both a summary conviction and a conviction on indictment.

Section 6 — (Proceedings)

This provides that proceedings for an offence under this Bill may only be commenced either by or with the consent of the Director of Public Prosecutions.

Section 7 — (Double Jeopardy)

This is a standard provision under which a person cannot be proceeded against for an offence under this Bill if the person has been acquitted or convicted of a similar offence in another country.

Sections 8, 9, 10 and 11

The privacy of the victim is going to be infringed or looked at in the event that there are no measures in the Bill to properly safeguard it; hence the privacy of the victim for such criminal cases is paramount. For this purpose, the Bill incorporates the extensive provisions in both the Criminal Law (Rape) Amendment Act 1990 with respect to the provisions governing the exclusion of the public from hearings, and the measures in the earlier Criminal Law (Rape) Act 1981 with respect to the provisions that safeguard the anonymity of the victim.

Section 8 — (Exclusion of the public from hearing)

This *section* deals with excluding members of the public from any court hearing on a criminal case under this Bill. Subsection (1) gives the Judge the power to exclude all persons from the court when hearing a case for offences committed under *sections* 2, 3 or 4 — except for officers of the court, anyone involved in the hearing, genuine representatives of the Press, and anyone else that the Judge decides may remain. The discretion of the Judge is subject to *subsection* (2) and (3).

Subsection (2) permits a parent, relative or friend of the victim to remain in the court for the duration of the hearing, or a parent, relative or friend of the person accused of committing the offence if the accused is not of full age.

Subsection (3) provides that in any hearing to which *subsection* (1) applies, the verdict and the sentence of the court — where applicable — shall be announced in public.

Section 9 — (Anonymity of girl or woman concerned)

This *section* provides that, once a person is charged with an offence under this Bill, no matter likely to lead members of the public to identify a girl or woman as the person against whom the offence is alleged to have been committed, may be published in a written publication available to the public (ie in particular, a newspaper) or be broadcast except as authorised by a direction under the *section*. The general prohibition is in *subsection* (1).

Subsection (2) enables a person who is to be tried for an offence (or another person who is likely to be tried at the same trial for that or another offence and against whom the girl or woman may be expected to give evidence at the trial) to apply before the commencement of the trial to a judge of the High Court or Circuit Court for a direction permitting disclosure of the girl's/woman's identity on the ground that this is necessary for the purpose of inducing potential witnesses to come forward and that the conduct of the applicant's defence is likely to be adversely affected if the direction is not given. If the judge is satisfied on these matters, the judge will give the direction. Since the *subsection* provides that the judge shall direct that the prohibition "shall not apply to such matter relating to the girl or woman as is specified in the direction", the judge will be able, in an appropriate case, to give a direction that will permit only a partial disclosure of the identify of the girl or woman.

Subsection (3) enables a person on trial for an offence (or co-accused at the trial) to apply to the judge for a direction similar to that under *subsection* (2). In this case the person on trial will have to satisfy the judge that there was good reason for his not having made the application before the commencement of the trial.

Subsection (4) provides for a case where the trial judge is satisfied that the effect of the prohibition under the section is to impose a “substantial and unreasonable restriction” on the reporting of the trial and that it is in the public interest to remove or relax the restriction. For example, the identity of the girl or woman may be a matter of public knowledge owing to the circumstances surrounding the offence or the subsequent investigations of it, in which case there would be no point in requiring the press to pretend to conceal her identity. If the judge is satisfied as mentioned, s/he will give a direction as under *subsection (2)* or *(3)*; and again the judge will be able to restrict the extent of the disclosure.

Subsection (5) enables a person who has been convicted of an offence, and is appealing against their conviction, to obtain a direction from the appellate court similar to that provided for by *subsection (2)* in order to obtain evidence in support of their appeal. The subsection will apply both to an appeal against a conviction on indictment and to an appeal against a conviction by a juvenile court.

Subsection (6) specifies the persons who will be guilty of an offence in the event of a publication or broadcast in contravention of *subsection (1)*.

Subsection (7) defines “a broadcast” and “written publication” for the purpose of the section.

Subsection (8) contains two savings: Paragraph *(a)* provides that the section shall not prohibit the publication or broadcasting of a report of legal proceedings other than a trial for an offence under this Bill (or preliminary or appellate proceedings). Paragraph *(b)* provides that the section shall not affect any other prohibition or restriction imposed by statute on a publication or broadcast.

Subsection (9) ensures that any liability which has been incurred by reason of the disclosure of information in contravention of *subsection (1)* will not be affected if disclosure of the information is later permitted by a direction under *subsection (2)*, *(3)* or *(4)*.

Subsection (10) provides that, in the event of a retrial of a person for a female genital mutilation offence, the commencement of any previous trial shall be disregarded for the purposes of *subsections (2)* and *(3)*. Thus the accused will be able to apply for a direction under *subsection (2)* at any time before the commencement of the retrial without having to satisfy the judge that there was good reason for his not having made the application before the commencement of the first trial.

Section 10 — (Anonymity of accused person)

This *section* imposes a prohibition on the publication or broadcasting of matter likely to lead members of the public to identify a person being charged with an offence under the Bill. The prohibition is similar *mutatis mutandis* to that under *section 9* in respect of the identification of the girl or woman as the person against whom the offence is alleged to have been committed. The differences are described in the next paragraph.

The prohibition will cease to apply if the accused is convicted (*subsection (1)(b)*). The accused (A) will have the right to have the prohibition lifted on application to a High Court judge before the trial or to the judge at the trial (*subsection 2(a)*); but the judge shall not give the direction to have the prohibition lifted if it leads to the public being able to identify the victim — unless the judge is satisfied that a direction under *section 9* (Anonymity of girl or woman

concerned) could be given. Any other person (B) who is to be charged with an offence under this Bill at the trial will be able to apply before the trial, and any co-accused (C) will be able to apply at the trial, for a direction lifting the prohibition in respect of (A) on the ground that this is necessary in order to induce witnesses to come forward as mentioned under *section 9. Subsection (8)* provides that a High Court judge can lift the prohibition on public interest grounds, on application by the Director of Public Prosecutions at any time after the person is charged with an offence under the Bill.

Section 11 — (Punishment for offences under sections 9 and 10)

Subsection (1) provides for the penalties that may be imposed for a summary conviction and a conviction on indictment for an offence of publishing or broadcasting unauthorised matter in contravention of *section 9 or 10*.

Subsections (2) and (3) are provisions of the usual kind for the liability of directors and others officers of a body corporate in the case of an offence such as mentioned in the immediately preceding paragraph above when committed by the body corporate.

Section 12 — (Evidence in proceedings for offences outside State)

Section 12 provides for evidentiary matters relating to a person being deemed to be an Irish citizen at the time that an offence is alleged to have been committed in any proceedings that refer to an offence under *section 4(1)(c)* of the Bill; it also allows for evidence by certificate.

Section 13 — (Amendment of Bail Act 1997)

Section (13) amends the Schedule to the Bail Act 1997. The Schedule lists the offences that are defined as “serious offences” and *section 2* of the Bail Act provides for the circumstances in which bail may be refused for such offences. As a result of this amendment, the offences in this Bill that relate to *sections (2), (3), and (4)* will be added to the Bail Schedule.

Section 14 — (Amendment of Children Act 2001)

Section (14) amends Schedule 1 to the Children Act 2001, inserting the offences relating to female genital mutilation at *section (2), (3), and (4)* of the Bill into this Schedule of Offences Against Children .

Section 15 — (Short Title)

This contains the Short title of the Bill.

*Department of Health and Children,
January, 2011.*