

# **The procedure in the Netherlands is a violation of human rights**

*"You can't win when you fight the government as an individual..."*

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## Introduction

The IND, the Dutch immigration service, is biased, unreliable and not very rigorous. The Dutch procedure for people accused of genocide (1F<sup>1</sup>) violates human rights.

Anyone accused by the IND of having participated in the Rwandan genocide is caught in quicksand that slowly but surely swallows them up. Dutch administrative law<sup>2</sup> and the IND's working methods are the main factors. Proving innocence through administrative law is almost impossible. Dutch citizens, victims of the National Tax Authorities, have experienced this bitterly<sup>3</sup>.

Rwandans living in the Netherlands who are accused of genocide have also experienced this. In practice, administrative law, which is designed to defend citizens against government decisions, offers little opportunity for an adequate defence. Dozens of Rwandan families living in the Netherlands are victims of this. Their residence permits were withdrawn, some even lost their Dutch passports and nationality. They were no longer allowed to work and were not entitled to social benefits, allowances and health insurance. They found themselves in a permanent state of poverty, fear and uncertainty, and some of them for more than ten years.

After a lengthy procedure, with no focus on the substance but only on the procedure, a judge finally decides what will happen, i.e., whether they can be deported to Rwanda. For many, this is a frightening destination, because they are politically active in the opposition. There is a high risk of being arrested, given an unfair trial, being illegally detained, tortured or killed.

The IND's method of working makes matters worse. Their charges are riddled with errors. There is a lack of knowledge of language and/or culture. The files are built up from general elements, supplemented by some personal details. The IND often requires further investigation in the country itself. The result is an 'Individueel Ambtsbericht' (*IAB, official report on an individual*), the quality of which even IND officials say internally leaves a lot to be desired. Thus, someone is accused of the worst possible crime, even though it is not known exactly what happened, where and when!

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<sup>1</sup><https://www.refugeelegalaidinformation.org/exclusion-refugee-status-under-article-1f-convention>  
<https://www.canlii.org/en/ca/scc/doc/2013/2013scc40/2013scc40.html?resultIndex=1>  
<https://www.canlii.org/en/ca/scc/doc/2013/2013scc40/2013scc40.pdf>  
[https://nl.wikipedia.org/wiki/Artikel\\_1F\\_Vluchtelingenverdrag#:~:text=Het%20bepaalde%20in%20artikel%201F,kunnen%20maken%20op%20vluchtelingrechtelijke%20bescherming.](https://nl.wikipedia.org/wiki/Artikel_1F_Vluchtelingenverdrag#:~:text=Het%20bepaalde%20in%20artikel%201F,kunnen%20maken%20op%20vluchtelingrechtelijke%20bescherming.)

<sup>2</sup>De grondbeginselen van de rechtsstaat zijn geschonden' als 'verschrikkelijk ongeluk'. Over de noodzaak van behoorlijk bestuur, Alex Brenninkmeijer, Nederlands Juristenblad, 8-01-2021,  
[https://www.njb.nl/media/4103/c-b-b-37e-d-97a-c-c-4d-20652575d-6b-97e-05c-9\\_pdf.pdf](https://www.njb.nl/media/4103/c-b-b-37e-d-97a-c-c-4d-20652575d-6b-97e-05c-9_pdf.pdf)

<sup>3</sup>Ongekend onrecht. Rapport parlementaire ondervragingscommissie Kinderopvangtoeslag, 17 december 2020  
<https://www.rijksoverheid.nl/documenten/publicaties/2021/01/21/kabinetsreactie-rapport-%E2%80%9COngekend-onrecht%E2%80%9D---samenvatting>

The IND almost never admits a mistake and almost never includes arguments in defence of the suspect in its decision. This is contrary to the General Administrative Law (Awb<sup>4</sup>), which stipulates that an administrative organisation such as the IND must fulfil its tasks without prejudice.

In April 2021, Dutch lawyers presented a shocking black book containing fifty stories of how the IND treated their clients in an unbelievably cruel and inhumane manner<sup>5</sup>. The publication describes the IND's activities as follows: "...excessive formalism, the dismissal of people as fraudsters, an IND that rigidly adheres to rules and in doing so completely loses sight of the human dimension..."

Since the Netherlands has helped build the Rwandan judicial system for many years, almost all Dutch judges believe that defendants can be sent back to Rwanda. Similarly, most politicians believe that these people can be deported or extradited to Rwanda. There seems to be a general feeling that to say otherwise would devalue all the years of technical, financial and political support provided by their government.

### **5.1. The IND Rwanda Project**

It all started in 2006. During an introductory interview<sup>6</sup>, a new IND official suggested to his boss that the situation of Rwandan refugees should be re-examined with the understanding that there might be genocidaires among them. Contacts were made with the Ministry of Foreign Affairs and in 2008 the 'Rwanda project' became a reality. Unit 1F of the IND was to reassess the files on the basis of a number of criteria. These criteria were not made public.

At the end of 2009, 17 cases were "selected" and in 2010 the first indictment letters by the IND were sent. The recipients were accused of having lied during their asylum procedure and of having participated in the genocide. For them and their families, this was the beginning of a nightmare from which there was almost no escape. Deportation to Rwanda became a serious and real threat.

### **5.2. The IND's charges are riddled with errors**

The accusation, innocently called '*Voornemen*' (intention), consists of a general part resulting from an internet search and a personal part. The first time you see such a report, you are shocked: this report is about a real criminal. But if you look closely, you will notice

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<sup>4</sup> <https://wetten.overheid.nl/BWBR0005537/2021-03-01>, article 2.4

<sup>5</sup> <https://www.vajn.org/wp-content/uploads/2021/04/boek-ongehoord-onrecht-in-het-vreemdelingenrecht.pdf>

<sup>6</sup> Les informations sont enregistrées via Wob-verzoek, <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/wob-verzoeken/2020/08/04/besluit-wob-verzoek-uitlevering-persoon-aan-rwanda/Openbaar+gemaakte+documenten+Rwanda.pdf>

that the general part is long, while the personal part is often only a few pages long, including the IAB (*official report on an individual*). This report is often full of mistakes. Villages are mixed up. Names are misspelled.

Throughout the process, including during the hearings and trial, the IND is quick to mark its targets with the 1F stamp. Thus, obvious and blatant inaccuracies are presented as truths. BTIs are selectively quoted incorrectly, incompletely or erroneously. Sources are also quoted incompletely, distorting the reality. Information and sources that exonerate the suspect are simply left out. Obviously, false conclusions are drawn. Sometimes the IND claims that sources are eyewitnesses when in fact they are only repeating what they have heard from others (hearsay). The IND also uses reports from unreliable organisations such as African Rights.

### **5.3. Poor quality of the IAB**

The IAB, the official report on an individual, is very important for the procedure.

#### **Procedure**

The IND requests the Ministry of Foreign Affairs to conduct an investigation in Rwanda on the suspect. IND drafts the questionnaire. The Dutch Embassy in Kigali asks a 'trusted' advisor (often a Rwandan lawyer) to conduct the investigation. The result is sent to Foreign Affairs Unit 1F. This unit verifies the sources, except for human sources. This is impossible in practice.

Only Unit 1F is allowed to see the so-called basic documents, often reports of conversations with witnesses. This unit asks for further explanations from the embassy if necessary and then draws up the IAB which is then forwarded to the IND.

Ultimately, the court decides whether deportation is permitted. They attach great value to the IAB without any further justification. In 1998, the National Ombudsman (Ombudsman) concluded that: *"The quality of the various official reports is not sufficiently guaranteed... There are also a number of shortcomings in the reporting and verification of information from home country investigations"*<sup>7</sup>.

In 2007, the National Ombudsman again investigated the quality of the ABIs. Little had changed: *"The way the IND uses these reports indicates bias and partiality"*<sup>8</sup>.

In a letter to the Dutch Parliament (Tweede Kamer) a year later, the National Ombudsman complained about the lack of information: *"The Netherlands protects a disproportionate*

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<sup>7</sup> Rapport Nationale Ombudsman 1998 :

<https://www.nationaleombudsman.nl/nieuws/1998/kwaliteit-individuele-ambtsberichten-in-asielzaken-onvoldoende-gewaarborgd>.

<sup>8</sup> Rapport Nationale Ombudsman 2007 :2007/328

[https://www.nationaleombudsman.nl/uploads/rapporten/20070328\\_2006.14164.pdf](https://www.nationaleombudsman.nl/uploads/rapporten/20070328_2006.14164.pdf)

*amount of factual information through the IAB, so that it is not possible to have the views of both sides of the case about the evidence included in the procedure* <sup>9</sup>."

The Ombudsman is not alone in his criticism. Lawyers, professors and journalists have repeatedly pointed out the many flaws in the process leading to the IAB. Even civil servants are critical. For example, a report from the reconciliation meeting on international crimes (Internationale Misdrijven, IM) of 14 May 2018 states: *'During the consultations on Rwanda on 3 April, it became clear that the IAB is not always sufficiently concrete. For example, it is not always clear which events and which period are referred to* (."

So, someone is accused of the worst possible crime, yet it is not clear what happened, when and where!

But the IND, Foreign Affairs and most judges turn a deaf ear to all criticism, including internal criticism. According to the IND, the IABs were carefully drafted.

The judges also look at the official thematic opinion, which gives a general overview of the situation in a country. For Rwanda, the last report was heavily criticised<sup>10</sup>. It gave a far too flattering picture: *"The official opinion Rwanda 2016, is incorrect, unreliable and based on selective evidence."*

#### **5.4. The IND botches the job**

There is total lack of rigorous scrutiny of information provided .. Neither in the BII's, nor in the Rwanda investigations on which they are based. It is an open secret that Rwanda is a strictly controlled society where anyone who does not belong to a village or neighbourhood is reported to the neighbourhood chief as suspicious. It is therefore not possible for the *Vertrouwenspersoon* (trusted advisor) of the Dutch embassy, often a Rwandan lawyer, to carry out independent research. People usually give politically correct answers because they have to report the conversation to the state party representative in their neighbourhood.

In addition, there is no human source control. Apart from the 'adviser' (*the Vertrouwenspersoon*), no one knows whether these people really exist or, if they do, what they said. There are no recordings of the conversation and no copies of identity cards<sup>11</sup>. This may seem understandable if one is willing to believe that witnesses are at risk. But it means that no one can verify the oral sources. It is often difficult to know whether they are eyewitnesses or sources who quote others. Moreover, in a number of cases, many sources can be linked to one source, so that it appears that the source has recruited the others. It is also not clear whether the sources had contact with each other.

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<sup>9</sup>Brief Nationale Ombudsman aan Tweede Kamer september 2008

<https://www.nationaleombudsman.nl/nieuws/onderzoeken/2007200>

[https://www.nationaleombudsman.nl/uploads/brief\\_individuele\\_amtsberichten\\_aan\\_tweede\\_kamer\\_0\\_0.pdf](https://www.nationaleombudsman.nl/uploads/brief_individuele_amtsberichten_aan_tweede_kamer_0_0.pdf)

<sup>10</sup><https://www.njb.nl/blogs/het-amtsbericht-rwanda-waarom-weer-zon-onjuiste-voorstelling-van-zaken/>

<sup>11</sup>Brandpunt : De lange arm van Kagame. <https://tvblik.nl/brandpunt/9-november-2014>

As the names of many districts and places changed in Rwanda after the genocide, geographical references are also questionable. Sometimes a single official report refers to a district, which then turns out to be a village with the same name, but in a completely different location.

Furthermore, it is very likely that the *Vertrouwenspersoon* is dealing with 'sources' that can be linked to the Genocide Fugitive Tracking Unit (GFTU<sup>12</sup>). The *Vertrouwenspersoon* could then receive information prepared by the GFTU. In Rwanda, it is not uncommon for people to be forced to make a false statement. And finally, sources can benefit from their false testimony if they accuse someone in order to obtain land, a house or property from the suspect.

In a number of cases, it seems that the IND will repeat investigations if the results do not fit into their expectations. For example, a Rwandan *Vertrouwenspersoon* conducted an investigation on **Joseph Mugenzi**. He found nothing special, and another *Vertrouwenspersoon* was quickly sent to conduct a second investigation. And surprisingly, during this second investigation, he found human sources that accused Mugenzi. In the end, the second report was sent to the Netherlands, as the first one was no longer relevant<sup>13</sup>, because it exonerated the accused.

On several occasions, the Netherlands sent investigators themselves. It is even more complicated for them. They are not sufficiently familiar with the history and culture of Rwanda, are accompanied by the Rwandan judicial police officer (Ministère public), the police and the Genocide Fugitive Tracking Unit (GFTU) and are dependent on interpreters whose independence cannot be established.

Individuals are thus charged on the basis of official reports that are full of errors and based on unverifiable sources.

Research by the National Ombudsman shows that the IAB leads to the rejection of asylum applications in eighty per cent of cases<sup>14</sup>.

## 5.5. Living in limbo in no-man's land

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<sup>12</sup>In addition to the Interpol project, the Rwandan National Prosecution Services established the Genocide Fugitive Tracking Unit (GFTU) in 2007, tasked with identifying the whereabouts of genocide suspects abroad, investigating allegations and cooperating with national prosecution services and international judicial bodies to either prosecute the accused domestically or extradite them to Rwanda. European states continue to assist Rwanda in building up relevant expertise. The Netherlands, in particular, signed a letter of intent with the Rwandan government in 2010 which allowed the exchange of non-operational knowledge between Dutch and Rwandan public prosecution, judiciary and bar associations. In 2012, the GFTU issued a list with names of more than 70,000 genocide fugitives who had been convicted by gacaca courts in absentia.

<sup>13</sup> Brandpunt : De lange arm van Kagame. <https://tvblik.nl/brandpunt/9-november-2014>

<sup>14</sup> Rapport Nationale Ombudsman 2007 : 2007/200

Persons charged on the basis of Article 1F run a high risk of landing in a trap that they can hardly get out of. Like the wolf and the lamb in La Fontaine's fable<sup>15</sup>, the reason of the strongest is always the best. Often there is too little evidence for a criminal prosecution, but the 1F stamp of the IND remains. The supreme judge, the Raad van State, almost always agrees with the judges and the IND because he/she must limit him/herself to the form and does not analyse the substance.

This can lead to a situation in which the suspect is neither convicted nor acquitted but is also not entitled to support from Dutch institutions because of the 1F stamp, which means, among other things, that he or she is not entitled to refugee protection, insurance or social assistance.

In March 2015, a member of the Dutch Lawyers' Committee wrote: "*Leaving people in a legal no-man's land who can in no way prove their innocence is not fair. (...) Deporting refugees (...) after eighteen years of residence in the Netherlands or allowing 1F people to live for years illegally without proper (criminal) assessment is not a credible and humane asylum policy*<sup>16</sup>."

## 5.6. The IND is persistent

Once the IND gets hold of a case, it is difficult to let go, even if in some cases there is no case to answer at all in Rwanda. The most obvious example is that of **Lin Muyizere**, the husband of Victoire Ingabire Umehoza. In the summer of 2010, an application for the establishment of an IAB was on the desk of the Dutch ambassador in Kigali. At that time, the situation on the ground was highly volatile. There were regular grenade attacks, the media was suspended, journalists were being hunted down arrested or even murdered. In August, presidential elections were held.

Rwanda has repeatedly stated that it has no case against Muyizere. And since he is the husband of opposition leader Victoire Ingabire Umehoza, it is likely that they took the time to check him out. Indeed if they had found anything against him - however little - they would have used it against him and her. But nothing was found. Yet in 2014, Muyizere received a report from the IND indicating that he was suspected of genocide-related activities. In the course of his proceedings, his passport was taken away as was his Dutch nationality. Meanwhile, his wife was arrested and sentenced on appeal to 15 years' imprisonment. Muyizere became seriously ill. Nevertheless, the IND continued the proceedings. Muyizere appealed and in December 2018, he won his case against the Dutch state, getting back all his rights and his passport.

The same goes for the first Rwandan expelled under the Rwanda project, **Jean Gervais Munyaneza**. He flew to Kigali accompanied by Dutch policemen and provided with a 'laissez-passer'. Rwanda was not amused. They didn't have a case against him, they had

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<sup>15</sup> <https://lyricstranslate.com/en/le-loup-et-lagneau-wolf-and-lamb.html>

<sup>16</sup> <https://www.volkskrant.nl/columns-opinie/vluchtelingen-in-juridisch-niemandsland~b3aa0d01/>

not made any request for this man. He was only allowed into Rwanda with great difficulty. Since then, he has been living with his family in Kigali.

His brother was deported from the Netherlands a year later. He was arrested on arrival in Rwanda and immediately placed in an ordinary prison as he was not covered by the transfer law. After five years of investigation, the judge ruled that he should be released and be tried while he is out of prison. . He still does not know when his trial will end<sup>17</sup>. His case has also been taken to the European Court of Human Rights. That court decided negatively for his case in January 2022.

**Jean Baptiste Mugimba**, also a victim of the IND, was extradited in November 2016 at the request of Rwanda. Also in his case, it became clear last year that witnesses had lied. During one of the hearings, a prosecution witness who was to testify against him did the opposite, clearing him of any responsibility<sup>18</sup>. In the spring of 2021, it was reported that the judges had asked for his trial to be reopened in May 2021 because they wanted to hear more witnesses. This is very unusual because the prosecutor and the defence lawyers had all already presented their closing arguments. All that remained was the delivery of the verdict.

Since the decision to reopen his case was taken, the date for a new hearing has been continually postponed. At the end of December 2021, it was still unclear whether and when the trial would resume. It was learned, however, that the verdict was to be delivered on 23 December 2021. Surprisingly, it did not take place and no further date was given.

**Jean Claude Iyamuremye**<sup>19</sup> was extradited at the same time. His case progressed more slowly than Mugimba's, but again the evidence seemed thin. It was the IND that initiated proceedings against them<sup>20</sup>. In the course of the proceedings, it became an extradition case because Rwanda requested it.

Rwanda feared that the two accused would not be tried in the Netherlands because of the very high costs involved in such a trial. The Rwandan government also feared that if the trial took place in the Netherlands, the sentence would be too low.

The issue of **Rutunga Venant** is equally emblematic.

Until 2010, Rutunga was not explicitly wanted by the Rwandan government, but it knew all about him. Indeed, in 1996, two years after the genocide, Rutunga's passport was renewed by the Rwandan authorities, something the IND says had never happened to a genocide suspect. Indeed, there have been two trials in Rwanda for the alleged perpetrators of crimes committed at ISAR-Rubona in Butare: Butare - RMP 41.640/S8 RP 76/2/2000 and on appeal in Nyabisindu RPA 145/I/2001/NZA RP 76/2/2000. The Rwandan authorities found no reason to suspect him.

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<sup>17</sup>Anonymous source in the Netherlands, name known to the publisher.

<sup>18</sup><https://www.radiyoyacuvoa.com/a/4764022.html>  
<https://www.topafricanews.com/2019/01/31/umutangabuhamya-wubushinjacyaha-yashinjuye-mugimba/>

<sup>19</sup><https://www.vn.nl/ik-een-moordenaar-integendeel/>

<sup>20</sup><https://www.vn.nl/was-deze-man-een-moordenaar-in-rwanda/>



Two laws were enacted in 2000 and 2004 criminalising the failure to talk about crimes committed during the genocide, but Mr Rutunga was not subsequently reported as a suspect.

Rutunga had continued to publish his agricultural research papers in international journals after 1994 and they are well known to Rwandan authorities. He was therefore known to the Rwandan authorities and, if necessary, it would have been easy to find him. However, there was no attempt to get him extradited to Rwanda. In 2009, Mr Rutunga was allowed by the Rwandan authorities to share the proceeds of the sale of the Kigali Butchery and Charcuterie, which is impossible for genocide suspects. Similarly, the IND, and in its wake the Dutch courts, have always stressed that Mr Rutunga was not wanted by the Rwandan authorities. His name was never published in the Official Gazette of Rwanda, as was done for all the main genocide suspects.

The IND first told Venant Rutunga in the 1F objection of 27 January 2009: "*you are not wanted in Rwanda, so you will not be prosecuted in Rwanda as a genocide suspect and you can return safely*". On 16 March 2010, Venant Rutunga was declared finally inadmissible for refugee protection because he could safely return to Rwanda. Just over six weeks later, on 29 April 2010, after 16 years without any sign of interest from the Rwandan authorities for Mr Rutunga, an extradition request suddenly came out of the blue from the Rwandan government.

## **5.7. Monitoring of extradited Rwandans is mind blowing ()**

Mugimba, Iyamuremye and Rutunga were allowed to be extradited because they were covered by the transfer law, which provided that they would remain in an international prison and could allegedly count on a fair trial monitored by international lawyers. This is not the case. The knowledge of the Rwandan judges leaves much to be desired, as does the quality of the guards, as the International Commission of Justice writes<sup>21</sup>. In an email dated 22 June 2018, the then Dutch ambassador, Frederique de Man, writes: "*... unfortunately, we have to note that even today, questions arise during the preparatory hearings. We have asked the ICJ monitors to prepare more analytical reports from now on with clear reference to the existing legislation and in particular to the Transfer Law. The last monitors' report showed that some judges are not familiar with this law.*"

The monitoring reports are irregular and do not provide analysis or advice, although this is agreed in their contract. Sometimes entire court sessions are reported in just two sentences.

The report of the IG reconciliation meeting of 5 November 2018 says: "*At the consultation between (omitted.), it was decided that AIRS<sup>22</sup> will pilot better monitoring of the proceedings in Rwanda by the ICJ.*"

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<sup>21</sup> <https://www.icj-kenya.org/>

<sup>22</sup> Afdeling Internationale Rechtshulp in Strafzaken ( *International Legal Assistance Division in Criminal Matters*)

The monitors' promise to do better has meant little in practice. An email dated 13 December 2019 still calls for improved reporting. So, the contract was amended in 2020 with additional requirements. Although the reports now arrive more regularly, the quality of the largely public reports has still not improved.

For Iyamuremye, after the report of March-April-May 2021, and the (first) verdict of June 2021 (*according to the unofficial translation of the verdict sentenced to 25 years for genocide*), there is a final report of August 2021 giving an overview of the whole process. It also says nothing about a possible appeal by Iyamuremye against the June 2021 verdict. To monitor a possible appeal, ICJ-Kenya will probably have to obtain a new contract, if our Ministry of Justice so wishes.

After so many delays and postponements for lack of evidence, the court finally came up with a diversion, ruling that, even if there was no evidence that he himself had participated in the Nyakabanda crimes, he would have participated anyway in setting up the roadblocks on which Tutsis were killed in Nyakabanda, Nyamirambo and Gitega<sup>23</sup>. Then, J.B. Mugimba was sentenced to 25 years imprisonment<sup>24</sup>, March 17, 2022. He subsequently appealed.

Regarding Rutunga, there are now two reports on the website.

## **5.8. Administrative procedure: swimming with lead tied on the back.**

To say that the administrative procedure fails totally to protect the accused is an understatement. In the course of the proceedings, the IND only needs to make it look plausible that there exists a serious suspicion of war crimes. It does not have to prove it. The Administrative Jurisdiction Division considers that the Dutch Nationality Act does not require this. The IND literally says: *'For the withdrawal of Dutch citizenship, it is sufficient that there is a serious suspicion'*<sup>25</sup>. This gives too much room for arbitrariness, because this legal vacuum is for the benefit of the 'law of the strongest'. IND is the only one to rule on this. Yet these "serious suspicions" are only acceptable if they are based on verifiable facts and not on lies. In these cases, IND elevates the Rwandan regime to the status of "judge and jury". In effect, he is relying solely on the accusations that this authoritarian regime provides by taking advantage of this legal vacuum, whereas there is irrefutable evidence that in political cases, witnesses are either forced to testify against the government's critics, or are paid to do so, or receive other benefits. Others do so because, as RPF supporters, they have taken an oath<sup>26</sup> of total loyalty to the government and have sworn to fight the enemies of the state. They are forced to sign their own death sentences in case

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<sup>23</sup> <https://www.bbc.com/gahuza/amakuru-60778526>

<sup>24</sup> <https://www.newtimes.co.rw/news/jean-baptiste-mugimba-gets-25-years-genocide-crimes>

<sup>25</sup> <https://www.raadvanstate.nl/uitspraken/@124086/201907911-1-v6/#highlight=%2c%20ECL%3aNL%3aRVS%3a2021%3a114>

<sup>26</sup> <https://www.bbc.com/afrique/region-54985445>

of disloyalty to the state; the text of this oath can be found on social media. Some witnesses are prisoners who make a false statement in exchange for the promise of release or a reduction in their prison sentence.

So, this is not a trial about guilt or not, it is only about procedures. If the procedure has been followed correctly according to the judge and if there are no objections to deporting someone to Rwanda, the accused can be deported.

The highest appeal body, the Council of State (Raad van State), is composed of many former politicians and is therefore in fact a political body. In most cases, the Council of State approves the judge's decision. According to figures from the Ministry of Justice, the IND has more than a 20% chance of winning an appeal. An asylum seeker has less than a 5% chance of winning.

For lawyers, it is an unfair fight: the suspect is presumed guilty and must prove his innocence. But in its position of supremacy, the IND is the only omnipotent one to assess the charges and decide whether the testimony is fair, credible, reliable or not. Witnesses and sources of the accused are systematically rejected on the grounds that, according to the IND, 'they are not objective'.

The defence also often has an information deficit vis-à-vis the IND. Firstly, it is difficult for the defence to conduct its own investigations in Rwanda; secondly, it cannot verify the motives of the IND's witnesses as they are anonymised; and thirdly, it is only administrative law which does not allow for cross-examination.

## **5.9. The Netherlands has spent millions of Euros to support the judicial system**

Prior to the genocide, the Netherlands was hardly active in Rwanda except for the presence of an NGO SNV that worked in partnership with local organisations. This changed when the Minister for Development Cooperation, Jan Pronk, visited Rwanda in May 1994. What he saw there shocked him deeply and prompted him to make a strong commitment to Rwanda.

The Netherlands had provided virtually no military support before and during the genocide, despite Pronk's strong insistence. Development aid to Rwanda was seen as repayment of a debt of honour, and although there were many signs of human rights violations at the time, this did not affect Pronk's attitude or Dutch financial support. This support was given to security, governance and especially justice. The Netherlands became one of the main sponsors of the ICTR and the Gacaca: the people's courts that were supposed to relieve the congestion of the ordinary courts. Even in the beginning, these Gacaca courts functioned in an unprofessional way and over time they were increasingly criticised. The Netherlands recognised their shortcomings, but still considered them a good instrument for reconciliation. In addition, the Netherlands contributed significantly

to the construction of the international wing of the Mpanga prison and the court buildings, as well as the training of judges and lawyers.

In 2010, 2012 and 2014, development aid was temporarily suspended following the publication of the UN Mapping Report and the destabilisation of eastern Congo.

However, these suspensions were always subsequently lifted, and new aid was even granted, despite the appalling human rights situation in Rwanda. Dutch diplomats were silent about the lack of political space and freedom of expression. The trials of Rwandan politician Victoire Ingabire, who had been living in the Netherlands for 16 years, were barely mentioned in public. The Netherlands considered that it was not their responsibility, as Victoire Ingabire had Rwandan, not Dutch, national. However, the Dutch embassy followed the trial closely and the ambassador visited her several times.

During these years, the Netherlands was able to present itself as a reliable actor in a conflict-sensitive area through its support to the judicial sector. During this period, Rwanda showed a willingness to bring genocide suspects to justice in its own country, and Dutch support was invaluable in achieving this. It was against this background that the first steps of the Rwanda project were taken in 2008: 'Reassessment of Rwandan cases on possible genocide activities'.

It was inevitable that most politicians, prosecutors and judges would think that people could be deported or extradited to Rwanda. After all, the Netherlands itself helped build the judicial system. To say otherwise would be to cast doubt on years of support and on the usefulness of millions of euros of funding.

But since the kidnapping of Paul Rusesabagina and his conviction by the Rwandan courts, former Minister Jan Pronk has become very critical of the Dutch position towards Rwanda. He disagrees with the extradition of Rwandans to Rwanda: *"We extradite people to Rwanda on insufficient grounds. This is irresponsible. If you want to charge people, bring them to justice in the Netherlands and don't extradite them to a country where you don't know if the rule of law is respected. There seems to be a general laziness on the part of the IND and the Dutch legal institutions to get rid of people."*<sup>27</sup>

### **5.10. The Netherlands finances a system of repression**

The Rwandan judicial system operates with the financial support of several Western countries. The Netherlands is one of the four main financial supporters of Rwanda. For years, it has contributed financially to the functioning of the Rwandan judicial system in several areas: costs of certain administrative services, Gacaca courts, the Supreme Court, legal aid NGOs, training of judicial officials<sup>28</sup>, etc.

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<sup>27</sup> <https://eenvandaag.avrotros.nl/item/forse-kritiek-van-oud-minister-jan-pronk-op-proces-held-van-hotel-rwanda/>

<sup>28</sup> <http://www.buitenpostdewereld.org/weblog-rwanda-2010/how-much-paid-the-dutch-for.html>

Given Rwanda's human rights record, as presented at the General Assembly of the UN Human Rights Council in Geneva in January 2021<sup>29</sup>, it is high time that the Dutch taxpayer held the Dutch government to account. What is the result of all this spending?

The Rwandan judicial system is at a standstill. Not only is the quality of the magistrates in office unsatisfactory, but above all, the Rwandan judicial system has become a means of getting rid of opponents and silencing all critical voices. It is time, if not too late, for the financiers of the Rwandan judicial system to realise that they are feeding a system of repression.

Indeed, instead of helping Rwanda to build a judicial system more capable of providing impartial justice based on the rule of law, the substantial financial contribution of the Netherlands to the Rwandan judiciary has been used to strengthen the repressive apparatus of the RPF regime that keeps its population under severe oppression<sup>30</sup>.

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<sup>29</sup> [https://www.ecoi.net/en/file/local/2042308/a\\_hrc\\_wg.6\\_37\\_rwa\\_2\\_E.pdf](https://www.ecoi.net/en/file/local/2042308/a_hrc_wg.6_37_rwa_2_E.pdf)  
<https://rw.usembassy.gov/u-s-statement-at-the-universal-periodic-review-of-rwanda/>  
<https://www.gov.uk/government/speeches/37th-universal-periodic-review-uk-statement-on-rwanda>

<sup>30</sup> <https://freedomhouse.org/report/transnational-repression/rwanda>  
<https://www.hrw.org/world-report/2021/country-chapters/rwanda>  
<https://www.hrw.org/world-report/2020/country-chapters/rwanda>  
<https://www.hrw.org/news/2014/01/28/rwanda-repression-across-borders#>

