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**INTERNATIONAL DAY OF REFLECTION ON THE 1994
GENOCIDE IN RWANDA**

Ladies and Gentlemen, colleagues of the Bank, distinguished guests,

I would like to thank the Constituency representing Rwanda for the privilege and opportunity given to me to make this presentation on the United Nations Convention on the Prevention and Punishment of the Crime of Genocide on the occasion of this International Day of Reflection on the 1994 Genocide in Rwanda, which we commemorate not only in accordance with the United Nations Resolution but perhaps more significantly in obedience to our consciences as members of the human race.

The human tragedy that has come to be known as the Rwandan Genocide started exactly ten years ago. [Accordingly, in memory of the hundreds of thousands of people who were lost in the senseless, brutal killings that ensued, I ask everyone in this room to stand and remain silent in a moment of somber reflection.

THANK YOU]

The Rwandan Genocide was certainly not the first mass killing in recorded history, but it was one of the most grotesque, odious and dastardly events on the African continent, indeed in the world, during the last century. On average 8,000 people were killed each day over a period of 100 days. The British magazine “The Economist” last week described it as “the purest genocide since 1945”. But alas, there was nothing pure or clean about the human slaughter that began in April 1994.

The purpose of this presentation, however, is not to revisit that bloody history, nor the politics or the doctrinal agenda related to this genocide. I propose to simply limit this short presentation to a discussion of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide; other related international instruments; the judicial systems established to help ensure that justice is done; and offer some suggestions on what international financial institutions, like the ADB, should do in similar circumstances.

The UN Convention and related Instruments

First, a brief background on the United Nations Convention on the Prevention and Punishment of Genocide itself is in order. The issue of genocide was raised and addressed at the very first session of the General Assembly of the United Nations in 1946. The resulting resolution described “genocide” as a denial of the right of existence of entire human groups contrary to moral law and the aims of the United Nations, and it requested the Economic and Social Council to submit a draft convention on the crime of genocide to the next session of the General Assembly. Two years later, on December 9, 1948, the General Assembly, at its third session, adopted the Convention on the Prevention and Punishment of the Crime of Genocide and proposed it for signature and ratification by member states.

ANALYSIS OF THE CONVENTION

The Convention is contained in 19 articles. However the substantive provisions are found in Articles 1 through Article 6. The 13 remaining articles deal essentially with purely procedural and operational issues of implementation.

These substantive provisions are written in plain language, devoid of the somewhat legalistic or esoteric jargon found in many legal documents. The articles are clear and concise.

In Article 1 of the Convention the Parties ‘Confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish’.

This provision is straightforward.

Article 2 of the Convention defines genocide in unequivocal language 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;
- (e) Forcibly transferring children of the group to another group.

This Article 2 is generally seen as the heart of the Convention.

Having defined ‘genocide’ Article 3 of the Convention sets forth certain acts that are punishable as crimes. Those acts are:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

The broad language of this Article is intended to deter and punish anyone who acts directly or indirectly in perpetrating or inflicting or causing anything that would, within the definition given earlier, constitute genocide. This provision has the practical effect of inculcating not only the henchman who directly and physically inflicts the injury but also those who by their words stir others to inflict such injuries. It is a proper provision since history shows the most effective perpetrators have been those who by their words arouse in others vile sentiments of bigotry, racism, and hatred.

Article 4 of the Convention makes genocide a punishable offense irrespective of rank, political or societal position: ‘Persons committing genocide or any of the other acts enumerated in Article 3 shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.’

According to this provision nobody is beyond or exempt from punishment. This provision, significantly, while it did not prevent the Rwanda genocide, is useful as a general and a specific deterrent against the commission of this heinous crime. The public must be sensitized to the existence of the Convention and punishment for acts committed in violation of the Convention must be predictable and certain. In addition to the United Nations Convention on the Prevention and the Punishment of the Crime of Genocide, other international and regional instruments also have been

adopted. These include the Universal Declaration of Human Rights and the African Declaration on Human and Peoples' Rights.

THE GENOCIDE CONVENTION & INTERNATIONAL TRIBUNALS

Multiple forums exist for the trial of persons charged with genocide. Article 6 of the Convention states that 'persons charged with genocide or any of the other acts enumerated in Article 3 shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.'

This provision in a way establishes a claim for jurisdiction by domestic courts of the country in which the act was committed, irrespective of the nationality or status of the accused.

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

In the case of Rwanda, an ad hoc tribunal was set up by a UN resolution.

The International Criminal Tribunal for Rwanda (ICTR) was set up by the Security Council Resolution 955 of 8 November 1994 for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda between 1 January and 31 December 1994. The Tribunal may also deal with the prosecution of Rwandan citizens responsible for genocide and other such violations of international law committed in the territory of neighboring states during the same period.

The ICTR is an ad hoc tribunal. Located in Arusha, Tanzania, its jurisdiction is concurrent with national courts. The Tribunal may request national courts to defer to its competence. There is no death penalty, the maximum penalty being life imprisonment.

Nationally, Rwanda has established Gacaca courts, which are local courts established to deal with the nearly 80,000 reported persons accused of participating in the genocide. These traditional or local courts, just like the International Tribunal, have been burdened by the mere volume of cases and limited resources.

THE ICC SO FAR

This presentation would be incomplete without a passing mention of the newly created International Criminal Court (ICC). Since 2003, a permanent International Criminal Court has been created.

The Statute of the ICC was adopted on 17 July 1998 at a diplomatic conference in Rome. However entry into force of this instrument only occurred on June 30, 2002 upon the 60th ratification. The Statute provides for the establishment of a permanent court with jurisdiction over genocide, crimes against humanity and war crimes. The ICC can only investigate crimes committed after 1 July 2002. Unlike the ad hoc tribunals for Rwanda or the former Yugoslavia, which have limited geographical scope, the ICC is global in its reach. It is expected that the ICC, located in The Hague, will help to end the impunity enjoyed by those responsible for the most serious human rights crimes.

THE AFRICAN COURT ON HUMAN & PEOPLES RIGHTS

On January 26, this year, the African Court of Human & Peoples Rights came into effect. For the first time African States, in addition to the universal instruments they have adopted at international level, have established a forum here in Africa to deal with issues of Human and Peoples' rights. This significant development highlights the priority rightfully being placed on the preservation of life and of inherent rights.

CONCLUSION

Beyond any universal morale that the tragedy in Rwanda may have served, African countries must absorb the lessons of this genocide in order to avoid a repetition of the ultimate crime on our beloved continent.

Weak institutions in many African countries have given rise to, and encourage a culture of impunity, especially under autocratic regimes determined to remain in power at any cost.

This is the first time that senior officials have been called to account before an international court of law for massive violation of human rights in Africa and one hopes that it sends a strong signal and deter all that may not yet

have taken notice of the universal resolve to prosecute persons, irrespective of status, who commit crimes against humanity, including genocide.

****The views expressed herein represent the views of the author and may not necessarily reflect the views of the African Development Bank.***