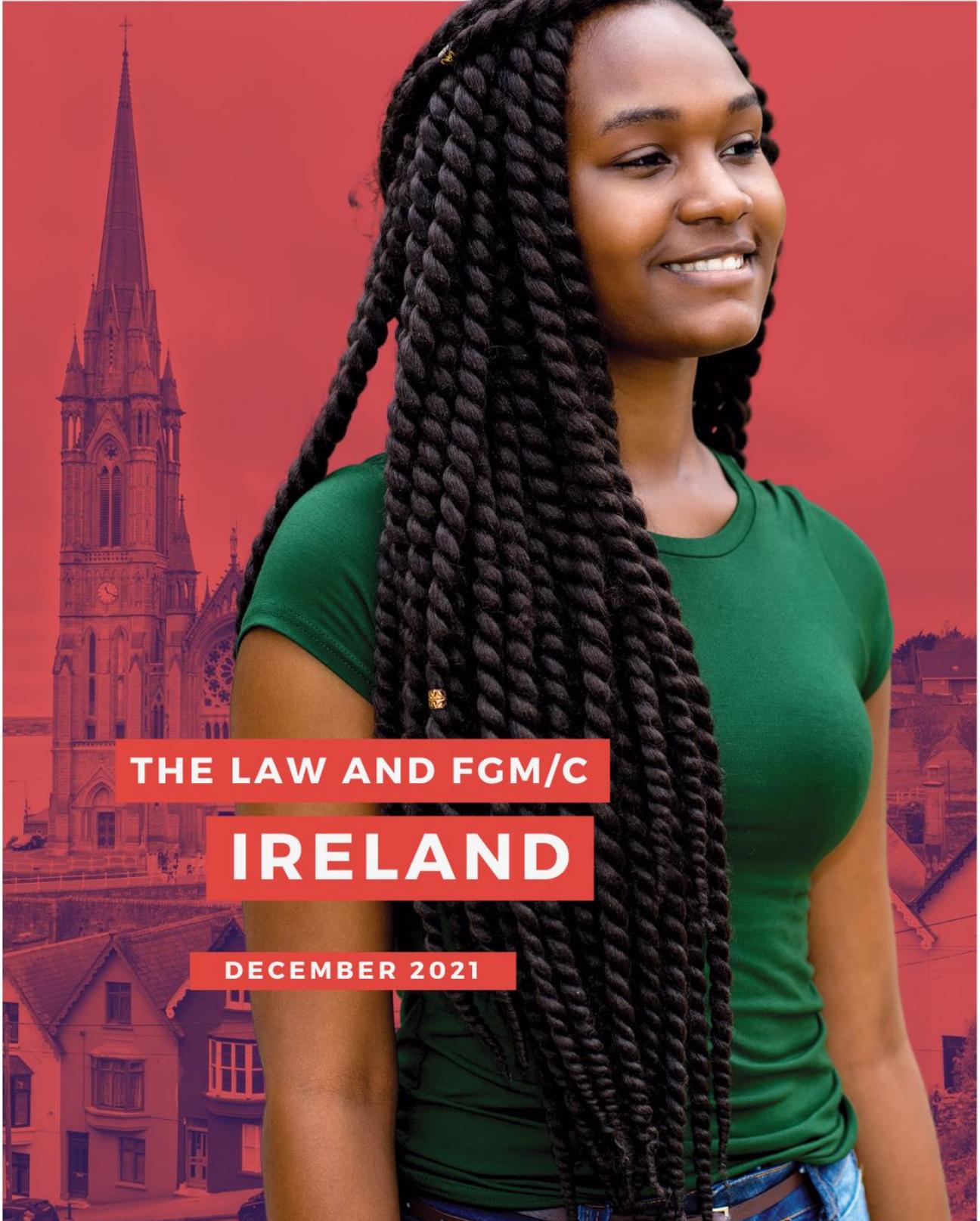




ORCHID  PROJECT



THE LAW AND FGM/C

IRELAND

DECEMBER 2021

National Legal Framework

Overview of National Legal Framework in The Republic of Ireland

National legislation:

- ✓ Specific law/provision criminalising FGM/C
- ✓ Provides a definition of FGM/C
- X Criminalises the performance of FGM/C
- ✓ Criminalises the procurement, arrangement and/or assistance of acts of FGM/C
- ✓* Obligation to report incidents of FGM/C to the authorities
- ✓** Criminalises the participation of medical professionals in acts of FGM/C
- ✓ Extraterritorial application regardless of double criminality

* Only in the case of minors.

** Not specifically criminalised.

Introduction

The Republic of Ireland is a country occupying the greater part of the island of Ireland, which is situated in the North Atlantic Ocean, to the west of Great Britain. The Republic of Ireland (*Ireland*) has an estimated population of 4.9 million.¹ It is a unitary, constitutional republic with a parliamentary democracy and has a common-law legal system.

FGM/C Prevalence

The most recent estimation on the prevalence of female genital mutilation/cutting (FGM/C) in Ireland is from 2017, by the Irish non-governmental organisation AkiDwA. AkiDwA estimates that, based on data collected by the Irish Central Statistics Office, approximately 5,790 women and girls who have undergone FGM/C are living in Ireland.² Earlier studies published in 2008 and 2010 estimated the number to be 2,585 and 3,170, respectively.³

National Legal Framework

Specific Law

Ireland has a specific law criminalising FGM/C, the **Criminal Justice (Female Genital Mutilation) Act 2012, as amended** (the *FGM Act*).

Definition of FGM/C

Section 1 of the FGM Act defines 'FGM' as 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. This definition would likely cover most, if not all, types

of FGM/C. The definition is in line with the definition of FGM given by the World Health Organization, but does differ slightly, omitting ‘other types of injuries for non-medical reasons’.⁴

The FGM Act does not further define the terms ‘excising’, ‘infibulating’ or ‘otherwise mutilating’. To date, there is little to no judicial consideration of these terms. Whether a particular procedure amounts to excision, infibulation or mutilation of the genitalia would be a question of fact, which would need to be established by medical and/or other expert evidence.

Women and Girls of All Ages

The performance of, or an attempt to perform, FGM/C on women and girls of all ages has been criminalised in Ireland. However, **Section 2(2)(d) of the FGM Act** prescribes that it is not a criminal offence to perform or attempt to perform FGM/C on a woman aged 18 or older if there is no resulting permanent bodily harm. However, the FGM Act does not define what would or not constitute ‘permanent bodily harm’, making this exception seemingly inappropriate and adding unnecessarily complexity.

Section 2(3) states that carrying out or attempting to carry out FGM/C is an offence irrespective of the consent of the girl or woman concerned, her parents or her guardian.

Additionally, any offences committed under **Sections 2, 3 and 4** are specifically designated ‘offences against children’ under the **Children Act 2001, as amended** (the *Children Act*).

Procuring, Aiding and Abetting

Procuring, aiding and abetting FGM/C are criminalised in Ireland through general criminal law. **Section 7(1) of the Criminal Law Act 1997** (the *Criminal Law Act*) prescribes that any person who aids, abets, counsels or procures the commission of an indictable offence shall be liable to punishment as a principal offender.

Allowing the Use of Premises

Allowing the use of premises for the purpose of FGM/C is not specifically criminalised in Ireland. Although it is not mentioned specifically in the **FGM Act**, allowing the use of premises could be a form of ‘aiding’ under **Section 7(1) of the Criminal Law Act**.

Providing or Possessing Tools

Providing or possessing tools for the purpose of FGM/C is not specifically criminalised in Ireland. Although it is not mentioned specifically in the **FGM Act**, providing tools, specific or otherwise, used for the purposes of carrying out an act of FGM/C could be a form of ‘aiding’ under **Section 7(1) of the Criminal Law Act**, although simply possessing tools is unlikely to qualify as an ‘attempt’.

Failure to Report FGM/C

Failing to report FGM/C constitutes an offence in Ireland, but only if the victim is a child under the age of 18. **Section 2(1) of the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012** prescribes that it is an offence if:

- *a person knows or believes that a certain offence, including (inter alia) FGM, has been committed by another person against a child; and*
- *the person has information that might be of assistance in the apprehension, prosecution or conviction of that other person; and*
- *the person fails without reasonable excuse to disclose the information to the authorities as soon as possible.*

Under general child protection laws, certain professionals have a duty to report any actual or suspected case of FGM/C. **Section 14(1) of the Children First Act 2015** obligates ‘mandated persons’ to notify the Child and Family Agency if they know, believe or have reasonable grounds to suspect that a child has been harmed, is being harmed or is at risk of being harmed, based on information they have received, acquired or been made aware of during the course of their professional activities. **Section 2 of Schedule 2 of the Children First Act** prescribes that ‘mandated persons’ include, *inter alia*, medical professionals (practitioners, midwives, nurses, etc), social workers and teachers.

Medicalised FGM/C

Medicalised FGM/C is not specifically criminalised in Ireland, but would fall under the general prohibition in **Section 2(1) of the FGM Act**.

Section 2(2) contains two medical exceptions to acts that might otherwise constitute offences of FGM/C:

- Under **Section 2(2)(a)**, a surgical operation performed by a registered medical practitioner that is necessary for the protection of the physical or mental health of the woman or girl is not considered an offence of FGM.
- Under **Section 2(2)(b)**, 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, is not considered an offence of FGM.

Extraterritoriality

The **FGM Act** has extraterritorial application and extends to any act constituting FGM/C committed outside the territory of Ireland under the requirement of double criminality. It explicitly criminalises the removal of any girl or woman outside of Ireland for the purpose of committing an act of FGM/C on her.

Section 4(1)(c) prescribes that it is an offence to perform or attempt to perform an act of FGM/C outside of Ireland if done by a person who has Irish nationality or is ordinarily resident in Ireland and if FGM/C is also a criminal offence in the country where it was committed or attempted. Under **Section 4(2)(d)**, it is not an offence if the victim is 18 years of age or older and no permanent bodily harm has ensued.

Section 3(1) criminalises the removal of any girl or woman outside the national borders of Ireland for the purpose of carrying out an act of FGM/C. This section prescribes that it is an offence to take or attempt to take a woman or girl out of Ireland with the purpose of performing an act of FGM/C on her. Under **Section 3(2)(c)**, it is not an offence if the victim is 18 years of age or older and no permanent bodily harm has ensued.

Under **Section 3(3)**, it is presumed that a woman or girl was taken or attempted to be taken out of Ireland for the purpose of having an act of FGM/C performed on her if the circumstances of the case give rise to the reasonable inference that one of the purposes for such removal was having FGM/C performed on her, or if FGM/C was performed on her after being removed from Ireland and before her subsequent return to Ireland. **Section 3(5)** elaborates that to ‘remove a girl or woman from Ireland’ includes:

- *arranging any part of her travel out of Ireland;*
- *accompanying her for any portion of that travel;*
- *arranging that she be met when her travel out of Ireland has ended; or*
- *doing any other act that could facilitate her travel out of Ireland.*

Penalties

Section 5 of the FGM Act prescribes that any person who is guilty of an offence under **Sections 2, 3 and 4 of the FGM Act** shall be liable for a sentence of:

- *up to 14 years' imprisonment or a fine, or both, on conviction on indictment (more severe offences); and*
- *up to one year's imprisonment or a fine, or both, on summary conviction (less severe offences; for example, a less severe form of FGM).*

Under **Section 7(1) of the Criminal Law Act**, those who procure, counsel aid in and/or abet an indictable offence are liable to those same sentences as principle offenders, so any persons who procure, counsel, aid in and/or abet an act or attempted act of FGM/C and who are deemed indictable on prosecution will be liable to *up to 14 years' imprisonment or a fine, or both, on conviction.*

Protection

Protecting Uncut Girls and Women

Uncut girls under the age of 18 can be protected through the child protection legislation. There are no specific or general laws protecting uncut women over the age of 18, aside from the general criminal legislative provisions.

Supervision Orders

Under the **Child Care Act 1991, as amended** (the *Child Care Act*), a child can be put under supervision or be taken into care by court order. **Section 19(1)(c) of the Child Care Act** prescribes that a court may make a 'supervision order', on the application of **the Child and Family Agency**,¹ if there are reasonable grounds for believing that the child's health, development or welfare is likely to be avoidably impaired or neglected and it is desirable that the child is visited periodically by or on behalf of the health board.

Section 19(2) prescribes that a supervision order authorises the Child and Family Agency to have the child visited on such periodic occasions as the agency may consider necessary in order to guarantee the welfare of the child and give the necessary advice to the parents.

When making a supervision order, and throughout the subsequent duration of such order, a court may, on application by the Child and Family Agency, give direction regarding the care of the child, such as requiring the parents to guarantee that the child attends a medical examination or assessment (**Section 19(4)**).

Section 19(5) prescribes that not complying with the terms and directions of a supervision order is an offence, the sentence for which is *a fine* or, at the direction of the court, *up to six months' imprisonment, or both*, on summary conviction.

Care Orders

A court may also order a child to be taken into care. The granting of a care order is independent of a supervision order and may be granted immediately upon application if the court deems such an order necessary. **Section 18(1)(c) of the Child Care Act** prescribes that a court may make a 'care order', on application by the Child and Family Agency, if the child's health, development or welfare is likely to be avoidably impaired or neglected and the child requires care or protection that the child is unlikely to receive unless the court makes an order.

¹ Tusla – the Child and Family Agency – established under the Child and Family Act 2013, as amended, is the dedicated state agency responsible for the wellbeing, health and protection of children in the Republic of Ireland.

Under **Section 18(2)**, a care order's duration is up to the discretion of the court and may last until the child's 18th birthday. **Section 18(6)** prescribes that, between the application for and the decision on a care order, the court may give directions regarding the care and custody of the child or make a supervision order.

Interim Care Orders

Under **Section 17(1) of the Child Care Act**, pending the decision on or application for a care order, a justice of a district court may also make an 'interim care order' if deemed necessary to protect the child. If the parents, guardian acting in *loco parentis* or the Child and Family Agency having custody of the child do not consent to such order, an interim care order may not last longer than 29 days.

Emergency Care Orders

Section 13(1) prescribes that, in the case of an immediate and serious risk to the health or welfare of a child or the imminent likelihood of such a risk, a justice may make an 'emergency care order', on the application of the Child and Family Agency, for the child to be taken into the care of the Child and Family Agency for a maximum period of eight days (a court direction may, however, be given at any time during the currency of the order and may be varied or discharged on the application of any person). If there is no time to make an application, the police may take the child into protection under **Section 12(1)**.

Victims and Witnesses

Victims and witnesses enjoy protection from publicity in Ireland under the **FGM Act**. **Section 8(1)** prescribes that FGM/C court cases are not to be held in public, excluding the presence of any persons directly concerned in the proceedings, such as officers of the court, 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 attend.

Section 9 protects the anonymity of the victim. **Section 9(1)** prescribes that nothing may be published or broadcast that may lead the public to identify the girl or woman against whom the alleged offence has been committed, except in situations where the court gives directions for doing so. **Section 9(6)** prescribes that a breach of **Section 9(1)** constitutes an offence.

Implementation of the Law

Court Cases

There has been one conviction for FGM/C in Ireland to date. On 27 January 2020, the Dublin Circuit Criminal Court sentenced a married man and woman, both originating from East Africa, to (respectively) five years and six months' imprisonment, and four years and nine months' imprisonment for procuring FGM/C performed on their daughter in 2016, who was just under two years of age at the time.

The performance of FGM/C on the girl took place in Ireland. The victim was brought to hospital due to excessive bleeding, where the parents told hospital staff that she had sustained her injuries by falling backwards on a toy without a diaper on. The girl had to undergo surgery to stop the excessive bleeding from the injuries sustained. The treating doctors and surgeon observed that her clitoris had been partially removed, amounting to FGM/C Type I, and formed the view that the explanation given by the girl's parents was not credible and the injuries were not accidental, whereupon they duly notified the authorities.

The parents pleaded not guilty in court and denied that FGM/C had been carried out on their daughter, but this was not accepted by the jury, which returned a unanimous verdict of guilty on all counts.⁵

Conclusions and Recommendations

Conclusions

FGM/C is criminalised in Ireland under a specific law, the **Criminal Justice (Female Genital Mutilation) Act 2012, as amended** (the *FGM Act*). The definition of 'FGM' maintained in the law seems to cover all **types of FGM/C** and is in line with the World Health Organization's definition of FGM; however, it omits the criterion of FGM/C being performed for non-medical reasons. **Medicalised FGM/C** is not specifically addressed, but is likely to be covered by the general prohibition of **Section 2(1) of the FGM Act**.

Procuring, aiding and abetting FGM/C is not specifically criminalised in Ireland, but providing tools could qualify as 'aiding'.

The **failure to report** FGM/C is criminalised in Ireland, but only if the victim is a minor. Under general child protection laws, there is an obligation for relevant professionals to report cases of FGM/C and cases where a girl is at risk of it.

The FGM Act extends **extraterritorial application** to FGM/C committed abroad, under the requirement of double criminality, and explicitly criminalises cross-border movement for the purpose of FGM/C.

Recommendations

We recommend that Ireland also criminalise performing FGM/C on a woman who is 18 years of age or older even if there is no permanent bodily harm resulting from it.

We also recommend that Ireland order an inquiry into the prevalence of FGM/C and the number of girls and women possibly at risk of it.

Appendix I: International and Regional Treaties

REPUBLIC OF IRELAND

Signed

Ratified/ Acceded

Reservations on reporting?

International

International Covenant on Civil & Political Rights (1966) (ICCPR) ⁶	✓ 1973	✓ 1989	No
International Covenant on Economic, Social & Cultural Rights (1966) (ICESCR) ⁷	✓ 1973	✓ 1989	No
Convention on the Elimination of All forms of Discrimination Against Women (1979) (CEDAW) ⁸	X	✓ 1985	No
Convention on the Rights of the Child (1989) (CRC) ⁹	✓ 1990	✓ 1992	No

Regional

Istanbul Convention ¹⁰	✓ 2015	✓ 2019	Yes*
European Convention on Human Rights ¹¹	✓ 1950	✓ 1953	No

* In accordance with Article 78, paragraph 2, of the Convention, Ireland reserves the right not to apply the provisions of the Convention laid down in:

- Article 30, paragraph 2;
- Article 44, paragraph 3.

‘Signed’: a treaty is signed by countries following negotiation and agreement of its contents.

‘Ratified’: once signed, most treaties and conventions must be ratified (i.e. approved through the standard national legislative procedure) to be legally effective in that country.

‘Acceded’: when a country ratifies a treaty that has already been negotiated by other states.

Appendix II: National Laws

Criminal Justice (Female Genital Mutilation) Act 2012

Section 1

“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.

Section 2

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

Section 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.
- (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,
 - (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
 - (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—

- (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
 - (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.
- (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—
- (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
 - (d) doing any other act that could facilitate her travel out of the State.

Section 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—
- (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.
- (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,
 - (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,
 - (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.
- (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.
- (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.

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

Section 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.
- (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.

Section 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.

- (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—
 - (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,

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

Criminal Law Act 1997

Section 7

- (1) Any person who aids, abets, counsels or procures the commission of an indictable offence shall be liable to be indicted, tried and punished as a principal offender.
- (2) Where a person has committed an arrestable offence, any other person who, knowing or believing him or her to be guilty of the offence or of some other arrestable offence, does without reasonable excuse any act with intent to impede his or her apprehension or prosecution shall be guilty of an offence.
- (3) If, upon the trial on indictment of an arrestable offence, it is proved that the offence charged, or some other offence of which the accused might on that charge be found guilty, was committed but it is not proved that the accused was guilty of it, the accused may be found guilty of an offence under subsection (2) of which it is proved that he or she is guilty in relation to the offence charged, or that other offence.
- (4) A person committing an offence under subsection (2) with intent to impede another person's apprehension or prosecution shall be liable on conviction on indictment to imprisonment according to the gravity of the offence that the other person has committed or attempted to commit, as follows:
 - (a) if that offence is one for which the sentence is fixed by law, or for which the maximum sentence is imprisonment for life, he or she shall be liable to imprisonment for a term not exceeding ten years;
 - (b) if it is one for which a person of full capacity and not previously convicted may be sentenced to imprisonment for a term of fourteen years, he or she shall be liable to imprisonment for a term not exceeding seven years;
 - (c) if it is not one included in paragraph (a) or (b) but is one for which a person of full capacity and not previously convicted may be sentenced to imprisonment for a term of ten years, he or she shall be liable to imprisonment for a term not exceeding five years;
 - (d) in any other case, he or she shall be liable to imprisonment for a term not exceeding three years.
- (5) Where a person is charged with an offence under subsection (2), no further proceedings in the matter (other than any remand in custody or on bail) shall be taken except by or with the consent of the Director of Public Prosecutions.
- (6) The references in the following provisions, namely subsection (1) of section 13 (which relates to a plea of guilty in the District Court of an indictable offence) and subsection (1) (f) of section 29 (which relates to bail in the case of certain offences) of the Criminal Procedure Act, 1967, to an accessory before or after the fact shall be construed as references to aiding, abetting, counselling or procuring the commission of an offence, and to an offence under subsection (2).
- (7) The First Schedule to the Criminal Justice Act, 1951 (which specifies the indictable offences which may be tried summarily with the consent of the accused) is hereby amended by the insertion of the following reference: "24. An offence under section 7(2) of the Criminal Law Act, 1997."

Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012

Section 2

- (1) Subject to this section, a person shall be guilty of an offence if—
- (a) he or she knows or believes that an offence, that is a Schedule 1 offence, has been committed by another person against a child, and
 - (b) he or she has information which he or she knows or believes might be of material assistance in securing the apprehension, prosecution or conviction of that other person for that offence,
- and fails without reasonable excuse to disclose that information as soon as it is practicable to do so to a member of the Garda Síochána.
- (2) Subsection (1) applies only to information that a person acquires, receives or becomes aware of after the passing of this Act irrespective of whether the Schedule 1 offence concerned was committed before or after that passing.
- (3) The child against whom the Schedule 1 offence concerned was committed (whether or not still a child) shall not be guilty of an offence under this section.
- (4) This section is without prejudice to any right or privilege that may arise in any criminal proceedings by virtue of any rule of law or other enactment entitling a person to refuse to disclose information.
- (5) For the avoidance of doubt it is hereby declared that the obligation imposed on a person by subsection (1) to disclose information that he or she has to a member of the Garda Síochána is in addition to, and not in substitution for, any other obligation that the person has to disclose that information to the Garda Síochána or any other person, but that subsection shall not require the first-mentioned person to disclose that information to the Garda Síochána more than once.

Children First Act 2015

Section 14

- (1) Subject to subsections (3), (4), (5), (6) and (7), where a mandated person knows, believes or has reasonable grounds to suspect, on the basis of information that he or she has received, acquired or becomes aware of in the course of his or her employment or profession as such a mandated person, that a child—
- (a) has been harmed,
 - (b) is being harmed, or
 - (c) is at risk of being harmed,
- he or she shall, as soon as practicable, report that knowledge, belief or suspicion, as the case may be, to the Agency.
- (2) Where a child believes that he or she—
- (a) has been harmed,
 - (b) is being harmed, or
 - (c) is at risk of being harmed,
- and discloses that belief to a mandated person in the course of the mandated person's employment or profession as such a person, the mandated person shall, subject to subsections (5), (6) and (7), as soon as practicable, report that disclosure to the Agency.
- (3) A mandated person shall not be required to make a report to the Agency under subsection (1) where—
- (a) he or she knows or believes that—
 - (i) a child who is aged 15 years or more but less than 17 years is engaged in sexual activity, and
 - (ii) the other party to the sexual activity concerned is not more than 2 years older than the child concerned,
 - (b) he or she knows or believes that—
 - (i) there is no material difference in capacity or maturity between the parties engaged in the sexual activity concerned, and
 - (ii) the relationship between the parties engaged in the sexual activity concerned is not intimidatory or exploitative of either party,
 - (c) he or she is satisfied that subsection (2) does not apply, and
 - (d) the child concerned has made known to the mandated person his or her view that the activity, or information relating to it, should not be disclosed to the Agency and the mandated person relied upon that view.
- (4) A mandated person shall not be required to make a report to the Agency under subsection (1) where the sole basis for the mandated person's knowledge, belief or suspicion is as a result of information he or she has acquired, received or become aware of—
- (a) from—
 - (i) another mandated person, or
 - (ii) a person, other than a mandated person, who has reported jointly with a mandated person pursuant to subsection (6)(b),that a report has been made to the Agency in respect of the child concerned by that other person,
 - (b) pursuant to his or her role, as a member of staff of the Agency, in carrying out an assessment as to whether a child who is the subject of a report or any other child has been, is being or is at risk of being harmed, or
 - (c) pursuant to his or her role in assisting the Agency with an assessment as to whether a child who is the subject of a report or any other child has been, is being or is at risk of being harmed.

- (5) Subsections (1) and (2) apply only to information that a mandated person acquires, receives or becomes aware of after the commencement of this section irrespective of whether the harm concerned occurred before or after that commencement.
- (6) Subject to subsection (7), a report under subsection (1) or (2) shall be made by the completion of such form as shall be specified for that purpose by the Agency (in this Act referred to as a “mandated report form”) and may be made by the mandated person—
 - (a) himself or herself, or
 - (b) jointly with one or more than one other person, irrespective of whether or not the other person is a mandated person.
- (7) Where a mandated person acting in the course of his or her employment or profession knows, believes or has reasonable grounds to suspect that a child may be at risk of immediate harm and should be removed to a place of safety, he or she may make a report to the Agency under subsection (1) or (2) other than by means of a mandated report form.
- (8) Where a mandated person makes a report under subsection (7), he or she shall in addition, complete a mandated report form as soon as may be but in any event not later than 3 days after the making of the first-mentioned report.
- (9) Any of the following matters may be prescribed:
 - (a) the procedures that are to apply to a mandated person making a report under this section;
 - (b) the making of a report by a mandated person jointly with one or more than one other person under this section.
- (10) The Agency shall make a mandated report form available in such form and manner (including on the internet) as the Agency considers appropriate.
- (11) The obligations imposed on a mandated person under this section are in addition to, and not in substitution for, any other obligation that the person has to disclose information to the Agency (whether or not in his or her capacity as a mandated person), but, subject to subsection (8), this section shall not require the mandated person to disclose that information to the Agency more than once.
- (12) Nothing in this section shall operate to affect any other obligation that a person has to disclose information to a member of An Garda Síochána under the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 or to any other person by or under any other enactment or rule of law.

Child Care Act 1991

Section 12

- (1) Where a member of the Garda Síochána has reasonable grounds for believing that—
- (a) there is an immediate and serious risk to the health or welfare of a child, and
 - (b) it would not be sufficient for the protection of the child from such immediate and serious risk to await the making of an application for an emergency care order by the Child and Family Agency under section 13 ,
- the member, accompanied by such other persons as may be necessary, may, without warrant, enter (if need be by force) any house or other place (including any building or part of a building, tent, caravan or other temporary or moveable structure, vehicle, vessel, aircraft or hovercraft) and remove the child to safety.

[. . .]

Section 13

- (1) If a justice of the District Court is of opinion on the application of the Child and Family Agency that there is reasonable cause to believe that—
- (a) there is an immediate and serious risk to the health or welfare of a child which necessitates his being placed in the care of the Child and Family Agency, or
 - (b) there is likely to be such a risk if the child is removed from the place where he is for the time being,
- the justice may make an order to be known and in this Act referred to as an “emergency care order”.
- (2) An emergency care order shall place the child under the care of the Child and Family Agency for the area in which the child is for the time being for a period of eight days or such shorter period as may be specified in the order.

[. . .]

Section 17

- (1) Where a justice of the District Court is satisfied on the application of the Child and Family Agency that—
- (a) an application for a care order in respect of the child has been or is about to be made (whether or not an emergency care order is in force), and
 - (b) there is reasonable cause to believe that any of the circumstances mentioned at paragraph (a), (b) or (c) of section 18 (1) exists or has existed with respect to the child and that it is necessary for the protection of the child's health or welfare that he be placed or maintained in the care of the Child and Family Agency pending the determination of the application for the care order,
- the justice may make an order to be known and in this Act referred to as an “interim care order”.
- (2) An interim care order shall require that the child named in the order be placed or maintained in the care of the Child and Family Agency —
- (a) for a period not exceeding eight days, or
 - (b) where the Child and Family Agency and the parent having custody of the child or person acting in loco parentis consent, for a period exceeding eight days,
- and an extension or extensions of any such period may be granted (with the consent, where an extension is to exceed eight days, of the persons specified in paragraph (b)) on the application of any of the parties if the justice is satisfied that grounds for the making of an interim care order continue to exist with respect to the child.

[. . .]

Section 18

- (1) Where, on the application of the Child and Family Agency with respect to a child who resides or is found in its area, the court is satisfied that—
 - (a) the child has been or is being assaulted, ill-treated, neglected or sexually abused, or
 - (b) the child's health, development or welfare has been or is being avoidably impaired or neglected, or
 - (c) the child's health, development or welfare is likely to be avoidably impaired or neglected,and that the child requires care or protection which he is unlikely to receive unless the court makes an order under this section, the court may make an order (in this Act referred to as a "care order") in respect of the child.
- (2) A care order shall commit the child to the care of the Child and Family Agency for so long as he remains a child or for such shorter period as the court may determine and, in such case, the court may, of its own motion or on the application of any person, extend the operation of the order if the court is satisfied that grounds for the making of a care order continue to exist with respect to the child.
- (3) Where a care order is in force, the Child and Family Agency shall—
 - (a) have the like control over the child as if it were his parent; and
 - (b) do what is reasonable (subject to the provisions of this Act) in all the circumstances of the case for the purpose of safeguarding or promoting the child's health, development or welfare;and shall have, in particular, the authority to—
 - (i) decide the type of care to be provided for the child under section 36;
 - (ii) give consent to any necessary medical or psychiatric examination, treatment or assessment with respect to the child; and
 - (iii) give consent to the issue of a passport to the child, or to the provision of passport facilities for him, to enable him to travel abroad for a limited period.
- (4) Any consent given by the Child and Family Agency in accordance with this section shall be sufficient authority for the carrying out of a medical or psychiatric examination or assessment, the provision of medical or psychiatric treatment, the issue of a passport or the provision of passport facilities, as the case may be.
- (5) Where, on an application for a care order, the court is satisfied that—
 - (a) it is not necessary or appropriate that a care order be made, and
 - (b) it is desirable that the child be visited periodically in his home by or on behalf of the Child and Family Agency,the court may make a supervision order under section 19.
- (6) Between the making of an application for a care order and its determination, the court, of its own motion or on the application of any person, may give such directions as it sees fit as to the care and custody of, or may make a supervision order in respect of, the child who is the subject of the application pending such determination, and any such direction or supervision order shall cease to have effect on the determination of the application.
- (7) Where a court makes a care order, it may in addition make an order requiring the parents of the child or either of them to contribute to the Child and Family Agency such weekly or other periodic sum towards the cost of maintaining the child as the court, having regard to the means of the parents or either of them, thinks fit.
- (8) An order under subsection (7) may be varied or discharged on application to the court by the parent required to contribute or by the Child and Family Agency.

Section 19

- (1) Where, on the application of the Child and Family Agency, with respect to a child who resides in its area, the court is satisfied that there are reasonable grounds for believing that—
 - (a) the child has been or is being assaulted, ill-treated, neglected or sexually abused, or

(b) the child's health, development or welfare has been or is being avoidably impaired or neglected, or

(c) the child's health, development or welfare is likely to be avoidably impaired or neglected,

and it is desirable that the child be visited periodically by or on behalf of the Child and Family Agency, the court may make an order (in this Act referred to as a "supervision order") in respect of the child.

- (2) A supervision order shall authorise the Child and Family Agency to have the child visited on such periodic occasions as the board may consider necessary in order to satisfy itself as to the welfare of the child and to give to his parents or to a person acting in loco parentis any necessary advice as to the care of the child.
- (3) Any parent or person acting in loco parentis who is dissatisfied with the manner in which the Child and Family Agency is exercising its authority to have a child visited in accordance with this section may apply to the court and the court may give such directions as it sees fit as to the manner in which the child is to be visited and the Child and Family Agency shall comply with any such direction.
- (4) Where a court makes a supervision order in respect of a child, it may, on the application of the Child and Family Agency, either at the time of the making of the order or at any time during the currency of the order, give such directions as it sees fit as to the care of the child, which may require the parents of the child or a person acting in loco parentis to cause him to attend for medical or psychiatric examination, treatment or assessment at a hospital, clinic or other place specified by the court.
- (5) Any person who fails to comply with the terms of a supervision order or any directions given by a court under subsection (4) or who prevents a person from visiting a child on behalf of the Child and Family Agency or who obstructs or impedes any such person visiting a child in pursuance of such an order shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500 or, at the discretion of the court, to imprisonment for a term not exceeding 6 months or both such fine and such imprisonment.
- (6) A supervision order shall remain in force for a period of 12 months or such shorter period as may be specified in the order and, in any event, shall cease to have effect when the person in respect of whom the order is made ceases to be a child.
- (7) On or before the expiration of a supervision order, a further supervision order may be made on the application of the Child and Family Agency with effect from the expiration of the first mentioned order.

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- 1 Central Statistics Office (2020) *Population and Migration Estimates*. Available at <https://www.cso.ie/en/releasesandpublications/er/pme/populationandmigrationestimatesapril2020/> (accessed 15 July 2021).
 - 2 AkiDwA (2017) *Female Genital Mutilation: Towards a National Action Plan to Combat FGM 2016-2019*. Available at <https://akidwa.ie/female-genital-mutilation/> (accessed 15 July 2021).
 - 3 European Institute for Gender Equality (2013) *Current situation of female genital mutilation in Ireland*. Available at <https://eige.europa.eu/publications/current-situation-and-trends-female-genital-mutilation-ireland> (accessed 15 July 2021).
 - 4 World Health Organization (2020) *Factsheet: Female Genital Mutilation*. Available at [https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation#:~:text=Female%20genital%20mutilation%20\(FGM\)%20involves,benefits%20for%20girls%20and%20wo men](https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation#:~:text=Female%20genital%20mutilation%20(FGM)%20involves,benefits%20for%20girls%20and%20wo men) (accessed 15 July 2021).
 - 5 Órla Ryan (2020) 'Ireland's first FGM conviction: Father sentenced to 5.5 years, mother sentenced to 4 years and 9 months', *TheJournal.ie*, 27 January. Available at <https://www.thejournal.ie/fgm-trial-sentencing-ireland-4975318-Jan2020/> (accessed 15 July 2021).
 - 6 *International Covenant on Civil and Political Rights* (1966) United Nations Treaty Collection: Status of Treaties. Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en (accessed 15 July 2021).
 - 7 *International Covenant on Economic, Social and Cultural Rights* (1966) United Nations Treaty Collection: Status of Treaties. Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4 (accessed 15 July 2021).
 - 8 *Convention on the Elimination of All Forms of Discrimination Against Women* (1979) United Nations Treaty Collection: Status of Treaties. Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=_en#9 (accessed 15 July 2021).
 - 9 *Convention on the Rights of the Child* (1989) United Nations Treaty Collection: Status of Treaties. Available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en (accessed 15 July 2021).
 - 10 - Council of Europe (2021) *Chart of signatures and ratifications of Treaty 210, Convention on preventing and combating violence against women and domestic violence*. Available <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=210> (accessed 15 July 2021).
 - Council of Europe (2021) *Reservations and Declarations for Treaty 210, Convention on preventing and combating violence against women and domestic violence*. Available at <https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=210&codeNature=0> (accessed 15 July 2021).
 - 11 - Council of Europe (2021) *Chart of Signatures and Ratifications of Treaty 005, Convention for the Protection of Human Rights and Fundamental Freedoms*. Available at <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=005> (accessed 15 July 2021).
 - Council of Europe (2021) *Reservations and Declarations for Treaty 005, Convention for the Protection of Human Rights and Fundamental Freedoms*. Available at <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=005> (accessed 15 July 2021).

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Kadettmann (undated) *Smiling beautiful happy afro woman with afro hairstyle . . .* 123RF ID 162918987.

Please note that the use of a photograph of any girl or woman in this report does not imply that she has, nor has not, undergone FGM/C.

This report analyses and discusses the application of national (criminal) laws to the commission of FGM/C and any possible related crimes. It also explores other legal factors deemed relevant, such as legal obligations to report the commission or likely upcoming commission of FGM/C, available legal protective measures for girls and women at risk of FGM/C, and any obligations of national governments in relation to FGM/C.

The initial research conducted for this report consisted of a questionnaire developed by 28 Too Many (part of Orchid Project) and Ashurst LLP. The information contained in the responses to that questionnaire was then reviewed by Middelburg Human Rights Law Consultancy, updated and used as the basis of further research from relevant sources. This report is mainly based on primary legal sources such as legislation, case law and authoritative literature, but does use secondary sources such as government documents, journal articles and newspaper articles.

This report has been prepared as a work of legal research only and does not represent legal advice in respect of any of the laws of the Republic of Ireland. It does not purport to be complete or to apply to any particular factual or legal circumstance. It does not constitute, and must not be relied or acted upon as, legal advice or create an attorney-client relationship with any person or entity. Neither 28 Too Many, Orchid Project, Ashurst LLP and Middelburg Human Rights Law Consultancy nor any other contributor to this report accepts responsibility for losses that may arise from reliance upon the information contained herein, or any inaccuracies, including changes in the law since the research was completed in August 2021. No contributor to this report holds himself or herself out as being qualified to provide legal advice in respect of any jurisdiction as a result of his or her participation in this project or contribution to this report. Legal advice should be obtained from legal counsel qualified in the relevant jurisdiction/s when dealing with specific circumstances. It should be noted, furthermore, that in many countries there is a lack of legal precedent for the penalties laid out in the law, meaning that, in practice, lesser penalties may be applied.

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