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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 February 2014]

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

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A tale of two massacres: Chattisinghpora and Pathribal

The diabolical facts

On the evening of 20 March 2000, 15 or 17 unidentified gunmen, some in Indian army uniform, entered the village of Chattisinghpora in Anantnag district in troubled Jammu and Kashmir and ordered the Sikh men to assemble.

The attackers wore uniforms of the Indian armed forces and were led by a tall man whom they addressed as Commanding Officer. All Sikh men were rounded up, ostensibly to check their identities, and made to sit on the ground in two groups against the walls of the gurdwaras [Sikh temples] a few hundred meters from each other; they were shot at point blank range. As the attackers withdrew, they reportedly shouted Hindu slogans. A small bottle of liquor was left behind by them.

The attackers had shot dead 34 Sikh men. Several men were injured by gun shots, of these one man died later from his injuries.

A unit of paramilitary Indian Army's Rashtriya Rifles stationed close to the village failed to intervene and only visited the place of the incident on the following morning. Despite all sides in the Kashmir conflict condemning the massacre, it was widely believed that the Indian forces were behind the outrage. It was committed on the eve of President Bill Clinton's visit to India, with the dual objective of defaming Kashmiri freedom fighters and creating a rift between Sikhs and Muslims in Kashmir.

President Clinton subsequently wrote that "Hindu militants" were responsible for the attack. It was a clear reference to Indian forces. Kashmiri armed resistance activists have consistently denied any involvement with the attack, saying that they have no enmity with the Sikhs. Sikhs themselves also accuse Indian forces, regular or irregular, of carrying out the gruesome massacre.

Five days after the events at Chattisinghpora, on 25 March 2000, Indian military forces killed five men in Pathribal village of Anantnag district, claiming that the victims were the "foreign militants" responsible for the Chattisinghpora massacre. Official reports claimed that forces had, after a gun fight, blown up the hut where the men were hiding, and had retrieved five bodies that had been charred beyond recognition. The bodies were buried separately without any postmortem examination.

Local people had reported many innocent Muslim Kashmiri men had been rounded up in the days before and they suspected it was those men who had in fact been killed in Pathribal simply to 'prove' India's claim that Kashmiri militants had killed the Sikhs at Chattisinghpora a few days earlier. Massive public pressure (seven protestors were killed by forces in Anantnag in April 2000) forced the authorities to exhume the Pathribal dead in April 2000 and they were then identified by family members as being some of the local villagers who had 'disappeared' a few days before the Chattisinghpora attack — they were innocent Kashmiri Muslims who had nothing to do with that outrage.

The Indian authorities took DNA samples of the Pathribal victims in order to check them against the DNA from their families. The special investigation team inquiring into the Pathribal incident approached the Centre for DNA Fingerprinting and Diagnostics, Hyderabad, and the Central Forensic Science Laboratory, Kolkata, with medical samples of the relatives to match with those of the slain men. That was in 2000. Two years later The Times of India reported that the samples from the relatives had been substituted with some others, a fact that both forensic centers had conveyed to the state police but India again denied any wrongdoing or cover up.

Due to huge public pressure India's leading federal investigation agency, Central Bureau of Investigation (CBI), investigated the incident and indicted several army officers, saying it was a "fake encounter and cold-blooded murders". Two years ago, the Supreme Court asked the army to decide whether accused officers should be tried by an army court or a civilian court. The army opposed a civilian trial for the officers and took over the investigation. In February 2014 the Indian army exonerated the officers involved by saying "The evidence recorded could not establish a prime facie case against any of the accused persons" and that the case was now closed.

Is india to be held accountable?

Observers of the shocking sequence of these events, which bear all the hallmarks of other Indian atrocities in Punjab and Kashmir over recent decades, are left wondering how the international community should respond to this overt mockery of human rights in areas of conflict. Not only are grotesque acts of state terrorism laid bare but also impeding the administration of justice, impunity given by Indian authorities to the perpetrators is there for all to see.

The moral bankruptcy of those involved in these heinous crimes is clear but what of the legal accountability that the world must surely demand?

To combat impunity, international law, including treaties to which India is party, guarantees the right to an effective remedy for victims of gross human rights violations, including "disappearances" and extrajudicial executions. A victim's right to an effective remedy obligates the state to take the necessary investigative, judicial, and reparatory steps to redress the violation and address the victim's rights to knowledge, justice, and reparations. The state is under a continuing obligation to provide an effective remedy; there is no time limit on legal action and the right cannot be compromised even during a state of emergency. In theory, India's domestic law is not inconsistent with international law. The Indian Supreme Court has repeatedly stressed the respect given to the national implementation of international law, and the need to accommodate international law "even without express legislative sanction." Moreover, the Supreme Court has held that international law can be incorporated into the fundamental rights under the Indian Constitution. Thus, the standards of international human rights law, including the right to an effective remedy in cases of "disappearances" and extrajudicial executions, are part of the fundamental rights protected by the Indian Constitution.

It is clear that the Indian authorities, despite their obligations under both international law and their own domestic law, have singularly failed to administer justice in the case of the atrocities described here. There is no judicial will or political will to deliver justice and there is no hope of justice on the part of the victims unless the UN itself intervenes. The onus for action lies squarely with the international community and the UN's human rights bodies risk damage to their own reputations if they fail to address the situation with determination and speed. It is submitted that the Human Rights Council should take up the investigation of these serious crimes and to recommend appropriate punishment of all those responsible. The Sikhs and the Kashmiris will assist fully with that work even though Indian authorities will doubtless object to 'interference' in their internal affairs. Anyone who believes in human rights and justice will know that this case is anything but India's 'internal affair'.