

12<sup>th</sup> Report

# Canada's Program on Crimes Against Humanity and War Crimes 2008-2011

Canada Border Services Agency  
Citizenship and Immigration Canada  
Department of Justice Canada  
Royal Canadian Mounted Police



2008-2011



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## Introduction

This is the 12<sup>th</sup> Report on Canada's Crimes Against Humanity and War Crimes Program, hereafter referred to as the War Crimes Program. This report summarizes program activities from April 1, 2008 to March 31, 2011. The goal of the War Crimes Program is to deny safe haven in Canada to war criminals and persons believed to have committed or been complicit in war crimes, crimes against humanity, or genocide.

The War Crimes Program is delivered as a partnership between the Canada Border Services Agency (CBSA), Citizenship and Immigration Canada (CIC), the Department of Justice Canada (the Department of Justice), and the Royal Canadian Mounted Police (RCMP). The CBSA enforces the *Immigration and Refugee Protection Act* (IRPA) in denying inadmissible persons access to Canada at ports of entry, excluding refugee claimants from protection, and deporting inadmissible and excluded persons from Canada. CIC also applies the IRPA when determining the admissibility of temporary and permanent residents to Canada; CIC conducts the initial screening as part of the visa assessment process to determine if there are reasonable grounds to believe that the applicant has committed or was complicit in the commission of war crimes, crimes against humanity, or genocide. CIC and the Department of Justice are responsible for citizenship revocation. Under the *Extradition Act*, the Department of Justice leads on cases involving extradition to foreign states or surrender to international tribunals. The Department of Justice also works with the Public Prosecution Service of Canada (PPSC) in criminal proceedings led by the PPSC. Criminal proceedings are, in turn, based on investigations conducted by the RCMP under the *Crimes Against Humanity and War Crimes Act* (CAHWCA).

The War Crimes Program Steering Committee (the Steering Committee) is composed of senior managers from each partner involved in the War Crimes Program. The Steering Committee ensures that the activities of the War Crimes Program are aligned with its objectives within each department and overall Government of Canada policy. A Program Coordination and Operations Committee (PCOC) facilitates interdepartmental coordination in assessing allegations, developing operational policy, carrying out integrated planning and accountability functions, and ensuring program compliance with international obligations.

The budget of the War Crimes Program is \$15.6 million per year. An independent evaluation conducted in 2008 concluded that the War Crimes Program is relevant, necessary, and makes a cost-effective contribution to Canada's ability to meet its domestic and international obligations to respond to war criminals and persons believed to have committed or been complicit in war crimes, crimes against humanity, and genocide. The evaluation also recommended that permanent funding be given to the War Crimes Program; in acknowledgement of this recommendation, the Government of Canada funded the War Crimes Program on a permanent basis in the 2011 federal budget.

Canada is internationally recognized for co-operating with other countries and international tribunals in its response to war criminals and to persons believed to have committed or been complicit in war crimes, crimes against humanity, or genocide. The War Crimes Program's collaborative approach and use of multiple legislative methods to achieve its goals have made the program a model for similar initiatives in other countries.

For more information on the War Crimes Program, including access to previous annual reports and program evaluations, visit [www.justice.gc.ca/warcrimes-crimesdeguerre](http://www.justice.gc.ca/warcrimes-crimesdeguerre).

## **Profile of the War Crimes Program**

On February 7, 1985, the Government of Canada established the Commission of Inquiry on War Criminals in Canada (the Deschênes Commission) “to conduct such investigations regarding alleged [Nazi] war criminals in Canada, including whether any such persons are now resident in Canada and when and how they obtained entry to Canada”. The Commission’s final report included recommendations on how to bring war criminals to justice, including amendments to laws and procedures governing the prosecution, removal of citizenship and deportation of war criminals, and the extradition of individuals wanted by other countries for war crimes.

Specialized war crimes sections were created in the Department of Justice, the RCMP, and later in CIC, to implement these recommendations. The War Crimes Program, as an interdepartmental initiative between CIC, the Department of Justice, and the RCMP, was subsequently established in 1998; the CBSA became a program partner upon its inception in December 2003.

Canada signed the Rome Statute of the International Criminal Court on December 18, 1998, ushering in even stronger laws criminalizing war crimes, crimes against humanity, and genocide. The CAHWCA was adopted on June 24, 2000 and the IRPA was passed on November 1, 2001. These legislative developments reinforced Canada’s existing no safe haven policy and established Canada as a global leader in seeking accountability from persons who have committed war crimes, crimes against humanity, or genocide.

While the War Crimes Program initially focused on war crimes cases from the Second World War, the program now addresses an increasing number of cases which stem from post-Second World War events, such as conflicts in the former Yugoslavia, Rwanda, or Iraq, and which involve not only war crimes but also crimes against humanity, or genocide. The War Crimes Program emphasizes immigration remedies, namely denying visas and denying entry to Canada to persons who are inadmissible to Canada under the IRPA. Immigration remedies have been found to be effective and cost-efficient. The most expensive and resource-intensive remedies are the criminal investigation and prosecution of war criminals – these methods are therefore pursued infrequently. Nonetheless, the ability to conduct criminal investigations and to prosecute is an important element of the War Crimes Program. In some cases, a criminal justice response is the most appropriate action and sends a strong message to Canadians and the international community that the Government of Canada does not tolerate impunity for war criminals or for persons who have committed crimes against humanity, or genocide.

## **War Crimes Program Activities from April 1, 2008, to March 31, 2011**

Canada uses a holistic approach to respond to persons believed to have committed or been complicit in war crimes, crimes against humanity or genocide. The War Crimes Program has nine legislative remedies at its disposal. The first two remedies, Denial of Visa Overseas and Denial at Port of Entry, prevent persons believed to have been involved or complicit in war crimes, crimes against humanity, or genocide from entering Canada. However, no prevention system is 100 percent successful; despite diligent screening measures, some of these persons are still found in Canada. For example, information about a person’s involvement in war crimes may arise after admission to Canada was already granted. There are seven legislative remedies to respond to persons already in Canada who are believed to have committed or been complicit in war crimes, crimes against humanity, or genocide: Exclusion, Admissibility Hearing, Removal, Citizenship Revocation, Extradition, Surrender to International Criminal Tribunal, and Criminal Investigation and Prosecution.

## Preventing the Entry to Canada of Persons Believed to Have Committed or Been Complicit in War Crimes, Crimes Against Humanity, or Genocide

### Denial of Visa Overseas and Denial at Port of Entry

Denial of visa overseas and denial at ports of entry are the most cost-effective methods of preventing persons believed to have committed or been complicit in war crimes, crimes against humanity, or genocide from entering Canada. Both methods are legislated in the IRPA. CIC immigration officers are the first line of defence in preventing such persons from reaching Canada, by ensuring that permanent and temporary residence applicants are admissible under the IRPA as part of the visa assessment process. At ports of entry, CBSA officers also ensure that all persons seeking to enter Canada are admissible under the IRPA and in compliance with Canadian laws and regulations.

Training, screening aids, intelligence, research, and analytical support are provided to CIC and CBSA officials to help identify persons who are believed to have committed or been complicit in war crimes, crimes against humanity, or genocide. When requested, the CBSA provides immigration officers with an assessment of an applicant's involvement or complicity in war crimes, crimes against humanity, or genocide. It is important to note that the assessment is not the same as the final decision to issue or deny a visa – that decision is always made by a CIC official.

When visa decisions are challenged through the process of judicial review, the Department of Justice provides legal advice and litigation support to CIC.

Lookouts are also posted in computer systems to alert immigration and CBSA border services officers to individuals believed to have committed or been complicit in war crimes, crimes against humanity, or genocide. A 24-hour telephone support line run by the CBSA assists overseas and in-Canada immigration officers by answering questions about the arrival of persons who are the subject of a lookout or who may be inadmissible due to the commission of or complicity in war crimes, crimes against humanity, or genocide. This telephone line is also available to other law enforcement agencies in Canada.

The following table quantifies the work of the War Crimes Program in preventing the entry to Canada of persons believed to have committed or been complicit in war crimes, crimes against humanity, or genocide. Unless noted otherwise, the variation in the numbers is due to normal year-to-year processing volume fluctuations. Time spent by the CBSA to pre-screen delegates who came to Canada on official visits or to attend international conferences and events, usually at the request of the Government of Canada, is not captured.

	2008-2009	2009-2010	2010-2011
<b>Visa processing in overseas immigration offices</b>			
Total number of temporary resident and permanent resident visa applications assessed overseas for the commission of or complicity in war crimes, crimes against humanity, or genocide	3,150	3,235	2,634
Total number of temporary resident and permanent resident visa applications denied overseas <sup>1</sup>	428	269	215

	2008-2009	2009-2010	2010-2011
<b>Temporary resident visa applications</b>			
Total number of temporary resident visa applications assessed overseas for the commission of or complicity in war crimes, crimes against humanity, or genocide	2,953	2,864	2,418
Total number of temporary resident visa applications denied overseas because of reasonable grounds to believe the applicant committed or was complicit in war crimes, crimes against humanity, or genocide <sup>2</sup>	379	131	91
Temporary resident visa applications denied overseas because of reasonable grounds to believe the applicant committed or was complicit in war crimes, crimes against humanity, or genocide, <i>without referring the application to the CBSA</i>	62	36	25
<b>Permanent resident visa applications</b>			
Total number of permanent resident visa applications assessed overseas for the commission of or complicity in war crimes, crimes against humanity, or genocide.	197	371	216
Total number of permanent resident visas denied overseas because of reasonable grounds to believe the applicant committed or was complicit in war crimes, crimes against humanity, or genocide <sup>2</sup>	49	138	124
<b>Visa application screening by the CBSA</b>			
Total number of permanent resident visa applications assessed by the CBSA for the commission of or complicity in war crimes, crimes against humanity, or genocide	343	349	401
Permanent resident visa applications assessed by the CBSA for the commission of or complicity in war crimes, crimes against humanity, or genocide, <i>received from overseas immigration offices</i>	311	297	317
Permanent resident visa applications assessed by the CBSA for the commission of or complicity in war crimes, crimes against humanity, or genocide, <i>received from in-Canada offices</i>	32	52	84
Favourable recommendations on permanent resident visa applications from the CBSA to CIC, concluding no reasonable grounds to believe that the applicant committed or was complicit in war crimes, crimes against humanity, or genocide.	200	190	247

<sup>1</sup> Includes visa applications that were denied because of reasonable grounds to believe that the applicant committed or was complicit in war crimes, crimes against humanity, or genocide; applicants who withdrew their visa applications when asked for more information during the screening process; and visa applications that were denied for other reasons, even though there were reasonable grounds to believe that the applicant committed or was complicit in war crimes, crimes against humanity, or genocide.

<sup>2</sup> Includes denials made without referring the visa application to the CBSA *and* denials made with an assessment from the CBSA of commission of or complicity in war crimes, crimes against humanity, or genocide



## Remedies for Persons in Canada Believed to Have Committed or Been Complicit in War Crimes, Crimes Against Humanity, or Genocide

The War Crimes Program may use any of the remaining seven remedies to respond to persons in Canada who are believed to have committed or been complicit in war crimes, crimes against humanity, or genocide: Exclusion, Admissibility Hearing, Removal, Citizenship Revocation, Extradition, Surrender to International Tribunals, and Criminal Investigation and Prosecution. An explanation of each remedy and the corresponding annual processing numbers are provided below. Unless noted otherwise, variation in the numbers is due to normal year-to-year fluctuation.

### Exclusion

During the refugee claim process, claims that raise concerns about possible involvement in war crimes, crimes against humanity, or genocide are referred to the CBSA for further investigation. If the results of the investigation show reasonable grounds to believe that the claimant has committed or was complicit in such crimes, then an application to exclude the claimant from refugee protection can be filed before the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB). Under article 1(F) of the 1951 *United Nations Convention Relating to the Status of Refugees*, a person cannot be a Convention refugee if they have committed war crimes, crimes against humanity, serious non-political crimes outside Canada, crimes against peace, and acts contrary to the purposes and principles of the United Nations.

For all three reporting periods, the number of decisions made by the RPD includes interventions that were filed in previous years. This is because refugee hearings in complex cases, such as those that involve war crimes allegations, often do not open and conclude in the same year.

	2008-2009	2009-2010	2010-2011
Refugee claims investigated by the CBSA for the commission of or complicity in war crimes, crimes against humanity, or genocide	549	794	680
Exclusion arguments filed by the CBSA before the RPD to exclude claimants from refugee protection because there were reasonable grounds to believe that the claimant committed or was complicit in war crimes, crimes against humanity, or genocide	112	87	88
Cases excluded from refugee protection by the RPD because there were reasonable grounds to believe that the claimant committed or was complicit in war crimes, crimes against humanity, or genocide <sup>1</sup>	18	25	31
Cases denied refugee protection by the RPD for reasons other than reasonable grounds to believe that the claimant committed or was complicit in war crimes, crimes against humanity, or genocide, where an exclusion argument had been filed	19	24	27
Cases granted refugee protection by the RPD where an exclusion argument had been filed	17	34	18
Refugee claims withdrawn or abandoned by claimant	20	15	22

<sup>1</sup> Excluded under Article 1(F) of the 1951 *United Nations Convention Relating to the Status of Refugees*.

## Admissibility Hearing

When allegations about the commission of or complicity in war crimes, crimes against humanity, or genocide are made against persons in Canada, these cases are referred by the CBSA to admissibility hearings before the Immigration Division of the IRB. If the person is a refugee claimant, the refugee claim is suspended pending the outcome of the admissibility hearing.

	2008-2009	2009-2010	2010-2011
Admissibility hearings opened for non-refugee claimants	15	11	8
Admissibility hearings opened for refugee claimants	19	19	18
Non-refugee claimants found inadmissible to Canada and ordered for deportation because of reasonable grounds to believe the claimant committed or was complicit in war crimes, crimes against humanity, or genocide	4	3	2
Refugee claimants found inadmissible to Canada and ordered for deportation because of reasonable grounds to believe the claimant committed or was complicit in war crimes, crimes against humanity, or genocide	19	6	5
Non-refugee claimants found admissible to Canada following a hearing at the IRB regarding war crimes, crimes against humanity, or genocide	1	2	3
Refugee claimants found admissible to Canada following a hearing at the IRB regarding war crimes, crimes against humanity, or genocide	2	13	7
Non-refugee claimant cases still under investigation as of March 31 at the end of the fiscal year <sup>1</sup>	16	30	28
Refugee claimant cases still under investigation as of March 31 at the end of the fiscal year <sup>2</sup>	161 <sup>2</sup>	118	132

<sup>1</sup> The investigation of complex cases may take more than one year to complete due to the need for additional time and resources.

<sup>2</sup> While the investigations inventory fluctuates from year to year (see Appendix 3), the number of refugee claimant cases still under investigation is significantly lower than the 701 cases reported in 2007-2008. This change is partly due to a clarification in the criteria for including a case in the inventory, and partly due to normal case volume fluctuation.

## Removal

Persons who are excluded from refugee protection or who are otherwise found inadmissible to Canada can be deported after all legal avenues have been exhausted and a pre-removal risk assessment (PRRA) has been conducted. Persons whose citizenship has been revoked may also be subject to deportation.

A warrant for arrest is issued when an individual does not report for removal or other immigration proceedings, such as an admissibility hearing. The warrant is considered executed when the individual is arrested or when their departure from Canada is confirmed.

	2008-2009	2009-2010	2010-2011
Persons removed from Canada because of reasonable grounds to believe the person committed or was complicit in war crimes, crimes against humanity, or genocide	22	22	17
CBSA inventory of enforceable removal orders with respect to claimants who are believed to have committed or been complicit in war crimes, crimes against humanity, or genocide	97	99	199
Removal orders that could not be carried out because of impediments <sup>1</sup>	65	66	118
Removal orders awaiting PRRAs	31	62	89
Warrants issued	11	13	9
Warrants executed	4	18	4
Warrants issued and executed in the same fiscal year	3	7	3
Inventory of outstanding warrants at the end of the fiscal year (includes outstanding warrants from previous years)	177	172	177

<sup>1</sup> Such as a stay issued by a court or a lack of travel documents.

## “Wanted by the CBSA”

The Government of Canada launched a new initiative in 2011 to facilitate the execution of outstanding warrants for removal from Canada under the IRPA. The CBSA asked the public to identify and report any information about persons named in the “Wanted by the CBSA” list. There are reasonable grounds to believe that some of the people on this list committed or were complicit in war crimes, crimes against humanity, or genocide. The results of this initiative will be available in the War Crimes Program report covering the 2011-2012 reporting period.

## Citizenship Revocation

The *Citizenship Act* provides that the government may revoke the citizenship of persons who obtained Canadian citizenship through misrepresentation, fraud, or knowingly concealing material circumstances. However, where the individual concerned denies the allegation, it must be proved in Federal Court.

The Department of Justice continues to handle allegations about Canadian citizens who are believed to have committed or been complicit in war crimes from the Second World War, however the majority of cases related to the Second World War have closed (see Appendix 2). Future citizenship revocation cases that come to the attention of the War Crimes Program are more likely to be about war crimes, crimes against humanity, or genocide in the modern context.

These cases often include allegations of fraud and complicity in war crimes. As a matter of government policy, it is sufficient to establish before the Federal Court that citizenship was fraudulently acquired for the government to adopt an order in council revoking citizenship. No further findings surrounding complicity are required.

The investigation of citizenship revocation cases requires close collaboration between CIC, the Department of Justice, and the RCMP; these cases involve the collection of information and evidence from domestic and international sources and take considerable time to complete.

On August 18, 2011, a decision was rendered in Federal Court regarding Branko Rogan, the first citizenship revocation case related to the commission of modern war crimes<sup>1</sup>. Mr. Rogan was found to have obtained his Canadian citizenship through false representation and to have knowingly concealed information when applying for citizenship. The next step in this case is for the Government of Canada to consider adopting an order in council to revoke Mr. Rogan's citizenship. Details about this case can be found in Appendix 1.

## Extradition and Surrender to International Criminal Tribunals

Extradition is a legal process that enables a state or an international tribunal to make a request to Canadian authorities to arrest and transfer a fugitive to the requesting state or tribunal in accordance with the *Extradition Act*. In Canada, the process is initiated by an incoming request for the arrest of a fugitive currently located on Canadian territory. The process requires agreement from the Attorney General of Canada to undertake proceedings before the Superior Court of a province on behalf of the state or tribunal making the request. The International Assistance Group of the Department of Justice is responsible for matters concerning extradition on behalf of the Government of Canada. Requests for extradition are not made public unless the Attorney General of Canada gives the authority to proceed.

## Criminal Investigation and Prosecution

The RCMP is responsible for the criminal investigation of individuals alleged to have committed or been complicit in war crimes, crimes against humanity, or genocide. It is important to note that an administrative investigation of a case is different from a criminal investigation. The authority to pursue administrative remedies, such as visa denial, exclusion from refugee protection, or citizenship revocation, comes from the IRPA and the *Citizenship Act*. The evidentiary threshold of an administrative investigation is also different than that of a criminal investigation and prosecution, which requires that a higher level of criminal involvement must be met. In order to pursue a criminal investigation and prosecution, the allegations must disclose personal involvement or command responsibility, and the evidence pertaining to the allegation must be corroborated and obtainable in a reasonable and rapid fashion, among other considerations. Allegations may originate from witnesses, foreign governments, community groups, non-governmental organizations, immigration proceedings, or open-source information. A criminal investigation of a war crime, crime against humanity, or genocide allegation is challenging and resource-intensive; travel and negotiations with foreign governments are frequently required, language barriers often need to be overcome, and witnesses can be difficult to locate and reluctant to provide testimony to investigators.

The RCMP works with the Department of Justice to interview witnesses, analyze investigation results, and decide whether to pursue criminal prosecution under the CAHWCA. If the recommendation is to prosecute, the matter is forwarded to the Public Prosecution Service of Canada (PPSC) for consideration and prosecution. If the PPSC lays charges, the Department of Justice provides support throughout the trial.

**Munyaneza, Désiré:** The historic trial of Désiré Munyaneza concluded in the Superior Court of Quebec in October 2009. Mr. Munyaneza was the first person charged under the CAHWCA for the commission of genocide, crimes against humanity, and war crimes during the Rwandan genocide in 1994. Mr. Munyaneza

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<sup>1</sup> Information outside the reporting period is included in order to present an accurate and complete account of the proceedings.

was convicted of all seven counts and sentenced to life imprisonment without parole for 25 years. The decision is currently under appeal before the Court of Appeal of Quebec. Details about this case can be found in Appendix 1.

**Mungwarere, Jacques:** Following an RCMP investigation, on November 6, 2009, the PPSC commenced criminal proceedings against Mr. Mungwarere before the Ontario Superior Court of Justice in Ottawa. He was charged with crimes against humanity and genocide in relation to the 1994 genocide in Rwanda. This is the second prosecution in Canada under the CAHWCA since the law was adopted in 2000. The trial is set to begin in April 2012. Mr. Mungwarere has been detained at the Ottawa-Carleton Detention Centre since his arrest on November 6, 2009.

## Co-operation and Outreach Activities

The War Crimes Program participates in numerous co-operative and outreach activities. These activities promote the sharing of information and best-practices and preserve strong, reciprocal relationships between the Government of Canada, other countries, international tribunals, and government and non-governmental stakeholders. The benefits of these activities are significant; by sharing logistical and investigative resources, Canada increases its capacity to deny war criminals safe haven and to demand accountability for their crimes.

Canadian missions abroad have ongoing relationships with host countries, other diplomatic missions, international organizations, and criminal tribunals. These relationships facilitate the monitoring of overall international migration trends; missions in Geneva, Brussels, and Washington, D.C. regularly participate in meetings on the subjects of migration and human rights. Additionally, international co-operation is essential in order to conduct investigations into war crimes matters as the events under inquiry took place in former conflict zones around the world.

Domestic and international partners can request support and intelligence on war crimes cases from the War Crimes Program. Over the past three years, the number of requests for information (RFIs) made to the CBSA about cases believed to involve war crimes, crimes against humanity, or genocide has increased; responses were provided to 2,157 RFIs in the 2008-2009 fiscal year, 2,810 RFIs in the 2009-2010 fiscal year, and 3,166 RFIs in the 2010-2011 fiscal year.

Government war crimes units from the United States, Australia, and the United Kingdom work closely with the CBSA under the *Four Country Conference Memorandum of Understanding (MOU) with Respect to Investigations Relating to Genocide, War Crimes and Crimes Against Humanity* signed in April 2007. Under the CAHWCA, the RCMP is also mandated to assist partner agencies in other countries on cases that involve war crimes, crimes against humanity, or genocide. This assistance can involve locating witnesses and suspects, taking statements, and providing intelligence requested by international partners. To carry out this mandate, the RCMP collaborates with the International Assistance Group of the Department of Justice.

The War Crimes Section of the Department of Justice also assists RCMP investigators by submitting requests for access to witnesses to other countries and international tribunals. The results of these requests support ongoing investigations that may lead to criminal charges in Canada or the revocation of citizenship and deportation. Historians from the Department of Justice also utilize archives located around the world to search for documents relevant to Canadian cases.

Throughout the reporting period, the RCMP and the Department of Justice also delivered activities to engage and educate a variety of audiences, such as other government departments, domestic and international law enforcement agencies, students, and the media about elements of the War Crimes Program. The RCMP and the Department of Justice gave presentations about the techniques and challenges of investigations into war crimes, crimes against humanity and genocide; cultural diversity encountered during the investigations process; negotiation procedures used to facilitate collaboration with officials in other countries; and the War Crimes Program itself.

Additionally, counsel from the Department of Justice engaged in capacity-building activities in developing countries, such as teaching international criminal law to members of the Law Society of Uganda in Kampala. The Department of Justice also wrote and published articles about war crimes issues in law journals and delivered guest lectures and seminars at high schools, community organizations, and universities in Canada and abroad.

Participation in international conferences and closed-door meetings also promotes information exchange and improves collaboration between Canada and other countries. The Department of Justice and the RCMP attended several international meetings designed to increase co-operation between specialized war crimes sections in Europe and North America. Such meetings included the annual meeting of the European Union Network for Contacts for Genocide, Crimes against Humanity and War Crimes, and the Roundtable on Co-operation between the International Criminal Tribunals and National Prosecuting Authorities, Arusha, Tanzania. These meetings were unique and significant opportunities for the Government of Canada to be involved in a new phase of international collaboration on criminal and civil war crimes proceedings.

Training is an important activity of the War Crimes Program. In October 2008, the Department of Justice and the CBSA jointly delivered a war crimes workshop at the Canadian Mission in Nairobi. The Department of Justice led the presentation on the identification of persons who may have committed or been complicit in war crimes, crimes against humanity, or genocide. The immigration section of the Nairobi mission, immigration program managers, and liaison officers from other Canadian missions in the Africa geographic region participated in this workshop. In January 2009, a three-day National War Crimes training session was held in Ottawa; the session was attended by approximately 50 people, including representatives from the Department of Justice, CIC, the RCMP, the CBSA, the Department of National Defence, and the Department of Foreign Affairs and International Trade. CIC security units in five regions across Canada (British Columbia and Yukon, Prairies and Northwest Territories, Ontario, Quebec, and Atlantic) also received war crimes training in 2009.

## **Conclusion**

Canada's War Crimes Program continues to show strong results in responding to persons believed to have committed or been complicit in war crimes, crimes against humanity, or genocide. The 2008 program evaluation affirms the success of the War Crimes Program in fulfilling Canada's international legal obligations and in meeting the needs of domestic and international partners and stakeholders. The evaluation also concludes that the use of a range of remedies, ranging from early detection and prevention of entry to Canada to criminal prosecution, "reflect[s] an appropriate balance between the desire to achieve the most cost-effective solutions and the need to maintain the integrity of the program in addressing [Canada's] no safe haven policy". The Government of Canada provided the War Crimes Program permanent funding in the 2011 federal budget. As the War Crimes Program evolves to respond to the increase in modern war crimes cases and to implement the evaluation recommendations, its activities will continue to uphold Canada's ability to deny safe haven to persons believed to have committed or been complicit in war crimes, crimes against humanity, or genocide, and to demand accountability for their conduct.

## Appendix 1: Case Samples April 1, 2008 to March 31, 2011

**Note:** Names are provided only in cases already in the public domain.

### Modern War Crimes Cases

#### Citizenship Revocation

**Rogan, Branko<sup>1</sup>** : This is the first citizenship revocation case involving a war crimes-related matter in the modern context. In July 2007, a notice of intention to revoke citizenship was served on Mr. Rogan pursuant to section 18 of the *Citizenship Act*. The trial commenced on April 11, 2011 before the Federal Court in Vancouver with hearings taking place on 13 days over a four-week period.

The decision was rendered on August 18, 2011; Justice Anne MacTavish found that when Mr. Rogan applied in 1994 to come to Canada, he had been untruthful with Canadian immigration and citizenship officials by concealing or providing misleading or false information related to his places of residence; his work history, particularly his work as a reserve police officer and guard at detention facilities in the municipality of Bileca in Bosnia-Herzegovina; and his personal and knowing complicity in the commission of the crimes against humanity of persecution and “other inhumane acts”. Specifically, Justice MacTavish concluded that Mr. Rogan participated directly and indirectly in the abuse of Muslim prisoners in detention facilities in Bileca.

On September 29, 2011, Justice MacTavish ordered Mr. Rogan to pay for a portion of the government’s legal costs. The next step is for the Government of Canada to consider adopting an order to revoke citizenship based on the circumstances of the case.

#### Criminal Prosecution

**Munyaneza, Désiré:** On October 19, 2005, Mr. Munyaneza, a Rwandan national, was arrested in Toronto for alleged activities relating to the Rwandan genocide in the region of Butare in Rwanda in 1994. Mr. Munyaneza was charged with two counts of genocide, two counts of crimes against humanity, and three counts of war crimes pursuant to the CAHWCA.

Following a rogatory commission held in Kigali, Rwanda, in January and February 2007, Mr. Munyaneza’s trial before the Superior Court of Quebec began on March 26, 2007. On October 10, 2007, the court completed hearing the testimony of Crown witnesses, Crown experts and RCMP investigators. On January 7, 2008, the court started to hear defence witnesses. From January 15 to January 22, 2008, a rogatory commission was held in Paris, France, to hear the testimony of defence witnesses who, for a variety of reasons, could not travel to Canada. Other rogatory commissions were held in Rwanda and Tanzania in April and May 2008. On May 22, 2009, the Superior Court of Quebec convicted Mr. Munyaneza of all seven counts of war crimes, crimes against humanity, and genocide. In October 2009, he was sentenced to life imprisonment without parole for 25 years. The decision is currently under appeal before the Court of Appeal of Quebec.

#### Actions Taken under Paragraph 35(1)(a) of the IRPA

A citizen of a country in South America applied for a visa. Concerns were raised about the applicant’s service in the army. There is substantial open-source documentation about the widespread and systematic commission of crimes against humanity by the army. The applicant was a long-serving officer of significant rank; there were reasonable grounds to believe that, given the length of service and rank achieved, the applicant would have been aware of or complicit in crimes against humanity committed by the army. The application was denied pursuant to paragraph 35(1)(a) of the IRPA.

<sup>1</sup> Information outside the reporting period is included in order to present an accurate and complete account of the proceedings.

A citizen of a country in Africa entered Canada on a permit and after a few years filed for refugee protection in Canada. At the admissibility hearing, the applicant confirmed membership in the country's national intelligence organization; the applicant had progressed through the organizational ranks to a high position until the applicant's forced resignation after more than 15 years of employment. The organization is recognized as having committed crimes against humanity from 1984 to 1999, which overlapped with the applicant's period of employment with the organization. The applicant denied all knowledge of crimes against humanity committed by the organization during his period of employment. The applicant was found inadmissible to Canada pursuant to paragraph 35(1)(a) of the IRPA.

A citizen of a country in Central Asia applied for a visa; concerns were raised about the applicant's previous military service. The applicant had been a member of a military organization that committed crimes against humanity to ensure the survival of the regime, such as forced disappearances of persons, torture, and unlawful imprisonment of civilians. The application was denied under paragraph 35(1)(a) of the IRPA.

### **Actions Taken under Paragraph 35(1)(b) of the IRPA**

A citizen of a country in the Middle East applied for a visa. The applicant was a senior official of the country's government and rose through the ranks since the applicant's initial appointment in the 1970s. The government of this country is a 'designated regime' that has engaged in serious human rights abuses. Under paragraph 35(1)(b) of the IRPA, any individual who has occupied a senior position in a designated government is deemed to have been able to exert "significant influence on the exercise of government power" and is inadmissible to Canada. The applicant was deemed inadmissible under paragraph 35(1)(b) and the visa application was denied.

A citizen of a country in the Caribbean applied for a visa. The applicant was a diplomat of the government during the period when the government was a 'designated regime' – that is, a regime that engaged in serious human rights abuses. Under paragraph 35(1)(b) of the IRPA, any individual who occupied a senior position in a designated government, including ambassadors and senior diplomatic officials, is deemed inadmissible to Canada. The application was denied.

### **Actions Taken under Article 1(F) of the 1951 *United Nations Convention Relating to the Status of Refugees***

A citizen of a country in Africa applied for refugee protection. The applicant worked for the country's national intelligence service. The organization is strongly criticized for its involvement in human rights abuses. The applicant was excluded from refugee protection under article 1(F)(a) of the 1951 *United Nations Convention Relating to the Status of Refugees*.

A citizen of a country in South America filed for refugee protection. The applicant was a member of the military and the police which are recognized as having perpetrated crimes against humanity during the period of the applicant's service. The applicant was excluded from refugee protection under article 1(F)(a) of the 1951 *United Nations Convention Relating to the Status of Refugees*.



## Second World War Cases

### Citizenship Revocation

**Oberlander, Helmut:** Helmut Oberlander did not declare his involvement with Nazi forces in the Second World War, first as an interpreter and later as an infantry member, when he was granted permanent residency in 1954. The information disclosed in the permanent residency process was also the basis for obtaining Canadian citizenship; Mr. Oberlander became a Canadian citizen in 1960. In February 2000, the Federal Court found that Mr. Oberlander had obtained citizenship through deception by concealing his membership in *Einsatzkommando 10a*, a unit that systematically carried out mass executions of civilians, particularly Jews, in the occupied Soviet Union. The Governor in Council revoked Mr. Oberlander's Canadian citizenship in July 2001. In May 2004, the Federal Court of Appeal quashed the revocation because the report of the Minister of Citizenship and Immigration, on which the Governor in Council had based its decision, failed to address whether Mr. Oberlander's case fell within the Canadian government's revocation policy for Second World War cases and also did not balance Mr. Oberlander's personal interests against the public interest.

On May 24, 2007, the Government of Canada announced that the Governor in Council had revoked Mr. Oberlander's citizenship. Mr. Oberlander applied for judicial review; the application was dismissed by the Federal Court. At the Federal Court of Appeal, Mr. Oberlander raised for the first time the issue of duress, as justification for his complicity in the atrocities committed by the Nazis. In a two-to-one decision made in November 2009, the Federal Court of Appeal remitted the matter to the Governor in Council for consideration of the issue of duress.

**Appendix 2: War Crimes Inventory: the Department of Justice/RCMP**

<b>The Department of Justice/RCMP modern war crimes file inventory</b>	
Number of files as of March 31, 2008	55
Number of files added 2008-2009	5
Number of files closed	6
Number of files as of March 31, 2009	54
Number of files added 2009-2010	10
Number of files closed	6
Number of files as of March 31, 2010	58
Number of files added 2010-2011	4
Number of files closed	4
Number of files as of March 31, 2011	58

<b>Summary of cases related to the Second World War</b>	
<b>Category</b>	<b>Total</b>
Open files	19
Closed files	1,824
<b>Total</b>	<b>1,843</b>

**Appendix 3: Summary of the War Crimes Program: CIC and the CBSA**

<b>Results</b>	<b>Entries prevented</b>	<b>Exclusions</b>	<b>Removals</b>	<b>Interventions in RPD hearings</b>	<b>Cases reviewed abroad</b>	<b>Cases reviewed in Canada</b>	<b>Cases concluded</b>
1997-1998	34	165	80	24	85	392	477
1998-1999	307	25	27	58	352	1,268	1,620
1999-2000	581	15	38	127	1,008	2,031	3,039
2000-2001	644	53	42	227	2,374	1,872	4,246
2001-2002	445	51	46	350	1,797	2,186	3,983
2002-2003	355	73	48	242	2,103	303	2,406
2003-2004	242	63	44	387	2,300	2,740	5,040
2004-2005	385	79	42	155	2,651	2,077	4,728
2005-2006	367	40	41	237	3,024	1,405	4,429
2006-2007	361	31	35	82	2,029	1,407	3,436
2007-2008	326	26	23	80	2,244	612	2,856
2008-2009	428	18	22	112	3,150	557	3,707
2009-2010	269	25	22	87	3,235	820	4,055
2010-2011	215	31	17	88	2,634	721	3,355
<b>Total</b>	<b>4,959</b>	<b>695</b>	<b>527</b>	<b>2,256</b>	<b>28,986</b>	<b>24,036</b>	<b>53,022</b>

<b>Inventory</b>	<b>Cases under investigation abroad</b>	<b>Refugee cases under investigation in Canada</b>	<b>Non-refugee cases under investigation in Canada</b>
1997-1998	51	3	82
1998-1999	45	9	71
1999-2000	125	363	135
2000-2001	300	311	208
2001-2002	170	292	205
2002-2003	357	150	125
2003-2004	597	883	115
2004-2005	733	663	65
2005-2006	639	346	27
2006-2007	585	691	23
2007-2008	418	702	31
2008-2009	813	161	16
2009-2010	693	118	30
2010-2011	687	132	28

## **Definitions**

**Entries prevented:** Applications refused abroad under paragraph 35(1)(a) or (b) of the IRPA (or before June 28, 2002, under paragraph 19(1)(j) or (l) of the *Immigration Act*), and cases investigated for war crimes but refused on other grounds or withdrawals.

**Exclusions:** Exclusion by the IRB from refugee protection in Canada under article 1(F)(a) of the *United Nations Convention relating to the Status of Refugees*.

**Removals:** Persons removed from Canada.

**Interventions in RPD hearings:** Cases in which the CBSA intervened at hearings of the RPD.

**Cases reviewed abroad:** War crimes cases investigated and concluded in visa offices under paragraph 35(1)(a) or (b) of the IRPA or paragraph 19(1)(j) or (l) of the *Immigration Act*.

**Cases reviewed in Canada:** War crimes cases investigated and concluded in Canada under paragraph 35(1)(a) or (b) of the IRPA or paragraph 19(1)(j) or (l) of the *Immigration Act* (includes interventions, exclusions, removals and CBSA investigations).

**Modern war crimes cases concluded:** Alleged war crimes cases reviewed and concluded in Canada and abroad during the fiscal year.

**Inventory:** Cases remaining under investigation at the end of the fiscal year.

**Cases under investigation abroad:** Overseas cases being reviewed for war crimes allegations.

**Refugee cases under investigation in Canada:** Cases referred for second-level Personal Information Form review.

**Non-refugee cases under investigation in Canada:** Includes foreign nationals in Canada who have not made refugee claims, permanent or temporary residents, and applicants for permanent residence or Canadian citizenship.

## **Appendix 4: Regimes Designated Pursuant to Paragraph 35(1)(b) of the *Immigration and Refugee Protection Act***

**Designated June 16, 1993, extended on August 15, 1997:** the Bosnian Serb regime from March 27, 1992 to October 10, 1996.

**Designated October 12, 1993:** the Siad Barré regime in Somalia from 1969 to 1991.

**Designated April 8, 1994:** the former military governments in Haiti from 1971 to 1986 and from 1991 to 1994, except for the period from August to December 1993.

**Designated October 21, 1994:** the former Marxist regimes of Afghanistan from 1978 to 1992.

**Designated September 3, 1996, amended September 9, 2004:** the governments of Ahmed Hassan Al-Bakr and Saddam Hussein in power in Iraq from 1968 until May 22, 2003.

**Designated April 27, 1998:** the government of Rwanda under Juvénal Habyarimana from October 1990 to April 1994, as well as the interim government in power from April 1994 to July 1994.

**Designated June 30, 1999, amended March 14, 2001:** the governments of the Federal Republic of Yugoslavia and the Republic of Serbia under Slobodan Milosevic from February 28, 1998 to October 7, 2000.

**Designated March 14, 2001, amended September 9, 2004:** the Taliban regime in Afghanistan from September 27, 1996 to December 22, 2001.

**Designated November 21, 2003:** the Government of Ethiopia under Mengistu Haile Mariam from September 12, 1974 to May 21, 1991.

## **Appendix 5: Acronyms**

**CAHWCA:** *Crimes Against Humanity and War Crimes Act*

**CBSA:** Canada Border Services Agency

**CIC:** Citizenship and Immigration Canada

**ICC:** International Criminal Court

**IRB:** Immigration and Refugee Board

**IRPA:** *Immigration and Refugee Protection Act*

**MOU:** Memorandum of Understanding

**PCOC:** Program Coordination and Operations Committee (of the War Crimes Program)

**PIF:** Personal Information Form

**PPSC:** Public Prosecution Service of Canada

**PRRA:** Pre-removal risk assessment

**RCMP:** Royal Canadian Mounted Police

**RFI:** Request for Information

**RPD:** Refugee Protection Division (of the Immigration and Refugee Board)