

**COI QUERY**

<b>Country of Origin/Topic</b>	<b>Rwanda</b>
<b>Question(s)</b>	<ol style="list-style-type: none"><li>1. <a href="#">Is there information on documented cases of persons convicted of genocide in European countries, who have returned to Rwanda after serving their sentence?</a></li><li>2. <a href="#">Is there information available on the treatment of such convicts by Rwandan authorities after returning?</a><ol style="list-style-type: none"><li>2.1 <a href="#">Is there information on documented cases of persons who, after been already investigated, prosecuted and convicted for genocide crimes in a European country, have been prosecuted for genocide crimes after returning to Rwanda?</a></li><li>2.2 <a href="#">Does Rwandan legislation address the issue of double jeopardy a) in general b) specifically in relation to genocide crimes?</a></li></ol></li><li>3. <a href="#">Is there information available on the treatment of such convicts by non-state actors after returning?</a></li><li>4. <a href="#">What is the situation of people who have been convicted abroad for crimes committed during the 1994 genocide compared to the situation for Rwandans convicted in Rwanda for similar acts, after the prison sentence has been served? Of particular interest is information on livelihood, access to employment and to health care.</a></li></ol>
<b>Date of completion</b>	<b>21 February 2020</b>
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*The target audience is caseworkers, COI researchers, policy makers, and decision making authorities. The answer was finalised on 21 February 2020. Any event taking place after this date is not included in this answer.*

## COI QUERY RESPONSE

### 1. Is there information on documented cases of persons convicted of genocide in European countries, who have returned to Rwanda after serving their sentence?

Only limited information on persons convicted of participation in the Rwandan genocide who have returned to Rwanda could be found amongst consulted and used sources.

#### Background information on the prosecutions related to the genocide in Rwanda:

After the 1994 genocide in Rwanda, which caused death of up to one million people, mostly Tutsis and moderate Hutus<sup>1</sup>, an International Criminal Tribunal for Rwanda (ICTR) was established in Tanzania to try the suspects. The court was working until December 2015. During its operation, the ICTR indicted 93 persons, 61 of those were convicted and sentenced.<sup>2</sup> Additionally, in Rwanda, some 12 000 local *gacaca* courts<sup>3</sup> were set up. These courts tried some 2 million cases until they were closed in June 2012.<sup>4</sup> Under the principle of universal jurisdiction, several genocide suspects were tried also abroad, including in a number of European countries.<sup>5</sup> These included eight cases in Belgium and three in Sweden.<sup>6</sup> Other European countries where such trials took place were Finland, France, Germany, Norway and Switzerland.<sup>7</sup> Moreover, sources reported on several cases of genocide suspects who were extradited from Europe to Rwanda, including from Denmark, Norway and the Netherlands.<sup>8</sup>

#### Overview of documented cases of genocide convicts who have returned from Europe to Rwanda:

In September 2006, the Swiss Supreme Court confirmed the decision of Swiss immigration authorities to deport a Rwandan national Fulgence Niyonteze to his country of origin after he served his term in prison in a connection to the genocide.<sup>9</sup> No further information on the deportation and on the

<sup>1</sup> The New Humanitarian, Genocide convicts begin community service, 23 September 2005, [url](#)

<sup>2</sup> Human Rights Watch, Rwanda: 25 Years On, Solidarity With Victims, 4 April 2019, [url](#)

<sup>3</sup> Dacaca courts were defined as 'traditional form of communal justice, whereby communal elders would resolve disputes by devising compensatory solutions aimed at restoring societal harmony. Gacaca proceedings took place on an ad hoc basis and encouraged community participation.' See: Powers, Shannon E., Rwanda's Gacaca Courts: Implications for International Criminal Law and Transitional Justice, In: ASIL (The American Society of International Law), 23 June 2011, [url](#)

<sup>4</sup> JusticeInfo.net, Rwanda: The most judged genocide in history, 4 April 2019, [url](#)

<sup>5</sup> Human Rights Watch, Rwanda: 25 Years On, Solidarity With Victims, 4 April 2019, [url](#)

<sup>6</sup> New Times (The), Genocide fugitives and the protracted pursuit for justice, 6 March 2019, [url](#)

<sup>7</sup> Human Rights Watch, Rwanda: 25 Years On, Solidarity With Victims, 4 April 2019, [url](#)

<sup>8</sup> JusticeInfo.net, Rwanda: The most judged genocide in history, 4 April 2019, [url](#); New Times (The), Genocide fugitives and the protracted pursuit for justice, 6 March 2019, [url](#)

<sup>9</sup> Trial International, Fulgence Niyonteze, 31 May 2016, [url](#)



subsequent treatment of Mr Niyonteze in Rwanda could be found amongst consulted and used sources.

In August 2018, Bernard Ntuyahaga, a former Rwandan mayor, applied for asylum in Belgium after being released from a prison where he was sentenced to serve 20 years after being found guilty of a manslaughter in a relation to the genocide.<sup>10</sup> After the assurance by the Rwandan authorities that he will not be tried again for the same crime in Rwanda, in December 2018, Mr. Ntuyahaga was repatriated to his country of origin where he spent three months in a demobilization and reintegration centre in the north of the country upon his arrival. The centre at the time hosted several hundreds of the former Democratic Forces for the Liberation of Rwanda (FDRL) rebels.<sup>11</sup> In May 2019, it was reported that Mr. Ntuyahaga was released, without additional information on his further integration into the society being provided.<sup>12</sup>

No further cases of genocide convicts who have returned from Europe to Rwanda could be found amongst consulted and used sources.

## **2. Is there information available on the treatment of such convicts by Rwandan authorities after returning?**

### **2.1 Is there information on documented cases of persons who, after been already investigated, prosecuted and convicted for genocide crimes in a European country, have been prosecuted for genocide crimes after returning to Rwanda?**

No information on persons who have already been prosecuted and convicted for genocide crimes in a European country and who would be again prosecuted for genocide crimes after returning to Rwanda could be found amongst consulted and used sources.

In their August 2016 report, the Dutch foreign ministry wrote that some 410 000 former combatants have returned to Rwanda since 2001 and the report stated that they were integrated into the society.<sup>13</sup> The same source noted that a 'very few Rwandans were arrested upon their return to the country.'<sup>14</sup> Based on information from a confidential source, the report further stated that: 'If a genocide suspect convicted abroad has served his sentence and returns to Rwanda, Rwanda will adhere to the ne bis in idem principle'<sup>15,16</sup>

Even though not directly related to the convicts who have returned to Rwanda from Europe, the following information could be of relevance.

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<sup>10</sup> The Guardian, Fury over asylum application by Rwandan who killed 10 Belgians, 9 August 2018, [url](#)

<sup>11</sup> Jeune Afrique, L'ancien major Bernard Ntuyahaga rapatrié au Rwanda après avoir épuisé tous les recours, 27 December 2018, [url](#)

<sup>12</sup> APA News, Ex-Rwandan senior officer completes re-integration course, 29 May 2019, [url](#), accessed 31 January 2020

<sup>13</sup> Netherlands, Ministry of Foreign Affairs, Country Report on Human Rights and Justice in Rwanda, 18 August 2016, [url](#), p. 42

<sup>14</sup> Netherlands, Ministry of Foreign Affairs, Country Report on Human Rights and Justice in Rwanda, 18 August 2016, [url](#), p. 43

<sup>15</sup> The principle provides that no one can be prosecuted repeatedly for the same offence. See: Van Bockel, W. B., The Ne Bis in Idem Principle in EU Law, Alphen aan de Rijn, Kluwer Law International, European Monograph Series, In: Cadmus, European University Institute Research Repository, 2010, [url](#)

<sup>16</sup> Netherlands, Ministry of Foreign Affairs, Country Report on Human Rights and Justice in Rwanda, 18 August 2016, [url](#), p. 35



A July 2019 article published by the Justiceinfo.net<sup>17</sup> described a release of convicts by the ICTR and their return to Rwanda as follows:

‘In total, eighty individuals convicted by the ICTY and ICTR have been released. Out of these, sixty-eight (85%) have been set free before serving their full sentence.

In some ICTY cases, prominent convicts received war hero welcomes at home and their release and return was celebrated by cheering crowds and supporting state officials (...). The majority, however, returned back to their countries more discreetly, or looked for a place to live elsewhere, and kept on living their lives in oblivion. Their leaving prisons went largely unnoticed, in silence, without any objection, outcry or contestation. That was also the case with Rwandan convicts, including Ferdinand Nahimana, a cofounder of the infamous Radio des Mille Collines whom Kigali considers the main ideologue and propagandist behind the genocide. He was granted early release from prison in Mali in 2016. Back then, nobody cried foul.’<sup>18</sup>

In an article published in January 2016 by The New Times, an executive director of the National Commission for the Fight against Genocide (CNLG) was quoted as saying that ‘even if the legal principle of double jeopardy must be respected, Rwandan courts would still pursue people and try them for cases not tackled by the tribunal [ICTR].’ For instance, in one case, a former Rwandan mayor was acquitted of genocide charges by the ICTR, but he could still be tried for a crime of rape in Rwanda.<sup>19</sup>

In this context, it should be noted that Article 92 of the Law No. 68/2018 determining offences and penalties in general stipulates life imprisonment as a punishment for the crime of genocide, which cannot be mitigated ‘by any circumstances’.<sup>20</sup> According to the article 93 of the same law, the following acts are to be punished in the same way as the crime of genocide: conspiracy to commit genocide, planning of the genocide, direct or indirect incitement to commit genocide, attempt to commit genocide and complicity in genocide.<sup>21</sup>

Furthermore, a crime of ‘genocide ideology’ is illegal according to the Law No. 59/2018 of on the crime of genocide ideology and related crimes. The law provides for penalty of ten to twenty five years of imprisonment (Art. 4) and it further specifies that ‘[a]ny person found guilty of the ideology of genocide who was convicted of the crime of genocide, shall be sentenced to life imprisonment.’ (Art. 5).<sup>22</sup> ‘Divisionism’ and categorisation of the population into different ethnic groups such as Hutu, Tutsi and Twa, are illegal in Rwanda as well.<sup>23</sup>

Amnesty International suggested that vague laws on ‘genocide ideology’ and ‘divisionism’, which is actually not defined in the law, have been used to silence critics.<sup>24</sup> USDOS stated that in 2018, some genocide-related cases ‘appeared predetermined’, without providing further details on the issue.<sup>25</sup>

<sup>17</sup> JusticeInfo.net describes itself as ‘an independent website covering news on justice related to mass violence, so as to promote reconciliation and fight impunity in societies facing serious crises’. See: JusticeInfo.net, About us, n.d., [url](#)

<sup>18</sup> Justiceinfo.net, Early release of ICTR convicts: the practice beyond the outrage, 5 July 2019, [url](#)

<sup>19</sup> The New Times, Rwandans acquitted by ICTR can return home, says CNLG, 18 January 2016, [url](#)

<sup>20</sup> Rwanda, Law No. 68/2018 determining offences and penalties in general, 30 August 2018, [url](#)

<sup>21</sup> Rwanda, Law No. 68/2018 determining offences and penalties in general, 30 August 2018, [url](#)

<sup>22</sup> Rwanda, Law No. 59/2018 on the crime of genocide ideology and related crimes, 22 August 2018, [url](#)

<sup>23</sup> USDOS, Country Report on Human Rights Practices 2018 - Rwanda, 13 March 2019, [url](#)

<sup>24</sup> AI, Safer to stay silent, The chilling effect of Rwanda’s laws on ‘genocide ideology’ and ‘sectarianism’, 2010, [url](#), pp. 15, 20

<sup>25</sup> USDOS, Country Report on Human Rights Practices 2018 - Rwanda, 13 March 2019, [url](#)



## 2.2 Does Rwandan legislation address the issue of double jeopardy a) in general b) specific to genocide crimes?

### a) In general

Double jeopardy is explicitly forbidden by the Rwandan law.<sup>26</sup>

Article 7 of the Law No. 68/2018 determining offences and penalties in general states:

‘No person may be punished for the same offence for more than once.’<sup>27</sup>

### b) Specifically in relation to genocide crimes

A 2011 Human Rights Watch report noted that that a loophole in the 2004 *gacaca* law allowed these courts to prosecute persons who have already been tried by the conventional courts, irrespective of the fact whether they were convicted or acquitted. According to the source, a loophole remained in place even after a May 2008 amendment of the law.<sup>28</sup>

The source noted that:

‘Genocide-related charges can be multi-faceted, potentially involving a number of distinct criminal acts that may have been committed at different times and in different locations. This can make it difficult to clearly distinguish between cases involving a violation of the principle of double jeopardy and cases in which an individual is charged in separate cases with unrelated offenses.’<sup>29</sup>

In January 2016, and in relation to the ICTR proceedings, the National Commission for the Fight against Genocide (NCFG) stated that persons who were already convicted and served their sentences, or those acquitted by the court, ‘should have no fear of returning home’ and they will not be prosecuted again as that would be against the prohibition of double jeopardy in the Rwandan law.<sup>30</sup>

In October 2015, it was reported that a French court discontinued a case against a Rwandan priest Wenceslas Munyeshyaka suspected of crimes against humanity and war crimes in relation to the 1994 genocide. The same source wrote that the priest was already sentenced in absentia by a military court in Rwanda to a life imprisonment in 2006.<sup>31</sup> Previously in France, three other Rwandans were convicted of genocide and sentenced to 25 years and life in prison, respectively.<sup>32</sup>

<sup>26</sup> Human Rights Watch, Justice Compromised, 31 May 2011, [url](#); UN HRC, Consideration of reports submitted by States parties under article 40 of the Covenant; Fourth periodic reports of States parties due in 2013; Rwanda, 30 October 2014, [url](#), p. 61

<sup>27</sup> Rwanda, Law No. 68/2018 determining offences and penalties in general, 30 August 2018, [url](#)

<sup>28</sup> Human Rights Watch, Justice Compromised, 31 May 2011, [url](#)

<sup>29</sup> Human Rights Watch, Justice Compromised, 31 May 2011, [url](#)

<sup>30</sup> The New Times, Rwandans acquitted by ICTR can return home, says CNLG, 18 January 2016, [url](#)

<sup>31</sup> Reuters, French court drops genocide case against Rwandan priest: source, 6 October 2015, [url](#)

<sup>32</sup> Le Monde, Un ancien préfet rwandais renvoyé aux assises en France pour complicité de génocide, 31 December 2018, [url](#)



In 2015, it was reported that an English court refused to extradite five Rwandan genocide suspects on the grounds of possible double jeopardy and a breach of fair trial in Rwanda. One of the persons, Celestin Mutabarkua, was known to be previously tried in a *gacaca* court.<sup>33</sup>

**3. Is there information available on the treatment of such convicts by non-state actors after returning?**

No information on the treatment of such convicts by non-state actors after return to Rwanda could be found in the consulted and used sources.

Sources indicate that perpetrators and survivors of genocide in Rwanda live today as neighbours.<sup>34</sup> The 2016 Dutch report noted that there are places in the country where survivors of genocide live together with family members of the perpetrators or where perpetrators, after serving their punishment, live together with the survivors.<sup>35</sup>

The same source described a release of genocide perpetrators and their return to the communities as follows:

‘Two months before they are released, prisoners are given the opportunity to meet the authorities in their village, look up their family and meet other people from the village. Perpetrators and victims are taught how the deal with one another. Victims (or their family members) who want to take revenge on the returning perpetrators risk punishment.’<sup>36</sup>

In January 2017, The Guardian reported on some 3 000 perpetrators and survivors of genocide living side by side in six reconciliation villages across Rwanda.<sup>37</sup> In the village of Mbyo for example, fifty four families consisting of Hutu and Tutsi were reported as living together in peace.<sup>38</sup>

In their overview of 2018, the US Department of State (USDOS) wrote that most of the returnees to Rwanda were able to resettle in their original places of residence, without further specifying profiles of the returnees.<sup>39</sup>

**4. What is the situation of people who have been convicted abroad for crimes committed during the 1994 genocide compared to the situation for Rwandans convicted in Rwanda for similar acts, after the prison sentence has been served? Of particular interest is information on livelihood, access to employment and to health care.**

<sup>33</sup> The Law of Nations, English court refuses to extradite in Rwanda genocide case: will a domestic prosecution follow?, 10 October 2017, [url](#)

<sup>34</sup> Rieder, H. and Elbert, T., Rwanda – lasting imprints of a genocide: trauma, mental health and psychosocial conditions in survivors, former prisoners and their children, In: Conflict and Health, 26 March 2013, [url](#); Robert Bosch Stiftung, Coping With the Past in Rwanda: The Road to Forgiveness, July 2018, [url](#); The New Humanitarian, Rwanda, part 4: The ‘reconciliation villages’ where genocide survivor and perpetrator live side by side, 20 May 2019, [url](#)

<sup>35</sup> Netherlands, Ministry of Foreign Affairs, Country Report on Human Rights and Justice in Rwanda, 18 August 2016, [url](#), p. 46

<sup>36</sup> Netherlands, Ministry of Foreign Affairs, Country Report on Human Rights and Justice in Rwanda, 18 August 2016, [url](#), p. 46

<sup>37</sup> The Guardian, ‘My neighbour murdered nearly all of my family, but now we are friends’, 12 January 2017, [url](#)

<sup>38</sup> Robert Bosch Stiftung, Coping With the Past in Rwanda: The Road to Forgiveness, July 2018, [url](#)

<sup>39</sup> USDOS, Country Report on Human Rights Practices 2018 - Rwanda, 13 March 2019, [url](#)



Very limited information on the situation of people who have been convicted abroad for crimes committed during the 1994 genocide compared to the situation of people convicted in Rwanda for similar acts, after the prison sentence has been served, could be found in the consulted and used sources.

In 2013, Rwandan justice ministry announced that persons convicted of genocide by the ICTR can return to Rwanda, serve the rest of their sentences there and later join the 'the reconciliation process'.<sup>40</sup>

Sources reported that persons characterised as former combatants were subjected to a three-month long reintegration program, including vocational training, after their return to Rwanda.<sup>41</sup>

Referring to a confidential source, the previously quoted Dutch report found that:

'There is basically no difference between the treatment of genocide perpetrators who returned from abroad and genocide perpetrators who remained in Rwanda. According to a source, all perpetrators are held accountable for their crimes, but their relatives are not considered responsible. People who have resided abroad for a long time normally do not have any problems when they return. Should they have been involved in the genocide, they will be treated the same way as those who stayed in Rwanda.'<sup>42</sup>

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<sup>40</sup> The East African, Genocide convicts free to return to Rwanda, 23 February 2013, [url](#)

<sup>41</sup> Al Jazeera, A long road to reintegration for Rwandan ex-combatants, 25 February 2016, [url](#); The New Times, Ex-combatants complete re-integration course, 19 November 2018, [url](#)

<sup>42</sup> Netherlands, Ministry of Foreign Affairs, Country Report on Human Rights and Justice in Rwanda, 18 August 2016, [url](#), p. 45



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