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Letter dated 28 April 2020 from the Permanent Representative of Rwanda to the United Nations addressed to the Secretary-General

I have the honour to share the response of the Government of Rwanda to the explanations of position of the United States of America and the United Kingdom of Great Britain and Northern Ireland on resolution 74/273, entitled "International Day of Reflection on the 1994 Genocide against the Tutsi in Rwanda", adopted by the General Assembly at its seventy-fourth session on 20 April 2020 (see annex).

I should be grateful if you would circulate the present letter and its annex as a document of the General Assembly, under agenda 64 (b).

(*Signed*) Valentine **Rugwabiza**
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Response of Rwanda to the explanations of position of the United States of America and the United Kingdom of Great Britain and Northern Ireland on resolution 74/273, entitled “International Day of Reflection on the 1994 Genocide against the Tutsi in Rwanda”

The adoption of General Assembly resolution 74/273, entitled “International Day of Reflection on the 1994 Genocide against the Tutsi in Rwanda”, elicited substantive reservations from two Member States, the United States and the United Kingdom, in letters dated 20 April 2020.

The United States was “concerned that changes made to the text – starting in 2018 and extended today – narrow the focus of the resolution to the Genocide against the Tutsi in Rwanda and fail to fully capture the magnitude of the violence that was committed against other groups. Many Hutu and others were also killed during the genocide, including those murdered for their opposition to the atrocities that were being committed. Failing to honour and remember these victims presents an incomplete picture of this dark part of history”.

Similarly, the reservations of the United Kingdom included the statement “We disagree with the framing of the genocide purely as ‘the 1994 genocide against the Tutsi’. As noted in previous resolutions, we believe that Hutus and others who were killed should also be recognized”.

It is interesting to note that, while both explanations of position underscored the importance of historical facts and collective memory in averting the recurrence of genocide, they stated the exact opposite by distorting these very historical facts and by ignoring the Security Council resolutions and the International Criminal Tribunal for Rwanda jurisprudence to which they are both bound.

Let us recall that the General Assembly, in resolution 96 (I), dated 11 December 1946, recognized genocide as a crime under international law and, in resolution 260 A (III), dated 9 December 1948, defined it as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; and (e) forcibly transferring children of the group to another group”.

The United Nations recognized that a crime consistent with that definition had been committed in Rwanda in 1994. Consequently, on 8 November 1994, the Security Council, in resolution 955 (1994), established the International Criminal Tribunal for Rwanda to prosecute persons responsible for the genocide committed between 1 January and 31 December 1994. The Tribunal began its work in 1995 and formally closed on 20 December 2012, having indicted 93 perpetrators of genocide. Its remaining functions were transferred to the International Residual Mechanism for Criminal Tribunals on 1 July 2012.

On 16 June 2006, the Appeals Chamber of the Tribunal, in the case of *The Prosecutor v. Karemera*, *Ngirumpatse and Nzirorera* (case No. ICTR-98-44-AR73 (C)), affirmed that a genocide against the Tutsi had indeed taken place in Rwanda. It instructed that all of the current and pending trials before the Trial

Chambers of the Tribunal must refer to the following as facts “beyond any dispute and not requiring any proof”:

(a) The existence of Twa, Tutsi and Hutu as protected groups falling under the Convention on the Prevention and Punishment of the Crime of Genocide;

(b) The following state of affairs existed in Rwanda from 6 April to 17 July 1994: there were throughout Rwanda widespread or systematic attacks against a civilian population on the basis of Tutsi ethnic identification. During the attacks, some Rwandan citizens killed or caused serious bodily or mental harm to person[s] perceived to be Tutsi. As a result of the attacks, there were a large number of deaths of persons of Tutsi ethnic identity;

(c) Between 6 April and 17 July 1994, there was a genocide in Rwanda against the Tutsi ethnic group.

According to a judicial notice of the Tribunal, the fact that the genocide in Rwanda was committed against the Tutsi was “beyond any dispute and [does] not require any proof”. Therefore, the position of the United Kingdom to “disagree with the framing of the genocide purely as the ‘1994 genocide against the Tutsi’” is a rejection of the Tribunal jurisprudence. Similarly, that both delegations hold in their explanations of position that “others” were also killed during the genocide is not captured by genocide as a legal term. Rwanda would welcome a specific reference to “other groups” – outside the group that was the target of extermination – that the United Nations has recognized in commemoration of “past genocides”. Otherwise, it would constitute an unwelcome exception for Rwanda. We therefore welcome the call by the United States of America to “urge our fellow Member States to insist that histories of past genocides” get treated with consistency in the application of shared principles.

The demands being made on Rwanda appear to create a mechanism of remembrance outside the principles of the United Nations. However, if the positions of the United States and the United Kingdom suggest the renegotiation of the Convention insofar as a collective decision is taken to remember “others” outside the group targeted for extermination, then this is indeed a call for the renegotiation of the Convention and a suggestion that, as it stands, the Convention is inadequate and should be revised beyond the “narrow” confines of targeted groups.

In the light of the Convention, the expectation that Rwanda broaden its framing beyond the Tutsi as the group targeted for extermination is to demand that Rwanda apply and violate the Convention at the same time.

Similarly, as with the affirmation that genocide was in fact committed against the Tutsi, the distinction between free speech and hate speech was also settled as part of a judicial process: the media trial *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze* (case No. ICTR-99-52-T), whose aim was to draw the line between free speech and hate speech. Once again, the Tribunal jurisprudence cleared any ambiguity between free speech and hate speech in the context of the 1994 genocide against the Tutsi in Rwanda. It is worth recalling the role that Radio-Télévision Libre des Mille Collines played during the execution of the genocide by calling for the acceleration of the killings and publication of the names and physical addresses of Tutsi individuals and families yet to be exterminated. Despite the active role of Radio-Télévision Libre in the execution of the genocide, when a permanent member was requested to jam the radio’s frequency, it refused to extend such assistance to the pursued targets, citing free speech.

In the pursuit of reconciliation, Rwanda has walked the tightrope of applying the Convention to commemorate the group that had been targeted for extermination

while being as inclusive as possible without compromising the very purpose of the commemoration of the genocide. For instance, in every annual commemoration of the genocide, Rwanda devotes 13 April to the remembrance of politicians and others who, although not part of the targeted group, were killed for having opposed the extermination of the Tutsi.

By bringing clarity on the group targeted for extermination, resolution 74/273, recently adopted on 20 April 2020, and decision 72/550, adopted on 26 January 2018, are consistent with the Convention. Rather than advancing reconciliation, the explanations of position of the United States and the United Kingdom bring ambiguity that feeds the resurgent genocide denial movement that is already on the rise in the Great Lakes region and beyond.

Rwanda supports the United States call for Member States to hold those responsible for genocide accountable and takes this opportunity to remind the United Kingdom to arrest and try genocide suspects on its territory who have yet to face justice for their role in the 1994 genocide against the Tutsi, as one of the strong measures to prevent impunity and the recurrence of genocide.

Finally, with regard to the negotiation process, Rwanda has neither the authority nor the desire to “force” any member into accepting a resolution’s language. The language in resolution 74/273 is a result of consultations among all members in an open-ended and bilateral format and in small groups, with members having expressed specific concerns. However, as is always the case for any multilateral process, not every concern raised by individual members can be accommodated, in particular when the concern raised does not enjoy broad consensus.