



Government of Canada
Gouvernement du Canada

Public Report

Canada's War Crimes Program



Department of Justice

Department of Citizenship and Immigration

Canada

Introduction

This report, which focuses on both the World War II and modern-day aspects of the War Crimes Program undertaken by the departments of Justice and Citizenship and Immigration (CIC), is the first in a series of annual reports that will provide information about the Program and its achievements.

The government of Canada has made a commitment that Canada will not become a safe haven for individuals who have committed war crimes or crimes against humanity. Together with the RCMP, the Department of Justice and CIC are working to uphold this objective.

The government has allocated \$46.8 million over the next three years in order to bring to justice those persons in Canada responsible for war crimes, crimes against humanity and other reprehensible acts in times of war, regardless of when those acts occurred.

Canada also has a public policy objective of assisting refugees fleeing crises and turmoil. Part of that aim is achieved through a refugee determination process for asylum seekers who arrive in Canada. Another part is achieved through Canadian posts abroad where there is an overseas selection process for those persons requiring resettlement because of a need for asylum, or those fleeing civil strife and turmoil.

In upholding this commitment, the government of Canada is determined to ensure that protection is denied to those who do not deserve it, specifically, refugee applicants who were involved in war crimes or crimes against humanity.

The government has demonstrated a resolve to deal firmly with such individuals. This initiative is the next step in a series of actions taken by the government of Canada.

On March 12, 1987, the government responded to the report of the Deschênes Commission of Inquiry into War Criminals and announced the policy on the issue of the presence of war criminals in Canada.

The Crimes against Humanity and War Crimes Section of the Department of Justice was created shortly after the publication of the report of the Commission, following the recommendation made by Mr. Justice Deschênes that the RCMP and the Department of Justice be given a mandate to carry out investigations of suspects living in Canada.

Concurrently, CIC amended the *Immigration Act* by barring admission to Canada of persons believed on reasonable grounds to have committed war crimes or crimes against humanity.

On January 31, 1995, following a Supreme Court of Canada decision which made further prosecutions under the *Criminal Code of Canada* impractical, the Honourable Sergio Marchi, then Minister of Citizenship and Immigration, and the Honourable Allan Rock, then Attorney General of Canada and Minister of Justice, announced an initiative focused on the revocation of citizenship and/or deportation of persons living in Canada who have committed war crimes, crimes against humanity or other reprehensible acts and who have lied about their backgrounds in order to enter Canada. Following that announcement, proceedings were commenced against four people for revocation of citizenship and deportation. The announcement also indicated that the government planned to initiate four cases annually in the second and third years of the initiative. In fact, 14 cases were commenced by the end of 1997, exceeding the initial goal.

With respect to modern-day cases, since the early 1990s, CIC has identified nearly 440 individuals suspected of war crimes. In recognition of this trend, a unit was created within CIC to compile a national inventory of cases and to liaise with regional offices in Canada and the posts abroad.

This new funding will enable the government of Canada to more fully establish a formal coordination process to ensure that all partners, whether dealing with intelligence gathering, prosecution or deportation, are working more closely together than has been possible in the past.

DEPARTMENT OF JUSTICE

PUBLIC REPORT WAR CRIMES AND CRIMES AGAINST HUMANITY

Mandate

The War Crimes Section (“The Section”) is mandated to receive allegations, and to investigate, assess and pursue cases against individuals suspected of involvement in war crimes, crimes against humanity and other reprehensible acts during times of war. The Section, in cooperation with the RCMP and CIC war crimes units, works to fulfill the commitment made by the government regarding war crimes and crimes against humanity. The 14 cases that were brought forward between January 31, 1995, and December 15, 1997, were the result of the cumulative work of the members of the Section. The goal of commencing 12 cases by January 1998 was exceeded by December 1997.

Staff of the Department of Justice War Crimes Program

In 1997-1998, the Department of Justice War Crimes Program consisted of 29 staff (full-time equivalents), including 8 counsel, 5 historical staff, 2 paralegals, and various support staff in the Ottawa office, and 8 regional counsel assigned as necessary to litigate the cases. The Department also uses outside consultants as appropriate. For example, in December 1997, the Department of Justice engaged the services of Mr. Neal Sher, former Director of the Office of Special Investigations in the United States Department of Justice, to advise senior officials regarding the World War II Program on a part-time basis. Contract historians are also hired to work on developing the cases. The Director of the Program is Mr. Paul Vickery, and the Chief Historian is Dr. Bettina Birn.

Total Financial Resources*

1995–1996	1996–1997	1997–1998
\$1,522,500	\$1,712,703	\$1,994,863

* Excluding the Employee Benefits Plan, accommodation costs, a \$500,000 disbursement fund provided by CIC, the cost of the RCMP War Crimes Unit and other services provided without charge from other government departments.

Overview of Operations

Historians and counsel in the Section, in conjunction with the RCMP, are responsible for investigating individuals suspected of war crimes, crimes against humanity and other reprehensible acts during times of war. Counsel in the Section, with the advice of the historians, are responsible for assessing the merits of each case in view of the evidence gathered. If there is sufficient evidence, counsel are responsible for preparing and submitting a recommendation for approval to the Minister of Citizenship and Immigration for the commencement of revocation of citizenship and deportation proceedings or to the Attorney General for the commencement of criminal proceedings.

Until very recently, the Section's mandate focused on suspects related to World War II activities, while CIC had the lead regarding more modern issues. Beginning this year, a more coordinated interdepartmental approach to these issues is being undertaken, in which the Department of Justice will increase cooperation with the RCMP and CIC in both the World War II and the modern cases.

Following the amendment of the *Criminal Code* in 1987 to permit prosecution in Canada for war crimes committed abroad, four criminal prosecutions were undertaken. None of them met with success. In 1994, the Supreme Court released its decision in the case of Imre Finta, who had been accused of war crimes under the *Criminal Code*. The *Finta* decision created an onerous burden for the Crown. The court's decision established a defence of superior orders and a double burden of proof for the offence. Following that decision, it was impractical to attempt further prosecutions. At the same time, in the *Luitjens* case, a revocation of citizenship and deportation proceedings was also initiated. The *Luitjens* proceedings ultimately resulted in the successful deportation of the defendant to the Netherlands, where he was incarcerated under a previously existing conviction.

Inventory of Suspects

Since the release of the Deschênes report and the advent of the World War II Program, the Justice and RCMP war crimes units have investigated over 1,500 allegations, including all of the 883 identified by Mr. Justice Deschênes.¹ The Deschênes Commission drew up three lists of suspects: a Master List of 774 names, an Addendum of 38 names and a list of 71 German scientists and technicians. Ten of the 14 cases commenced since 1995 were based on allegations from Justice Deschênes' lists. Justice Deschênes also identified 29 files from the Master List as meriting special attention; of these investigations, 8 have resulted in the commencement of proceedings. In the remaining 21, either the allegations could not be substantiated, or the subject died.

¹ All five cases commenced prior to 1995 were from Justice Deschênes' lists.

Since its inception, the Section has kept an ongoing inventory of all suspected individuals who have been brought to its attention and investigated.² In January 1998, the Section's inventory classification system was reviewed and the current categories are reflected in this report, both in the flow chart attached as Annex "A" and in the tally list as follows:

Inventory of Suspects – Status

• Allegation received, initial checks and surveys being undertaken		126
• Active Files - development stage		90
• Active files - proceedings ongoing		9
• Inactive Files		
a) membership only	177	
b) not enough evidence to support commencement of proceedings	54	
c) suspect not located in Canada	19	
d) suspect no longer located in Canada	8	
e) no evidence of entry	22	280
• Inactive files - routine investigative checks and surveys negative		176
• Closed files:		
a) suspect deceased	363	
b) date of birth pre-1900, no further investigation	4	
c) closed prior to 1998	513	880
• Closed files - Proceedings complete		
a) Criminal proceedings (pre-1995):		
a.a) individual deceased	0	
a.b) cases stayed	2	
a.c) cases lost	2	
a.d) cases won	0	
b) Civil proceedings		
b.a) individual deceased	3	
b.b) cases stayed	0	
b.c) cases lost	0	
b.d) cases won	3	
		<u>10</u>
<u>Total number of individuals listed in inventory to date</u>		1,571

² Please see the inventory flow chart, attached as annex "A," for an overview of how the files work their way through the investigation process.

As indicated, 880 files have been closed.³ A further 280 files are classified as inactive, all avenues of inquiry having been exhausted without a sufficient case to justify proceedings being established. These files are held in this category in the event that further information subsequently becomes available which might enable proceedings to be brought. A total of 176 files are inactive because of negative routine investigative checks and surveys, resulting in no information to support an allegation.

In considering these numbers, it should be borne in mind that, as is the case regarding criminal investigations, only a small proportion of the allegations investigated will culminate in viable proceedings. This is particularly the case when dealing with allegations regarding the World War II era, given the distance in time and geographic location that now separates us from the events, and given the state of disruption which existed in the affected regions at and after the end of the war. As more witnesses become unable to testify because of age, disability or death, and as the potential defendants become subject to such considerations, proceedings will become increasingly vulnerable.

The category of “membership only” cases requires some explanation. These are cases in which, while membership in a collaborationist organization can be established, there is insufficient evidence of complicity in the conduct of reprehensible acts and no evidence that the unit involved was directed to a limited and brutal purpose during the time of the individual’s membership.

Activity since January 1995

Denaturalization/Removal Actions Initiated:

1995: 5
1996: 5
1997: 4

³ Prior to January 1998, files were closed when the allegations were shown to be false, the wrong individual was originally identified, there was no evidence that the suspect was in Canada, or the subject of the investigation died. Following the review of the classification system in 1998, only files in which the proceedings are complete, or the suspect is deceased or born prior to 1900 will be closed. Files for suspects not located in Canada, suspects no longer located in Canada, and suspects for whom we have no evidence of entry to Canada are now classified as inactive, rather than closed.

Persons against whom proceedings have been commenced since 1995 (Status of cases referred to Federal Court)

Notice of reference withdrawn, citizenship revoked, no longer in Canada		2
Cases completed before Federal Court:	- awaiting decision	1
	- awaiting revocation	1
Cases in progress before the Federal Court		7
Persons who died during proceedings		<u>3</u>
Total:		14

Since 1995, the decision to initiate civil proceedings in these cases has been the subject of much public debate. In cases of alleged war crimes, crimes against humanity, or other reprehensible acts during times of war, the laws governing revocation of citizenship and deportation provide appropriate procedures and sanctions. No principle of law or fairness requires the government to use criminal law against an individual in situations where other laws, procedures and remedies could also be invoked. In fact, in one of the cases now before the Federal Court, the judge has rejected the respondent's argument that proceedings to revoke the citizenship of an individual are a disguised means of mounting a war crimes prosecution. The judge also held that application of the Federal Court process "in no way diminishes the respondent's right to be treated fairly in strict compliance with the principles of natural justice."⁴

The Courts' treatment of the cases

The Canadian courts have already considered the application of the *Immigration Act* and the *Citizenship Act* in World War II-related cases.⁵ The recent decision in the *Bogutin* case provides useful guidance for further cases and highlights the effectiveness of the Program. In that case, the Minister of Citizenship and Immigration notified the respondent on April 4, 1996, that she intended to request that the Governor in Council revoke his citizenship on the following grounds:

. . . that you have been admitted to Canada for permanent residence and have obtained Canadian citizenship by false representations or fraud or by knowingly concealing material circumstances in that you failed to divulge to Canadian immigration and citizenship officials your membership in the Selidovka district (raion) police in German-occupied

⁴ *Canada (Minister of Citizenship and Immigration) v. Tobiass et al.* [1997] 3 S.C.R. 391.

⁵ *Luitjens v. Canada (Secretary of State)* (1992), 142 N.R. 173, 54 F.T.R. 237 (note), 9 C.R.R. (2d) 149 (Fed. C. A.), leave to appeal to S.C.C. refused (1992), 143 N.R. 315 (note), 10 C.R.R. (2d) 384 (note) (S.C.C.); *M.C.I v. Bogutin* (February 20, 1998, unreported).

Ukraine during the period 1941 to 1943, and your participation in the execution of civilians and the arrest of civilians for the purposes of deportation for forced labour to Germany during that time.

In response to Mr. Bogutin's request pursuant to section 18 of the *Citizenship Act*, R.S.C. 1985 c. C-29, as amended, the Minister of Citizenship and Immigration referred the case to the Federal Court. The Honourable Mr. Justice McKeown concluded that he must decide whether the respondent obtained citizenship by false representation or fraud or by knowingly concealing material circumstances.⁶ He considered the issues to be as follows:

- 1) . . . whether the respondent was a member of the auxiliary police in Selidovo;
- 2) whether he was a collaborator; and
- 3) whether he lied in a material way upon his application for landed immigration status and citizenship.

In his findings, Mr. Justice McKeown interpreted the meaning of the term "collaborator" as follows:

The plain meaning of the term, collaborator, includes Mr. Bogutin since he was a member of the Selidovo District police which collaborated with the Germans who were Canada's enemies during World War II.

On the question of whether Mr. Bogutin participated in "the execution of civilians and the arrest of civilians for the purposes of deportation for forced labour to Germany," Mr. Justice McKeown stated in the findings of fact that there was "no evidence to demonstrate that Mr. Bogutin was involved in the executions" but that Mr. Bogutin "was personally and directly involved in effecting the roundups of young persons for forced labour in Germany."

Mr. Justice McKeown went on to find that "Canada had a standard immigration process that was followed in Europe at the relevant period of time" and that the "primary focus of the immigration process was to ascertain whether the displaced person came within one of the excluded categories of persons." He specifically found that ". . . prior to the spring of 1952, collaboration with the enemy in World War II was clearly still a blanket cause for exclusion from Canada."

With regard to Mr. Bogutin, Mr. Justice McKeown then found as follows:

- Mr. Bogutin concealed that he was a collaborator during the Nazi occupation;
- Mr. Bogutin falsely represented himself to the Canadian immigration officials as a Romanian national;

⁶ *Citizenship Act*, R.S.C. 1985, c. C-29 (as amended), s. 10(1).

- Mr. Bogutin gained admission to Canada for permanent residence by false representation or fraud or by concealing material circumstances; and
- Mr. Bogutin is therefore deemed to have obtained Canadian citizenship by false representation or fraud or by concealing material circumstances contrary to the *Citizenship Act*.

As stated above, these findings can provide useful guidance for decision making in potential cases under investigation. With the now rapid progress of these cases, it is expected that the body of case law will continue to develop and provide significant assistance in shaping the future direction of the Program. A decision is expected in the near future in the case of *M.C.I. v. Vitols*. The Program's effectiveness is further demonstrated by the fact that two of the first 14 defendants have chosen to leave Canada to avoid deportation.

The work of the Program does not finish with these successes. The Section's current workload consists of approximately 90 active files. In addition, initial checks are being undertaken on approximately 126 files. Based on those checks, the files will either become active or inactive. Significant work goes into investigating and developing each of these files. Evidence collection is done through research in archives and witness interviews, both in Canada and abroad.

In the early years, the Section worked to develop relations with foreign countries in order to secure access to archives for the purpose of historical research. As a result of this work, agreements have been secured with foreign countries, either informal or defined by the signing of memoranda of understanding. Pursuant to these agreements, historians, the RCMP and counsel from the Department of Justice have travelled overseas to search the archives, identify potential witnesses and conduct interviews in order to investigate suspected individuals. The significant passage of time makes locating documents more difficult, and sometimes impossible.

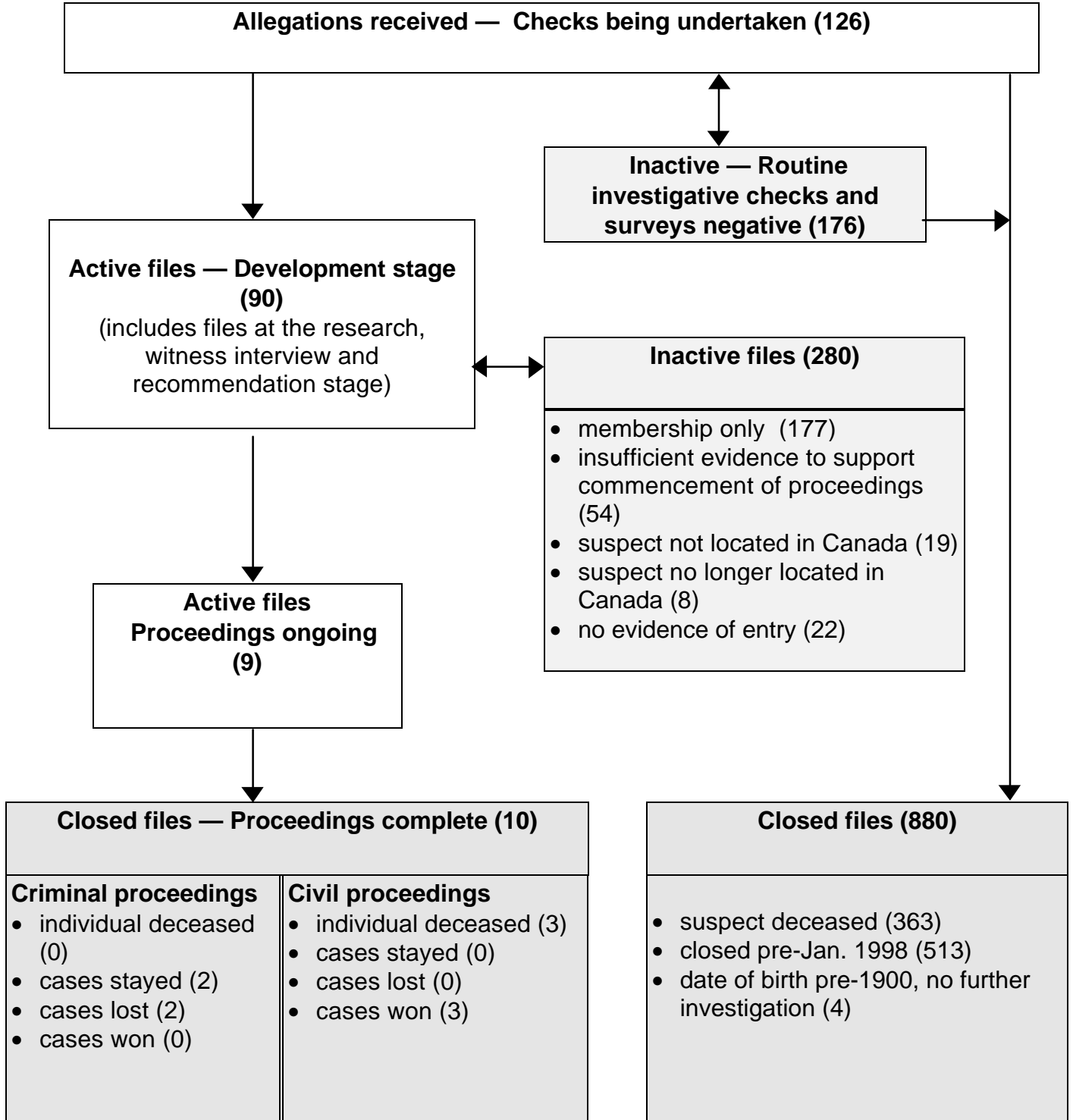
The documents located in foreign archives must frequently be examined by the historians through an interpreter. Later, they must be translated and certified if they are to be used in court proceedings. With the break-up of the Soviet Union and the subsequent opening of previously inaccessible archives in former Soviet states, more and more information has become available for examination and analysis by historians. Over the years, historical staff have worked hard to develop a keen understanding of the information stored in archival holdings in key locations.

Counsel in the Section consider and legally analyze the information collected by the historians. The archival documents themselves are a source of identification of potential witnesses. As with the documents, the passage of time often makes it difficult or impossible to locate the witnesses. In the majority of cases, counsel must travel to a foreign country to interview the witnesses using the services of an interpreter. These witness interview trips require a great deal of planning and coordination with foreign countries, as well as a significant amount of travel within the countries. In the event that a case proceeds to court, the court itself is often required to

travel to foreign countries to take Commission evidence as the witnesses are unable to travel to Canada.

In the face of the significant challenges that arise in developing these cases, the Program will sustain the pace established over the last several years in bringing these cases forward. Proceeding with these matters as quickly as possible is imperative given the advanced age and declining health of both available witnesses and the suspects themselves. All the work being done with regard to the World War II era should set an example for today. The government remains committed to ensuring that Canada will not be a safe haven for individuals who have committed crimes against humanity, war crimes and other reprehensible acts during times of war.

FLOW CHART - WORLD WAR II INVENTORY (total: 1,571)



CITIZENSHIP AND IMMIGRATION CANADA

PUBLIC REPORT MODERN-DAY WAR CRIMES AND CRIMES AGAINST HUMANITY

Mandate

The CIC War Crimes Unit is mandated to serve in a coordinating, reporting and liaison role to ensure that cases are processed as efficiently as possible through the immigration and judicial systems to the point of removal from Canada or denial of visas. The Unit has compiled a cross-Canada and international inventory of cases. In addition to forging strong links with inland, port of entry and overseas CIC offices, it has teamed up with other federal government departments and agencies, including the Royal Canadian Mounted Police and the Department of Justice.

Currently, there are close to 320 suspects in Canada identified for examination and enforcement action where warranted.

Resources

In 1997-1998, CIC's War Crimes Unit consisted of four staff: a project manager, two analysts and a clerk. The Unit worked closely with enforcement units throughout CIC's network of international, regional and local offices.

Pending approval of additional funding, resources were re-allocated from other program areas to support this undertaking. Costs of \$1.25 million were attributed to the 1997-1998 fiscal year for departmental operations, of which \$0.5 million were allocated to the War Crimes Unit at CIC headquarters.

The increased funding will enable CIC to strengthen the coordinating and analysis roles of the Modern-Day War Crimes Unit at headquarters and enhance the operational capacity of field offices.

Statutory Tools Available to Prevent the Entry or Landing of War Criminals

- Article 1F of the 1951 UN *Convention relating to the Status of Refugees* is an international instrument that provides the statutory basis in Canada to exclude persons from being granted Canada's protection under the Convention because of war crimes or crimes against humanity committed prior to their arrival in this country (Article 1F(a)). This provision was incorporated into the *Immigration Act* with the proclamation of Bill C-55 on January 1, 1989.

Article 1F(a) of the 1951 Convention states:

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: [the applicant] has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

- Following the recommendations of the Deschênes Commission, which concluded that war criminals were residing in Canada, the inadmissibility provisions of the *Immigration Act* were enhanced by Bill C-71 on October 30, 1987, when subsection 19(1)(j) was appended. Subsection 19(1)(j) renders inadmissible to Canada persons who there are reasonable grounds to believe have committed or were complicit in war crimes or crimes against humanity.
- On February 1, 1993, the *Immigration Act* incorporated changes brought about by Bill C-86 to create another inadmissible class through subsection 19(1)(l).

Subsection 19(1)(l) of the *Immigration Act* deals with individuals who are or were senior members of a government that has been designated by the Minister of Citizenship and Immigration as having committed systematic or gross human rights violations, war crimes or crimes against humanity.

Individuals found described under this section need not have personally committed atrocities perpetrated by the regime where they held a senior office. By virtue of the position they held in the government, they are accountable for its actions and are therefore inadmissible to Canada.

- Several regimes have been designated under Section 19(1)(l) of the *Immigration Act* as having committed war crimes or crimes against humanity. These regimes, most of which are no longer in existence, cover a period from 1968 to the present. They have held power in African, Asian, European, Middle-Eastern and Western Hemisphere states.
- On July 10, 1995, Royal Assent was granted to Bill C-44, which amended the *Immigration Act* to empower senior immigration officers to determine that refugee claimants found to have committed war crimes or crimes against humanity are ineligible for consideration before the Immigration and Refugee Board. This decision can be made at any time during the claimant's refugee hearing.
- On May 1, 1997, an amendment was made to the Post-Determination Refugee Claimants in Canada Class (PDRCC) which, in keeping with Canada's obligations to extend protection on certain grounds outside the Refugee Convention, provides for a review of grave personal risk in case of removal. The amended PDRCC now

restricts persons who have been precluded under article 1F(a) of the Refugee Convention from accessing this review.

Operational Measures

- Once CIC has been advised by our partner agencies of individuals who have been involved in war crimes or crimes against humanity, their identities are entered in an on-line database pending investigation and confirmation of their involvement.
- Canadian visa offices located near areas of turmoil have developed enhanced screening criteria adapted to local conditions. For example, missions in Belgrade, Bonn, Vienna and Nairobi are at the forefront of information sharing. Applicants who have been identified through the screening process are referred by the visa office to the International Criminal Tribunal in The Hague. The Tribunal possesses a significant database of names and intelligence gathered during witness debriefings. Therefore, while applicants might not have been indicted, it is possible that their military commander was denounced by a witness to an atrocity. This information is made available to the visa office to direct further questioning.

Status of Cases Reviewed to Date

- Approximately 440 cases have been reviewed by CIC. Under article 1F(a) of the Refugee Convention, 288 Convention refugee claimants have been excluded or are in the process of being reviewed for exclusion by the Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board because of war crimes. Under paragraphs 19(1)(j) and (l) of the *Immigration Act*, 115 cases were identified in Canada. Over 40 applicants were refused overseas.
- Of those identified under article 1F(a) of the Convention and paragraphs 19(1)(j) and (l) of the *Immigration Act*, approximately 80 were removed from Canada.
- The Federal Court has upheld over 90 percent of the exclusion decisions (where judicial review was sought). The greatest number of removals from Canada have come from this group of cases. In one prominent case (the son of former Somali dictator Siad Barre), the exclusion was challenged before, and eventually upheld by, the Supreme Court of Canada. The deportation took place the same day.
- In 15 cases, independent adjudicators determined that 19(1)(l) applied. These decisions have withstood all constitutional challenges to date.
- In a recent sampling of ten 19(1)(j) cases, one case was refused overseas, and two, who were the subject of inquiries in Canada, were deported. One inquiry is still being held, and in another, 19(1)(j) was found not to apply. One case is being litigated in the Federal Court and another is under review by the Minister of CIC. Two applicants were refused permanent residence and deported. One of the defendants passed away.

- Recently, the Ethiopian Government thanked Canada for taking action against several persons who were indicted for war crimes under the Dergue regime and who had escaped to Canada. Canada has commenced deportation proceedings on several of these cases. A Canadian officer was sent to Addis Ababa to obtain full affidavits on three cases, one of which is presently at the immigration inquiry stage.

International Obligations

Canada is party to international conventions that include the obligation to prosecute or extradite persons involved in specific types of atrocities (see glossary below), notably war crimes committed in international armed conflicts and genocide. Priority is given to deporting war criminals from Canada unless an obligation to prosecute or extradite applies.

Next Steps

In the coming months, CIC will use the new resources allocated by the government for its war crimes strategy by creating an enhanced Modern-Day War Crimes Unit responsible for intelligence gathering, analysis and coordination. Through this unit, CIC will strengthen its cooperation with the Department of Justice and other concerned agencies to deny the privileges of Canadian residence, citizenship or protection to persons involved in war crimes and crimes against humanity. The Crimes against Humanity and War Crimes Section of the Department of Justice currently has 20 modern-day files at various stages of development in its inventory. Additional resources and support will also be provided to field operations, both in Canada and abroad, to assist in the identification of cases, to improve the technical capacity to track the inventory through the immigration adjudication and judicial systems, and to effect removals as promptly as allowed by law.

Glossary of Terms

“Crimes against humanity” include crimes such as murder, extermination, enslavement, torture and any other inhumane act committed against civilians, in a widespread systematic manner, whether or not the country is in a state of war, or regardless if the act is in violation of the territorial law in force at the time. The acts may have been committed by state officials or private individuals, and against their own nationals or nationals of other states.

“Genocide” is the deliberate and systematic destruction, in whole or in part, of a national, ethnic, racial or religious group, whether committed in times of peace or in times of war, by state officials or private individuals.

“War crimes” are criminal acts committed during international armed conflicts (war between states) and civil wars, which violate the rules of war as defined by

international law. These acts include the ill-treatment of civilian populations within occupied territories, the violation and exploitation of individuals and private property, and the torture and execution of prisoners.

“Complicity” means that active membership in the organization responsible for committing proscribed atrocities is not required. A person is considered “complicit” if, while aware of the acts committed, this person contributes, directly or indirectly, to their occurrence.

July 21, 1998