

ATTAINING INTERNATIONAL ACKNOWLEDGMENT OF MALE GENITAL MUTILATION AS A HUMAN RIGHTS VIOLATION

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INTRODUCTION

One of the greatest challenges facing lawyers and other activists advocating a halt to male "circumcision," or male genital mutilation, is achieving universal agreement that this practice constitutes a human rights violation. A straightforward reading of numerous human rights treaties demonstrates that circumcision constitutes a violation of numerous international agreements. Acknowledgments of this fact have been recorded by scholars, non-governmental organisations, courts, and the United Nations. To date, neither the United Nations nor any other major, internationally recognised human rights agency or non-governmental organisations has initiated any program to pursue the eradication of male genital mutilation. The organisation to which such a campaign must ultimately be addressed is, of course, the United Nations.

With the exception of the two instances discussed below, the United Nations has not yet addressed male genital mutilation as a human rights violation. A plan of action to end this silence is presented here, consisting of a proposed written *Declaration*, more properly known as a *Written Intervention*, which will be submitted to the United Nations through Attorneys for the Rights of the Child, a non-governmental organisation. History has taught us that justice will usually prevail in the end, and so we may expect that, ultimately, male genital mutilation will be recognised as a human rights violation.

1. POTENTIAL BARRIERS TO ACKNOWLEDGMENT OF MALE GENITAL MUTILATION AS A HUMAN RIGHTS VIOLATION

Certain potential hindrances to achieving United Nations acknowledgment of male genital mutilation as a human rights violation. Included is the misperception that

the harm caused by male genital mutilation is generally much lower than that caused by female genital mutilation and problems of cultural influence and the biased origins of human rights doctrine.

1.1. "The Gap Excuse": The Asserted Dramatic Difference in Degree of Harm Between Female Genital Mutilation and Male Genital Mutilation

The asserted dramatic gap between the harm caused by female genital mutilation and male genital mutilation is often claimed to excuse human rights interpretations that only bar female genital mutilation and do not explicitly protect the male's right to genital integrity.¹ The validity of this "gap excuse" is questionable. This misperception is based on a false comparison of the most severe forms of female genital mutilation, as practised under unsanitary conditions in the African bush by untrained operators, and male genital mutilation, as practised in sterile American hospitals by trained medical practitioners. Male and female circumcision carried out under similar conditions have similar rates of long-term and short-term complication. The true distinction between male genital mutilation and female genital mutilation appears likely to be one of degree rather than kind and not a difference that can support a refusal to vilify male genital mutilation under human rights principles.

1.1.1. The Unlikelihood of Finding Many Volunteers. Undoubtedly, a typical female genital mutilation as practised in rural parts of Africa by non-medical personnel under unhygienic circumstances is more harmful than a typical male genital mutilation, at least one performed in a hospital in the United States, yet, as Hanny Lightfoot-Klein notes:

The fact that greater amounts of erogenous tissue are removed in female genital mutilation is irrelevant. It is highly unlikely that one would find many volunteers among those who shrug off removal of the male foreskin as being insignificant, were they asked to prove their point by allowing a comparable amount of skin to be removed—even with anesthesia—from their own genitals.²

Furthermore, it is highly unlikely that one would find many volunteers among those who trivialise the removal of the male foreskin were they asked to prove their point by submitting to the forms of circumcision that are practised under unsanitary conditions by non-medical circumcisers in the African Bush³ or Southern Yemen.⁴

Scientists around the world who are committed to uncovering the truth rather than following accepted dogma are closing the perceived harm gap from both directions. John Taylor's work is particularly enlightening regarding physical harm,⁵ while Ronald Goldman provides a useful summary of leading psychological studies completed through 1997.⁶ Researchers Nahid Toubia and Hanny Lightfoot-Klein, among others, have repeatedly documented the ability to experience orgasm of at least some African women who have undergone female genital mutilation even up to its most extreme form.⁷⁻¹⁰

1.1.2. Discriminatory Interpretations of Genital Mutilation Provisions Violate Equal Protection Under International Law. Interpretations of human rights law that recognise female genital mutilation but not male genital mutilation as violations them-

selves infringe on equal protection principles enshrined in international law. It should not be forgotten that nearly 90% of all genital mutilations world-wide are committed against males. Even if female genital mutilation can be determined to be, say, six times worse than male genital mutilation, the total suffering from male genital mutilation, were such a thing measurable, would still be on the order of that caused by female genital mutilation. This sort of scale balancing, however, is incompatible with the principles of human rights. Such discrimination directly conflicts with Article 7 of the *Universal Declaration of Human Rights*, which states:

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of the Declaration and against any incitement to such discrimination.

Article 2 of the *Universal Declaration* states, "Everyone is entitled to all the rights and freedoms set forth in this *Declaration*, without distinction of any kind, such as . . . sex . . ." Such interpretations also contravene Article 2 of the *Convention on the Rights of the Child*, which demands that the rights of each child be ensured without discrimination based on sex or other listed factors.¹¹ Article 1, paragraph 3 of the Charter of the United Nations includes among the purposes of the United Nations achievement of international co-operation in solving international problems and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.¹² Article 55(c) of the Charter provides that the United Nations "shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."¹³ Article II of the *American Declaration of the Rights and Duties of Man* similarly provides, "All persons are equal before the law and have the rights and duties established in this *Declaration*, without distinction as to race, sex, language, creed or any other factor." All members of the United Nations are bound by this and all charter provisions.

As this author has previously noted, the human rights provisions cited in paragraph 10 of the intervention are absolute ones not subject to a balancing in the scales of international justice relative to other violations. Political history, notably that of women, and human rights principles alike, should eloquently remind us to resist any temptation to create hierarchies of rights and then to argue that we need not or cannot now address the abuses we have placed lower in our hierarchy.¹⁴ Other authors have made similar points, commenting that Western human rights activists' hypocritical condemnation of one form of circumcision (i.e., female genital mutilation) merely because the act is considered "more" extreme, demonstrates a basic denial and ignorance of human rights law.¹⁵

Cameroon scholar Godfrey Tangwa has stated that:

There is no strictly moral argument against female circumcision that would not equally apply to male circumcision.¹⁶

Hanny Lightfoot-Klein grounds her thinking about these issues in the experiences of the victims, stating:

Politically, the underlying similarity between male and female sexual mutilations is that both are perpetrated by force on the generally unanesthetized, helpless bodies of consenting infants and children.¹⁷

Nor are all commentators necessarily satisfied by the traditional claims that patriarchal oppression of women explains female genital mutilation and justifies the exclusion of male genital mutilation from consideration. Chessler notes:

There appears to be a "hypersensitivity" to female human rights at the expense of male human rights; this double standard, which accepts and condones male circumcision but condemns female circumcision, makes the concept of human rights meaningless.¹⁸

Along these lines, Lightfoot-Klein notes:

The practice of female circumcision, which many Westerners regard as barbaric and irrational, has had its parallels throughout history in secular male circumcision, as practiced in the United States.¹⁹

Shamis Dirir, Coordinator of the London Black Women's Health Action Project, emphasises that:

Both male and female circumcisions raise the same human rights questions. Our mutual fight is against ignorance.²⁰

Women's International Network founder Fran Hosken stresses:

Human rights are indivisible, they apply to every society and culture and every continent. We cannot differentiate between black and white, rich and poor, or between male and female, if the concept of human rights is to mean anything at all.²¹

Such epigram-like statements would not be necessary were it not for the remarkable reluctance of the human rights community to acknowledge male genital mutilation as the human rights violation that it is. Therefore, where males who suffer male genital mutilation are discriminated against by not enjoying the same protection from genital mutilation that is enjoyed by females, a further human rights violation actually occurs, compounding the initial violation.

1.1.3. Parallel Attitudes Toward Female Genital Mutilation and Male Genital Mutilation. Some revealing parallels exist between female genital mutilation and male genital mutilation. In one study, people who unquestioningly accept genital mutilation were interviewed in the United States, Europe, and the Sudan and found to give the same justifications for female genital mutilation and male genital mutilation.

Regardless of the amount of tissue actually removed, the essential similarity lies in the fact that the African and American supporters of female and male sexual mutilation, respectively, minimize and trivialize the amount of tissue removed.²²

The interview subjects in these countries provided the same list of reasons to justify male genital mutilation and female genital mutilation: minimisation of damage and pain, beautification and promotion of sexual attractiveness, promoting social acceptability, medical indications, maintaining cleanliness and eliminating genital odours, preventing future problems, improving sex, a mistaken belief in the universality of the procedure, medicalisation ("If doctors do it, it must be a good thing"), denial of long-term harm.²³ Due to the existence of these perceived benefits, "[t]he affected

individuals in both cultures have come to view these procedures as something that was done for them and not to them.”²⁴

Other authors have also observed the similar justifications that are given for male and female genital surgeries.²⁵ Abbie Chessler recently noted the “amazing” existence of the peculiar double standard among Western human rights activists who continue to ignore male genital mutilation:

Although many activists and writers throughout the world condemn female circumcision, they fail to acknowledge the similarity between male and female circumcision, and to consequently reconsider the role of routine male circumcision in Western society.²⁶

L. Amede Obiora stresses that Africans fail to see a meaningful difference between the male and female procedures:

The inherent paradox and double-standard of acquiescing to the legality of male procedures while being scandalized and morally outraged by female circumcision raises an interesting question regarding why the West has failed to abide by its own criticism.²⁷

1.2. Cultural Influence and the Western Origins of Human Rights Doctrine

Human rights doctrine has only developed over the last half-century and largely in the wake of the global horror of the atrocities committed by the Nazi regime. The Western world heavily influenced the development of human rights instruments and norms.^{28–29} Despite growing attempts to forge standards that are less culturally based, the very structure of human rights principles is still profoundly tied to this history. It is simply easier for the human rights community to condemn a practice that goes on largely in the developing world against females than to vilify a parallel practice that also occurs in the developed world against the males. Moreover, the United States, where more incidents of male genital mutilation occur each year than any other country, happens to be the nation with the most influence in the United Nations, despite its record-setting dues arrearages. In an international organisation such as the United Nations and its subsidiary bodies, such as the Commission and Sub-Commission, political considerations may provide the United States with substantial leverage if it chooses to contest that male genital mutilation constitutes a human rights violation.

Human rights institutions are far from invulnerable to being moved by the cultural and political currents. As public awareness of a particular class of violation develops, governmental and non-governmental organisation responsiveness to that issue increases. Amnesty International, the world’s most prominent human rights non-governmental organisation, no longer focuses on the developing world while ignoring human rights violations in the United States, as it did in its early years. For many years, however, Amnesty International turned down as “outside our mandate” requests from its members to devote a portion of its resources to female genital mutilation.³⁰ According to Fran Hosken, until 1995, no international human rights organisation had ever cited female genital mutilation as a human rights violation.³¹ In that year, finally acceding after many years of public pressure, Amnesty International adopted a decision declaring female genital mutilation to constitute a human rights violation.³²

Human rights are heavily influenced by prevailing cultural norms. We all

naturally, almost necessarily, view the world through a set of filters derived from our society's particular social and cultural prejudices. Throughout history, a broad range of body mutilation practices have been accepted, including foot-binding, placing growing children in vases so their bones would be bent to the shape of the vase, and many other forms of genital mutilation of both sexes.³³ While generally and rightly viewed with horror by outside cultures, any particular mutilation comes to be seen by the perpetrating culture that developed it as, at worst, benign, and, often, even of positive benefit.

2. INCREASING ACKNOWLEDGMENT OF MALE GENITAL MUTILATION AS A HUMAN RIGHTS VIOLATION

Recognition of male genital mutilation as a human rights violation has been growing over the last few years among academic commentators, non-governmental organisations, and even official bodies, such as courts and the United Nations.

2.1. Growing Academic Acknowledgment

An increasing number of authors are concluding that male circumcision should be treated as a human rights violation despite our cultural prejudices.³⁴⁻³⁷

2.2. Growing Non-Governmental Organisation Acknowledgment: The Amnesty International Events

In 1992, resolutions were presented at the regional Amnesty International meetings in both Boston and San Francisco, asking for Amnesty International to affirm that genital mutilation of children and consenting adults (male and female) violates human rights.³⁸⁻³⁹ As their authors advised me by telephone, both resolutions were rejected with minimal discussion or consideration. At the 1997 meeting in South Africa of Amnesty International's International Council, the highest level of decision making in Amnesty International, Amnesty International reaffirmed and expanded its commitment to combating female genital mutilation as a serious human rights violation.⁴⁰ It did not address male genital mutilation. Amnesty International Bermuda observed that no obvious reason existed to exclude males from protection from genital mutilation and that Amnesty International's bylaws forbid discrimination on the basis of, *inter alia*, sex.⁴¹⁻⁴² Amnesty International Bermuda realised that Amnesty International's own bylaws thus clearly mandate treatment of male genital mutilation as a human rights violation. Amnesty International Bermuda presented a resolution to Working Party A.⁴³ The resolution called for the abolition of sex distinction in Amnesty's condemnation of genital mutilation.⁴⁴

Although the resolution was rejected by a large majority of the working party, the Bermuda section was advised in the plenary session that it could do promotional work on this issue provided it could demonstrate that male genital mutilation is an internationally recognised human rights violation.⁴⁵ In March 1998, Amnesty International Bermuda consequently submitted meticulous documentation to the International Council of the fact that male genital mutilation is indeed a human rights violation.⁴⁶ Apparently, Amnesty International Bermuda has yet to receive a substantive response to the issue it has raised. These events indicate that activists within

Amnesty International are becoming concerned with male genital mutilation as a human rights violation and are starting to question the established reason for its exclusion to date from the human rights pantheon.

2.3. Growing Official Acknowledgment

A German political asylum decision and two official United Nations reports have found male genital mutilation to constitute a human rights violation.

2.3.1. The German Asylum Decision. The German Federal Administrative Court, Germany's highest judicial body addressing administrative law, awarded political asylum to a Christian Turkish man based on his fear of circumcision against his will. The court accepted his testimony that, upon return to Turkey, in compulsory military service, he would be forcibly circumcised, as is the frequent practice in the Turkish military with repatriated Turkish Christian soldiers. The court held that in light of this threat, without any realistic opportunity to complain or escape the physical consequences, the requirements of group persecution were satisfied. Since the petitioner belonged to the group, his fear of persecution justified an award of political asylum. The court wrote:

There may be . . . no doubt that a circumcision which has taken place against the will of the person affected shows on the basis of its intensity and gravity a violation of his physical and psychological integrity which is of significance to asylum.⁴⁷

This holding, that a fear of circumcision can justify political asylum, further supports the status of male genital mutilation as a human rights violation.

2.3.2. Two United Nations Reports Acknowledge Male Genital Mutilation. Two reports released by the United Nations recognise various forms of sexual assault on males, including circumcision as torture and as a human rights violation.⁴⁸⁻⁴⁹

In 1992, the United Nations established a Commission of Experts to report on humanitarian law violations committed in the former Yugoslavia.⁵⁰ The Final Report, assembled by the Commission of Experts, specifically mentions male circumcision, castration, and other types of sexual mutilation as forms of sexual assault to which men had been subjected.⁵¹ The Final Report notes that, where such acts of mutilation constitute "serious international violations directed against the protected persons, in contradistinction to a fate befalling them merely as a side-effect," they are prohibited by common article 3 of the four Geneva Conventions of 1949 and in Protocol II to the Geneva Conventions.⁵² Their status as human rights violations follows from these findings, or, at minimum, is strongly supported by them.

3. CONCLUSION

A simple review of the relevant human rights agreements—including both substantive provisions and equal protection guarantees—demonstrates that male genital mutilation constitutes a human rights violation. While this fact has been recognised by legal scholars, Amnesty International Bermuda, the German judicial system, and the United Nations, widespread agreement that male genital mutilation violates human

rights has not yet been achieved. The United Nations has to date taken no action to eradicate this practice. Nor has any other major human rights agency or non-governmental organisation yet initiated any program to pursue eradication of male genital mutilation.

Presentation of our proposed intervention will, at most, represent a preliminary step in adding protection from male genital mutilation to the human rights pantheon. The standard reasons in the past for ignoring male genital mutilation, such as the difference in degree of harm relative to female genital mutilation and the Western origins of human rights law, are continuing to lose power as they come under the questioning eyes of an ever-increasing portion of the human rights community. The time is ripe for the launching of a campaign to stimulate United Nations action regarding male genital mutilation as well as universal recognition of male genital mutilation as a human rights violation.

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TEXT OF PROPOSED WRITTEN INTERVENTION

Male Genital Mutilation or "Circumcision"

1. Attorneys for the Rights of the Child is an international human rights organisation dedicated to ending all forms of genital mutilation world-wide, including male genital mutilation or "circumcision."

2. Currently, of the 15.3 million children and young adults forced to undergo genital mutilation each year, 13.3 million are male and 2 million are female.¹ Of all human beings who have been genitally mutilated, an estimated 650 million are males and 100 million are females.²⁻³ Therefore, world-wide, 87% of all incidents of genital mutilation occur to males. The countries that mutilate the highest percentage of males include Israel, the United States, and Canada, as well as a number of Asian and African countries.⁴⁻⁵ In the developed world, the procedure is typically carried out in infancy, while in the developing world it occurs any time between infancy and early adulthood, depending on the particular culture and other factors.⁶⁻⁷

3. Although it has been suggested that the right to freedom of religion may justify male genital mutilation (or female genital mutilation), human rights principles recognise that children bear their own right to freedom of religion, independent of the wishes of their parents or guardians, and have the right to demand that this freedom be respected. Moreover, religious scholars have begun questioning whether circumcision is an absolute requirement for males to be considered full members of either Judaism,⁸⁻¹³ or Islam.¹⁴⁻¹⁶

4. Legislation or human rights provisions that discriminatorily protect female genital mutilation and not male genital mutilation are sometimes justified by the supposedly dramatic contrast in severity between female genital mutilation and male genital mutilation. A wealth of evidence, however, proves the serious harm caused by male genital mutilation. Moreover, equal protection provisions in human rights agreements bar interpretations that discriminate on the basis of sex.

5. Recent research demonstrates that the average male circumcision in the developed world removes 51% of penile skin. The foreskin, the part amputated in circumcision, is composed of specialised and unique genital tissue and contains a highly significant number of erogenous and sensory nerve endings.¹⁷⁻²¹ A poll of circumcised men documents the long-term harm that many men experience as a result of this procedure.²²

6. Complications, which include an estimated 225 deaths each year in the United States alone,²³ occur with a frequency of between 2 to 5% or more depending on the definition applied.²⁴

7. Beginning at least as early as 1965, numerous researchers have comprehensively documented the broad range of psychological harm inflicted by male genital mutilation, including infant pain response, serious harm to infant neurological development and memory capability, the damage caused by memories of the procedure, the damage caused to self-esteem and body image, post-traumatic stress disorder, and serious sex-related effects.²⁵

8. Male genital mutilation has been found to be perceived by the child as an act of aggression and castration, to weaken the ego, disturb sexual identification, initiate regression toward more infantile and primitive modes of expression, and cause the child to withdraw and isolate itself from the disturbing stimuli.²⁶ Research also suggests that male genital mutilation causes behavioural changes and that some reported gender differences may actually be a result of male genital mutilation.²⁷ The myth that a newborn baby cannot suffer pain has been convincingly debunked,²⁸ and the harm male genital mutilation causes to babies by the severe levels of pain has been repeatedly documented.²⁹ At least one study found that the level of response to the pain and stress of the procedure exceeds the response to blood sampling or injections and is not significantly reduced even by application of an anaesthetic.³⁰

9. One study of male genital mutilation, as practised by the Xhosa tribe of Southern Africa, found that 9% of the circumcised boys died; 52% lost all or most of their penile shaft skin; 14% developed severe infectious lesions; 10% lost their glans penis; and 5% lost their entire penis. This represents only those boys who made it to the hospital. The true complication rate is likely to be much higher.³¹

It is worth noting that the "boys" are typically between 18 and 22 years of age or even older,³² and even the most determined Xhosa male realistically cannot hope to avoid enduring this severe violation of his bodily integrity. The social repercussions are simply too severe. "No self-respecting Xhosa girl would marry a Xhosa male unless he had submitted to the circumcision ritual . . . This prejudice may be great enough for uncircumcised men not only to be ostracised by their peers, but even to be attacked and violently beaten for their lack of conformity . . ."³³⁻³⁴

10. Well-recognised human rights principles forbid male genital mutilation. Basis for prohibition of the procedure include: a profound loss of highly specialised and sensitive sexual tissue, which also serves important protective functions; loss of bodily integrity; traumatic and highly painful disfigurement; complications with a range of severity up to and including death; and the impermissibility of any mutilation of children's genitals performed with neither their consent nor legitimate medical justification. These prohibitions are based on such critical rights as the rights of the child: the right to bodily integrity, the right to freedom of religion, the right to the highest attainable standard of health, and the right to protection against torture, and the right to equal protection. Male genital mutilation is prohibited by the following human rights provisions:

Charter of the United Nations—Article 55(c).

International Covenant on Civil and Political Rights—Articles 7, 9, 18.3, and 24.1.

Universal Declaration of Human Rights—Articles 3, 5, 6, 7, 12, and 25(2).

Convention on the Rights of the Child—Articles 6, 14.1, 14.3, 16, 19.1, 24.1, 24.2, 24.3, 34, 36, 37(a) and 37(b).

American Convention on Human Rights—Article 5.1 and 12.3.

American Declaration of the Rights and Duties of Man—Articles I, VII, and XI.

Convention Against Torture—Articles 2.1, 2.2, 4.1, and 4.2.

Declaration Against Torture—Article 3.

African [Banjul] Charter on Human and People's Rights—Articles 4, 5, 6, 16, 18(3).

[European] Convention for the Protection of Human Rights and Fundamental Freedoms—Articles 2(1), 3, 5, 9, 14.

Article 24.3 of the *Convention on the Rights of the Child* calls on states to "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."

11. Male genital mutilation has been acknowledged to be a human rights violation by academics, non-governmental organisations, courts, and the United Nations.

Conclusions and Recommendations

12. Male genital mutilation causes lasting and severe harm. A number of human rights documents forbid male genital mutilation. These existing human rights protections must be recognised and enforced.

13. The Sub-Commission should issue a Resolution expressing concern about male genital mutilation.

14. A Working Group on Traditional Practices Affecting the Health of Males or a Special Rapporteur on Traditional Practices Affecting the Health of Males should be established.

15. The mandates of the Special Rapporteur on Traditional Practices Affecting the Health of Women and Children and the Special Rapporteur on Torture should be expanded to encompass the practice of male genital mutilation.

16. The Sub-Commission should undertake a study of world-wide male genital mutilation practices with the goal of generating reliable information on the incidence and complication rates in all practising countries. The target date for completion of the study should be the Sub-Commission's session in 2000.

17. The Sub-Commission should request that all States fully co-operate with the efforts of the Sub-Commission, the Working Group on Traditional Practices Affecting the Health of Males, and the Special Rapporteur on Traditional Practices Affecting the Health of Women and Children and provide all information requested.

18. The Sub-Commission should ask each affected country to establish and implement a plan that outlines concrete steps and a timeline it will follow in working toward the eradication of male genital mutilation.

19. Each affected country should create a national committee to take measurable, verifiable steps to implement its plan to combat male genital mutilation and ample government financial assistance should be provided to it.

20. Each affected country should institute educational programs regarding the harm caused by male genital mutilation. Courses on the ill effects of male genital mutilation should be included in all training programs for medical and paramedical personnel, as well as in health and sex education courses and programs.

21. Each affected country should terminate all public funding of any hospitals in which male genital mutilation is performed.

22. Each affected country should pass legislation and/or extend existing legislation and/or case law to prohibit male genital mutilation.

23. Each affected country should contact religious institutions and work with them to facilitate their participation in the campaign to eliminate male genital mutilation.

24. Each affected country should be requested to submit progress reports to the Sub-Commission every year beginning in the 2002 session. These reports should detail the progress that each country is making in its efforts to eradicate male genital mutilation.

25. The Sub-Commission should ask the Commission on Human Rights to urge all countries to immediately ratify without reservations and effectively implement all relevant international instruments cited in paragraph 10. The United States and Somalia, the only two countries that have not yet ratified the *Convention on the Rights of the Child*, should be called on to immediately ratify the *Convention on the Rights of the Child* without reservations.

26. The Sub-Commission should request that the Commission on Human Rights ask the World Health Organisation to begin researching male genital mutilation and to call a conference to discuss the issue.

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