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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the World Muslim Congress, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 May 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Rape used a weapon of War by Indian army in Jammu and Kashmir

The International Covenant on Civil and Political Rights (ICCPR) prohibits torture and other forms of cruel, inhuman and degrading treatment. The Government of India has ratified the ICCPR. India has also ratified the four Geneva Conventions of 1949. Rape is clearly prohibited by Common Article 3; it is customarily understood to constitute both cruel treatment and an outrage on personal dignity. Protocol II provides authoritative guidance for interpreting Common Article 3's prohibition on "outrages upon personal dignity." Protocol II outlaws "outrages upon personal dignity, in particular humiliating treatment, rape, enforced prostitution and any form of indecent assault." The commentary of the International Committee of the Red Cross explains that this article "reaffirms and supplements Common Article 3 ... [because] it became clear that it was necessary to strengthen ... the protection of women ... who may also be victims of rape, enforced prostitution or indecent assault."

Although the line between cruel and inhuman treatment and torture is not well defined in either humanitarian or human rights law, rape also violates the ICCPR and Common Article 3 prohibitions on torture. When any party to an armed conflict, internal or international, uses rape, with the intention of inflicting severe pain or suffering and for the purposes of coercing, punishing, or intimidating, or to obtain information or a confession, it constitutes torture. Until recently, rape has often escaped international scrutiny and condemnation, including rape committed in the context of armed conflict. In the past, rape has often been accepted as "spoils of war" or mischaracterized as incidental to the conflict or as a privately-motivated form of sexual abuse rather than an abuse of power that implicates public responsibility. Reports of the widespread use of rape as a tactic of war in the former Yugoslavia have been instrumental in focusing attention on the function of rape in war and have provoked international condemnation. Such condemnation must be extended to the use of rape in all conflicts zones like Jammu Kashmir as well.

Jammu and Kashmir is a recognized United Nations disputed territory and the people of Jammu and Kashmir are yet to decide their political future. United Nations Security Council resolutions pledge people of Kashmir a free and fair plebiscite to decide their political destiny. However Indian denied to this right, forced to people of Indian occupied Kashmir to launch a peaceful political resistance against Indian occupation. India in response to people indigenous and peaceful struggle Indian state resorted to use of brutal force to subjugate the peoples will. India's government has pursued a policy of repression in Kashmir which has resulted in massive human rights violations by Indian army and paramilitary forces. Throughout the conflict, the occupational forces have deliberately targeted civilians. One of the heinous crimes Indian army and other forces committed during last 26year is rape. This has been used as a tool to punish and humiliate entire community.

Rape is an easy retribution for peoples "collective crime" the crime of being antagonistic and disloyal to the Indian state, which holds all Inhabitants guilty at least by implications. **Rape has been used strategically and systematically to threaten, humiliate and degrade the populace and kill their spirit in the struggle against military occupation.** Rape have thus been used a form of punishment for people of Indian occupied Kashmir, a punishment for rising against an unjustifiable dominance. The occupational forces include Indian regular army Units, Rastryia Rifles, the army raised for counter militancy operations in Jammu Kashmir, Border security Forces, (BSF) Central Reserve Police Force, (CRPF) Jammu Kashmir Police and other Para military forces which number over 700,000 and make Kashmir world's density populated militarized Zone.

A study conducted by Medicine Sans Frontiers 2005 found 67 percent of respondents in Karalpora block of district Kupwara has witnesses or heard of an act of rape or molestation, since 1989. It found that Kashmiri women are the worst sufferers of sexual violence in the world. It further revealed that sexual violence has been routinely perpetuated on Kashmiri women, 11.6 percent of respondents saying they were victims of sexual abuse.

There are many examples and testimonies of women who were raped in groups by Indian armed forces in Indian occupied Kashmir. Asia Watch in its report on rapes in Kashmir in 1993 list six documented cases of gang rape and mass rape committed by Indian army. The international Tribunal on human rights and justice in Indian occupied Kashmir, in its publication, "Alleged Perpetrators" has mentioned nine cases of rapes committed by Indian army. There are countless other examples of rape and gang rape in Kashmir for not all victims report sexual violence for the fear of

ostracism or exclusion in an environment where justice remains elusive. Many such cases went undocumented because families were coerced into silence, while those that were reported and subsequently documented by human rights organizations were never taken to logical conclusion, the criminal remaining exempt from punishment.

Indian military and paramilitary forces have been and continue to be exempted from punishment in any act done in the line of duty under law, without prior sanction of the state. Since the line of duty can include military operation against civilian populations and security personnel are always on active duty in a combat zone, any and every act of theirs, include killing young boys returning from the cricket game, can be interpreted as official duty. Since 1989, stories of human rights violations became routine in Indian occupied, impunity is guaranteed in sexual violence cases as in other human rights violations, but it is more serious owing to the social and cultural implications of stigmatization of victims. Women have been raped in front of their husbands, children and other relatives, it has been traumatizing not only for the victims but for the entire family and community. The legal quest for the justice has been futile, the with credibility of the criminals kept intact for delaying, extenuating and adjourning cases indefinitely, again a strategy we see employed to the great effect in the Kunan poshpora mass rape, in which 53 women were gang raped a struggle for justice by the gang rape victims has not yielded any results as yet. It is the integrity of the victim that is impugned.

In a typical case of reprisal rape, in an incident that took place on 2nd January 1992, major and other personnel of 5 Rashtriya Rifles barged into the house of a local in Resipora in district Anantnag Islamabad. The father of the family happened to be the father in law of a suspected militant, the family was assaulted and their father was abducted. The elder daughter was raped by the Major and the younger daughter by other army personnel in another room. After about 90 minutes, the personnel of 5 RR left the house and burnt it into the ground. While the two sisters were raped and spent the night in a bath room on the bank of a stream, their father has been missing since. As usual, an FIR was filed in the case, which was followed by series of inconclusive inquiries. The available documents do not suggest that even a court martial was conducted in this case by the army. In another case of reprisal rape, on the night of 10th of October 1992, 6 women were gang raped during a search operation, by Unit of the 22 Grenadiers, in village chack Saidepura in Shopian. The victims included an 11 year old and a 60 year old woman. The medical reports confirmed rape. No soldier was prosecuted. In fact, the government statement that two of the women who were raped were the wives of the militants.

This statement from the government is an evidence of the fact that the rape is seen as a justifiable punishment meted out to those associated with people of political dissent. Due to continued impunity rape and molestation has become an epidemic. On 12th of April 2016 a teenaged school girl was followed by a trooper of 21 RR, when she entered into a town hall washroom. Trooper tried to molest the girl, girl made a hue and cry which caught the attention of public in the market. People assembled at the site of incident and started protest near the Bunker of RR. Army and police resorted to indiscriminate firing which resulted in the death of two young men and on spot and 3 others were killed and dozens injured in other incidents following this incident. Girl was taken in custody and even high court order and appeal from amnesty international for the release of girl were not taken care of by the police and army.

United Nations owes moral and legal responsibility to protect life, honor and dignity of people of Indian occupied Kashmir.
