



Government
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Public Report

Canada's War Crimes Program

2000-2001



Department of Citizenship and Immigration
Department of Justice
Solicitor General Canada

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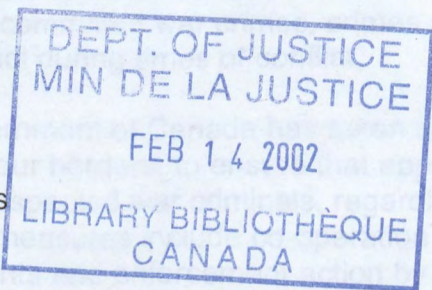
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War Crimes Program (Canada)

Canada's War Crimes Program

... annual report.

**CANADA'S WAR CRIMES PROGRAM
ANNUAL REPORT 2000-2001**



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INTRODUCTION

The policy of the Government of Canada is clear. Canada will not become a safe haven for those individuals who have committed war crimes, crimes against humanity or any other reprehensible act during times of conflict.

Over the past several years, the Government of Canada has taken significant measures, both within and outside of our borders, to ensure that appropriate enforcement action is taken against suspected war criminals, regardless of when or where the crimes occurred. These measures include co-operation with international courts, foreign governments and enforcement action by one of the three departments mandated to deliver Canada's War Crimes Program.

Canada is actively involved in supporting the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) and has ratified both the International Criminal Court Statute (ICC) and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts. Canada was the first country to introduce comprehensive legislation incorporating the provisions of the ICC Statute into domestic law. This legislation, *The Crimes Against Humanity and War Crimes Act*, came into force on October 23, 2000.

Enforcement strategies have been enhanced to ensure that effective measures are in place to deny admission to such individuals or, if in Canada, to ensure that the appropriate remedy is applied. These strategies are administered jointly by the Department of Justice, Citizenship and Immigration Canada and the Solicitor General of Canada (as the Minister responsible for the RCMP). Specific resources have been allocated to these departments to ensure the implementation of these strategies.

Over 1600 allegations of World War II atrocities have been investigated far exceeding the original number of 883 identified in the report of the 1987 Deschênes Commission of Inquiry on War Criminals. Nearly 15 years after the Deschênes Commission, investigating World War II allegations continues to be a high priority for Canada's War Crimes Program. However, it is becoming increasingly problematic to investigate and prosecute World War II cases due to the passage of time. In addition to Canada's efforts to pursue World War II matters the Department of Justice, Citizenship and Immigration Canada and the RCMP apply their expertise to investigate and prosecute modern war crimes cases.

BACKGROUND

World War II cases

In 1987 the Deschênes Commission of Inquiry on War Criminals produced a list of suspects containing 883 names. The government responded to the Deschênes report by announcing the creation of the War Crimes Section within the Department of Justice. In recognition of the complexity of researching and prosecuting such cases, this specialized unit was created to deal solely with these matters. It was also decided that the Special Investigations Unit of the RCMP, established in 1985 to assist the Deschênes Commission, would continue to conduct investigations of all suspected perpetrators.

From 1987 to 1992, four charges were laid under the *Criminal Code* but none resulted in a conviction. The case of *Imre Finta* was appealed and argued before the Supreme Court of Canada. In 1994, the Supreme Court upheld the acquittal and, as a result, it became clear that it would be impractical to prosecute further cases under the (then) existing provisions of the *Criminal Code*. During this period, the government also initiated a different enforcement strategy against suspected war criminals, namely revocation of citizenship under the *Citizenship Act* followed by deportation under the *Immigration Act*. Consequently, all cases are evaluated for both criminal prosecution and deportation proceedings before enforcement action is initiated.

The government pursues only those cases for which there is evidence of direct involvement in or complicity of war crimes or crimes against humanity. A person is considered complicit if, while aware of the commission of war crimes or crimes against humanity, the person contributes, directly or indirectly, to their occurrence. Membership in an organization responsible for committing the atrocities can be sufficient for complicity if the organization in question is one with a single, brutal purpose, e.g. a death squad.

Modern Day War Crimes Cases

Towards the late 1980's, political unrest in several parts of the world produced large flows of refugee claimants. Within these movements were persons involved in war crimes or crimes against humanity. Although the numbers were small, their presence in Canada is highly undesirable; consequently, a number of initiatives were taken to strengthen the measures available to ensure their removal from Canada. In 1989, the *Immigration Act* was amended to allow for the exclusion from the refugee determination process of individuals believed to

have been complicit in war crimes or crimes against humanity. In 1993, the *Immigration Act* was again amended to prohibit the admission of persons who are or were senior officials of a regime designated by the Minister of Citizenship and Immigration as having been responsible for gross human rights violations. In 1997, amendments were made to the Immigration Regulations prohibiting persons excluded from refugee determination as a result of war crimes from accessing additional humanitarian reviews available to other refugee claimants prior to their removal.

To address the increasing number of cases, Citizenship and Immigration Canada (CIC) created a Modern War Crimes Section in 1996 consisting of three employees. It was soon evident that existing resources and available infrastructure were insufficient to deal effectively with the movement of modern war criminals to Canada.

Renewed Approach 1998

Following a review in 1997, the government resolved to increase the effectiveness of its War Crimes Program. A total of \$46.8 million was allocated to the three responsible departments over a three year period. This funding would allow for increased co-ordination and co-operation between the three departments: in particular, the sharing of expertise in order to benefit both modern and WWII initiatives; substantial enhancements to the modern war crimes efforts, including increased emphasis on prevention of admission; and the initiation of fourteen new WWII cases over the following three years.

Subsequent to this allocation of resources, the following initiatives were undertaken:

- creation of an Interdepartmental Operations Group to direct and co-ordinate the activities of the three departments; and
- establishment of streamlined procedures for the treatment of every war crimes case in Canada.
- development of information technology (IT) infrastructure that would support the information and research requirements for immigration field officers in Canada and abroad;
- expansion of the Modern War Crimes Section at CIC National Headquarters from 3 to 16 employees;
- creation of an intelligence unit mandated to develop specific expertise in modern war crimes information;
- development of a training program specific to the detection and processing of war crimes cases;
- deployment of dedicated resources to specific posts abroad and the creation of regional Modern War Crimes Units in Montreal, Toronto and Vancouver with additional dedicated resources in Winnipeg, Halifax, and at the Case Processing Centre in Vegreville;

For a more comprehensive background to Canada's War Crimes Program, refer to Appendix A.

POLICY AND LEGISLATIVE FRAMEWORK

There are several remedies available to deal with alleged war criminals and persons who have committed crimes against humanity. The decision to use one or more of these mechanisms is based on a number of factors. These factors include: the different requirements of the courts in criminal and immigration/refugee cases to substantiate and verify evidence; an appropriate allocation of resources in the circumstances to provide a balanced approach; and Canada's obligations under international law. These remedies are:

- criminal prosecution in Canada;
- extradition to a foreign government;
- surrender to an international tribunal;
- revocation of citizenship and deportation;
- denial of visa to persons outside of Canada;
- denial of access (exclusion) to Canada's refugee determination system; and,
- inquiry and removal from Canada under the *Immigration Act*.

The decision to utilize a particular remedy is carefully considered and is assessed on the basis of its consistency with the Government's position that Canada not be a safe haven for war criminals.

Extradition to a foreign government or surrender to an international tribunal occurs upon request and will be considered in accordance with Canadian law. The provisions contained in Canada's *Crimes Against Humanity and War Crimes Act* governs criminal prosecutions in Canada. This new statute strengthens the legislative foundation for criminal prosecutions in Canada and fortifies the administration of justice by the International Criminal Court. The enactment of this legislation reinforces Canada's War Crimes Program and reaffirms Canada's pledge to Canadians and to the international community that Canada is not, and will not be, a safe haven for war criminals.

The following Canadian statutes authorize enforcement action against war criminals or persons who have committed crimes against humanity:

The Crimes Against Humanity and War Crimes Act:

- provides for the prosecution of any individual present in Canada for any offence stated in the Act regardless of where the offence occurred;
- creates new offences of genocide, crimes against humanity, war crimes, and breach of responsibility by military commanders and civilian superiors;
- creates new offences to protect the administration of justice at the ICC, including the safety of judges and witnesses; and,
- recognizes the need to provide restitution to victims and provides a mechanism to do so for victims of offences.

The Extradition Act:

- in addition to allowing Canada to extradite to other states, allows for the surrender to the International Criminal Tribunals for Rwanda and the former Yugoslavia;
- allows for the use of different forms of evidence that will facilitate surrender to the International Criminal Tribunals and states with a different legal tradition;
- permits the use of video and audio link technology to provide testimony from witnesses located in Canada or abroad; and,
- establishes clear procedures for the extradition or surrender process.

The Immigration Act:

- provides for the examination abroad of persons seeking to enter Canada where there is a visa requirement;
- provides two specific grounds of inadmissibility for persons involved in war crimes or crimes against humanity and outlines procedures for their reporting, inquiry and removal;
- provides for the exclusion from the refugee determination process of persons involved in war crimes or crimes against humanity; and,
- limits appeal rights of persons involved in war crimes and crimes against humanity.

The Citizenship Act:

- provides for the revocation of citizenship of persons who have obtained citizenship by fraud or misrepresentation;
- deems that persons who gained admission to Canada by fraud or misrepresentation and subsequently obtained Canadian citizenship are considered to have gained citizenship by fraud or misrepresentation; and,
- provides that citizenship shall not be granted where the person is under investigation by the RCMP, the Minister of Justice, or the Canadian Security Intelligence Service.

For the texts of the relevant provisions of the *Immigration Act* and the *Citizenship Act* refer to Appendix B. The full text of the four statutes can be found on the Department of Justice web site at: <http://www.canadajustice.gc.ca>

OVERVIEW OF PROGRAM OPERATIONS

Interdepartmental Operations Group

- ' Following the direction of the Government for a more integrated War Crimes Program, the Interdepartmental Operations Group was created in 1998. This is the vehicle through which Citizenship and Immigration Canada, the Department of Justice and the RCMP co-ordinate all war crimes operations undertaken by the Government of Canada. This co-ordination takes place on several levels, ranging from discussing and developing policy objectives common to all three departments to ensuring proper co-operation at the day-to-day working level.

The Interdepartmental Operations Group ensures that the Government of Canada has properly addressed all allegations of war crimes and crimes against humanity against Canadian citizens or persons present in Canada. One of its purposes is to ensure that Canada complies with its international obligations. This includes the investigation, prosecution and extradition or surrender of war criminals, as well as co-operation with the two international tribunals set up for this purpose, namely the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). In order to meet this objective, the RCMP and the Department of Justice investigate allegations involving reprehensible acts that could lead to a possible criminal prosecution or revocation of citizenship while CIC pursues the application of remedies under the *Immigration Act*, in co-operation with Department of Justice in certain instances when these matters proceed to court.

A major activity of the Interdepartmental Operations Group in this context has been the review of all War Crimes files, determining the appropriate course of action, and channeling the files to the appropriate departmental authority for action. During 2000-2001, 74 new files were reviewed to bring to 944 the total number reviewed since the creation of the Group. Most of these cases came from the active CIC inventory. As a result of this review, files were opened by the Department of Justice War Crimes Section for all allegations of genocide and war crimes from international armed conflicts, most of which stemmed from the Yugoslav and Rwandan conflicts, and for the most serious allegations of crimes against humanity. Approximately 10% of the files reviewed fell within these categories. There are regular reviews to examine new files that have been opened by CIC or that have come to the attention of the RCMP and Justice War Crimes Sections.

The Interdepartmental Operations Group meets on a monthly basis. The Chair of the Group rotates on an annual basis.

Department of Justice

The Department of Justice War Crimes Section is located in Ottawa and consists of ten lawyers, five historians/analysts, two paralegals, a historical support group, legal assistants and clerks. In addition, Department of Justice lawyers in the regional offices conduct all litigation and provide advice and support to the War Crimes Program. Outside consultants and contract historians/analysts are also hired when needed. The Section's focus is the investigation of allegations that could lead to a criminal prosecution or to revocation of citizenship and eventual removal, the latter in co-operation with Citizenship and Immigration Canada. When requested, the Department of Justice will become involved in litigation of immigration matters, including judicial reviews of immigration cases. In some instances, the Department of Justice will make submissions in complex cases before the Immigration and Refugee Board (IRB). The Department of Justice War Crimes section also provides legal advice on relevant issues.

172 modern war crimes files have been referred to the Department of Justice. This number includes those under investigation by the RCMP. The balance of the files have either been reviewed by counsel and historians/analysts and closed or are currently under examination. There are 85 active World War II files. Initial checks being undertaken on approximately 147 further World War II files will determine whether they become active or inactive. Much work goes into the complex process of investigating and developing each of these files. However, the passage of time has made it increasingly difficult to obtain admissible evidence to enable the Section to bring forward World War II proceedings. Notwithstanding these difficulties, the Section is still actively investigating World War II matters.

The International Assistance Group (IAG), part of the Federal Prosecution Service, assists the Minister of Justice in her function as the central authority for Canada under the *Extradition Act* and the *Mutual Legal Assistance in Criminal Matters Act* and advises the Minister on her responsibilities under these statutes.

The IAG reviews and co-ordinates requests to Canada for the extradition or surrender of persons sought to be prosecuted for crimes, including war crimes. Similarly, the IAG deals with requests by Canada to other countries for extradition of persons sought to be prosecuted for such crimes in Canada.

The IAG also reviews and co-ordinates requests for mutual legal assistance. Such requests are either based on mutual legal assistance treaties, administrative arrangements that Canada has entered into or on non-treaty requests. Such assistance may seek evidence or the testimony of witnesses in Canada for the purposes of foreign criminal investigations or prosecutions relating to alleged war crimes. In this regard, the IAG has also established operational linkages to assist investigations or prosecutions conducted by the International Criminal Tribunals for Rwanda and the Former Yugoslavia.

RCMP

The RCMP have ten regular member positions assigned to World War II and Modern War Crimes investigations within the RCMP War Crimes / Immigration and Passport Section located in Ottawa. Support for the Section is provided by RCMP personnel working in provincial and territorial jurisdictions, at Canadian missions abroad and at the Headquarters Forensic Laboratory. Other regional and municipal police forces in Canada, the International Criminal Police Organization (INTERPOL) and a variety of non-governmental organizations (NGOs) operating throughout the world also extend assistance when called upon. The RCMP responds to allegations of war crimes and crimes against humanity reported by the general public as well as by Canadian and foreign government agencies and also supports the citizenship revocation and deportation proceedings initiated by the Departments of Justice and Citizenship and Immigration.

The RCMP War Crimes / Immigration and Passport Section provides assistance to the United Nations International Tribunals for the Former Yugoslavia and Rwanda and has located and facilitated the interviewing of a number of witnesses in Canada for their ongoing investigations. The RCMP has been able to secure the co-operation and assistance of foreign authorities, which is a requirement for investigations to proceed within foreign jurisdictions. Members of the RCMP War Crimes Unit have also drawn on their experience of investigations in Rwanda and the former Yugoslavia to provide evidence at hearings before the Immigration and Refugee Board. It has 71 modern cases and over 100 WWII cases in its inventory, while available resources are targeted for priority cases. The modern cases under investigation are cases that may warrant prosecution under the *Crimes Against Humanity and War Crimes Act*.

Members of this unit are active in promoting the government's mandate through visits and presentations to high schools, universities, and a variety of interest groups. In addition, the unit is identified on the RCMP web site, thereby providing worldwide access to anyone wishing to contact them.

Department of Citizenship and Immigration

Citizenship and Immigration Canada takes a three-pronged approach in dealing with modern-day war criminals: preventing suspected war criminals from reaching Canada by refusing their immigrant, refugee or visitor visa applications while still overseas; excluding them from the refugee determination process in Canada; and removing war criminals who have already entered Canada. Most applicants overseas are identified through the visitor visa screening process. The majority of suspected war criminals in Canada are not permanent residents but have come to Canada as refugee claimants. Many in this group have been able to bypass the overseas screening process by travelling to Canada with

fraudulent or improperly obtained travel documents, often posing as persons of countries whose citizens do not need a visa to visit Canada.

While all persons who want to come to Canada are screened for possible war crimes involvement, posts abroad have special security vetting procedures to ensure that potential war crimes cases are identified and subjected to checks that are more thorough before a visa can be issued. These posts have specific profiles and use questionnaires designed to identify potential war criminals. When concerns are identified that cannot be resolved, the case is referred to the Modern War Crimes Section in Ottawa where a Case Analyst will conduct further inquiries with assistance from the Research and Intelligence sections as required; this happened on 2084 occasions in this fiscal year.

There are several ways in which the presence of war criminals in Canada is brought to the attention of immigration officials. Information may come to light when the person first makes his claim at a port of entry or during the refugee hearing. In those instances, the Immigration and Refugee Board (IRB) may exclude the person from refugee protection or, alternatively, adjourn the hearing and request the intervention of the CIC Hearings Officer to argue the case for exclusion. As well, immigrant/refugee communities have identified persons in Canada who have allegedly committed atrocities in their homeland.

Lastly, the Canadian Security Intelligence Service (CSIS), when conducting background checks on applicants for permanent residence or for citizenship, will refer names of individuals who may be implicated in war crimes or crimes against humanity to CIC. CIC then conducts further inquiries using its specialized Resource Centre data bases and specific intelligence information which resides with its Modern War Crimes Intelligence Co-ordination Unit to establish whether refusal or enforcement action under the war crimes or designated regimes provisions of the *Immigration Act* is warranted.

The **Resource Centre**, established as part of the Modern War Crimes Section, was designed primarily to provide research support to regional field officers, immigration analysts and other enforcement partners in identifying visa applicants and individuals in Canada who may have been involved in war crimes. Currently, the Resource Centre consists of two Research Officers and two Research Assistants who respond to requests for information, such as obtaining background material on events and organizations as well as verification of information contained in the Personal Information Form (PIF) submitted by refugee claimants and application forms for permanent residence and temporary entry to Canada.

The open-source materials, newspapers, journals and historical texts stored in the Centre, concentrate on human rights violations that have occurred in current and recent history including legal, military, refugee, historical, and geographic information. Although the Centre does possess hard copy documentation, the

vast majority of the information it has access to is in electronic format via the internet, including gateways to several media monitoring databases. The Resource Centre is continually identifying new sources of information and expanding its databases accordingly. Much of the information in the Resource Centre will soon be made available directly to field officers as part of the information technology infrastructure development for the Modern War Crimes Program.

The Resource Centre also serves as a central repository of current information such as news reports or bulletins gathered from media sources and international human rights organizations. The Resource Centre creates a Modern War Crimes News document that is compiled, edited and distributed daily to regional offices, 67 Canadian missions abroad, and, later this year, to several foreign governments.

During the past year, the Resource Centre responded to 1182 inquiries, more than double the number (542) from the previous year. An additional research assistant was added to deal with the additional workload.

The **Modern War Crimes Intelligence Co-ordination Unit** is another result of the government's review of war crimes operations in 1997 and presently consists of a Director and five analysts, most of whom are hired on contract. As the Modern War Crimes Section was formed, it became apparent that the connection between intelligence information and war crimes investigations needed to be strengthened. Information and intelligence relevant to war crimes, previously held randomly throughout other departments, is now co-ordinated by the Intelligence Unit to assist in examining war crimes allegations.

Functioning as a "central clearing house" for intelligence within the government, the Intelligence Co-ordination Unit is in contact with all other departments that might have intelligence information concerning governments, countries, places or perpetrators of war crimes that would enhance Canada's war crimes program. Given that most war crimes cases are dealt with under the *Immigration Act*, it was decided to place co-ordination of modern war crimes intelligence within Citizenship and Immigration Canada.

The Modern War Crimes Intelligence Unit has established and developed links with intelligence agencies in Canada and abroad and with the International Tribunal for the Former Yugoslavia; in particular, the Unit has benefited considerably from support provided by the Department of National Defence. It has also produced a number of working aids on countries that are of concern to the Canadian government from a war crimes perspective and has produced several screening tools to assist visa officers. Lastly, it assists the Resource Centre in responding to requests for information from visa offices and regional offices in Canada.

The Intelligence Unit has played a pivotal role in developing Canada's capacity to detect and identify war criminals by equipping immigration officers with better knowledge, tools, and expertise.

ACTIVITIES IN FISCAL YEAR 2000-2001

World War II Cases

Since 1995, seventeen revocation and deportation cases have been initiated. The Government has been successful in five denaturalization cases before the Federal Court of Canada (Bogutin, Katriuk, Kisluk, Oberlander and Odynsky). In two other cases (Csatory, Maciukas), the respondents did not contest the proceedings. Their citizenship was revoked and they left the country voluntarily. Defendants have been successful in three cases before the Federal Court of Canada (Vitols, Dueck and Podins). In six cases, suspects passed away during the course of the legal proceedings (Bogutin, Kenstavicius, Tobiass, Nemsila, Nebel and Kisluk). Currently the program is awaiting one decision (Baumgartner) from the Federal Court and proceedings are ongoing in two cases (Fast and Obodzinsky).

The passage of time has made it increasingly difficult to obtain admissible evidence to enable the Section to bring forward World War II proceedings. Notwithstanding these difficulties, the Section is still actively investigating World War II matters.

Selected World War II case files

In the Serge Kisluk case, Justice Allan Lutfy of the Federal Court released his decision on June 7, 1999. In finding for the Applicant, Justice Lutfy held that Mr. Kisluk "was admitted to Canada for permanent residence and obtained Canadian citizenship by false representations or fraud or by knowingly concealing material circumstances." Cabinet revoked his citizenship on 2 March 2000 and a deportation inquiry began on October 6, 2000. The deportation hearing before the Immigration and Refugee Board was brought to a close when Mr. Kisluk died in May 2001.

In the Wasyl Odynsky case, the court rendered its decision in March 2001. In an order dated March 2, 2001, Justice W. Andrew Mackay of the Federal Court - Trial Division found that Mr. Odynsky "obtained citizenship by false representation or by knowingly concealing material circumstances within the meaning of s. 18(1)(b) of the *Citizenship Act*." Mr. Odynsky was found to have concealed his service as a guard at the SS forced labour camps of Trawniki and Poniatowa. The table below summarizes the Section's World War II revocation and deportation proceedings. Further details are available in Appendix E.

Revocation

- ◆ References now before the Federal Court 2 (Fast, Obodzinsky)
- ◆ Awaiting decisions from Federal Court 1 (Baumgartner)
- ◆ Decisions rendered by Federal Court in favour of the Minister of Citizenship and Immigration since 1995..... 5 (Bogutin, Katriuk, Kisluk, Oberlander, and Odynsky)

Deportation

- ◆ Permanent resident –was before the Adjudication Division, Immigration And Refugee Board (Immigration Inquiry) 1 (Kisluk)

World War II Cases Concluded

- ◆ Removed or left Canada voluntarily 2 (Csatary, Maciukas)
- ◆ Proceedings concluded due to successful defence by Respondent/Defendant 3 (Dueck, Podins, Vitols)
- ◆ Deceased during proceedings 5 (Kenstavicius, Tobiass, Nemsila, Bogutin and Nebel)(Kisluk died during proceedings in Fiscal Year 2001-2002)

Modern Day Cases

Since the creation of a Modern War Crimes Section within Citizenship and Immigration Canada, the results have improved each year, and fiscal year 2000-2001 was no exception. There were considerable improvements in prevention and enforcement activities in a number of areas as compared to the previous fiscal year.

With respect to prevention, 644 persons were refused admission either as immigrants or visitors for war crimes related allegations, an increase of 63 over the past year or 14%. CIC officials intervened in refugee hearings involving war crimes allegations in 227 cases compared with 127 cases last year, an increase of 78%. The Refugee Division of the Immigration and Refugee Board excluded 53 persons from refugee determination, an increase of 51% over the last fiscal year. The number of persons removed from Canada increased from 38 to 42, an increase of 10% over the previous year (see Appendix F).

During the past fiscal year, CIC officials examined 2084 cases overseas and 1343 cases in Canada. As in previous years, the vast majority of war criminals in

Canada are discovered in the refugee claims system (85%). Appendix F provides a detailed breakdown of case processing for overseas and for those in Canada. Appendix G provides cumulative data since the beginning of the program. It is worth noting from the cumulative data that visa officials abroad have prevented the admission to Canada of 1566 persons complicit in war crimes or crimes against humanity. It is also noteworthy that, since the inception of the program, a total of 187 such persons have been removed from Canada.

The Department of Justice War Crimes Section has continued to work closely with the RCMP on ongoing investigations of modern war crimes. During the Fiscal Year 2000-2001, the Department of Justice and the RCMP worked to develop operational protocols respecting the investigations of war crimes.

Support to the International Criminal Tribunals and Foreign Governments

In June 2000, the Minister of Citizenship and Immigration visited the International Criminal Tribunal for the Former Yugoslavia where she forged additional co-operation and information sharing links between Canada and the Tribunal. CIC has in place an agreement with the ICTY that permits the re-settlement of ICTY witnesses in Canada. CIC is playing a lead role in Canadian support to the ICTY to help meet Canada's international obligations and commitments.

The Department of Justice War Crimes Section continued to strengthen its working relationship with the Tribunals and European governments. The Department of Justice began working with European government and police officials to work on a response to the issue of the movement of war criminals across borders and to share evidence and information. The section is also actively involved in several on-going investigations, in co-operation with the RCMP, in Europe and Africa.

The International Assistance Group (IAG) of the Department of Justice Federal Prosecution Service assists the RCMP and the Department of National Defence in their support to the investigations and prosecutions of the International Criminal Tribunals for Rwanda and the Former Yugoslavia. As well, the IAG reviews requests for mutual legal assistance under *Mutual Legal Assistance in Criminal Matters Act* from foreign governments in the investigation and prosecution of modern day war crimes. Such assistance is also available to the International Criminal Tribunals for the Former Yugoslavia and Rwanda.

Designation of Regimes as Having Been Involved in Gross Human Rights Violations

On June 30, 1999, the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia were designated under the *Immigration Act* as regimes that have been engaged in systematic and gross human rights violations and crimes against humanity. On March 14, 2001, as a result of the election of a new

democratic government in the Federal Republic of Yugoslavia, the previously open-ended designation was given an end date of October 7, 2000. As well, on the same date, the Taliban regime in Afghanistan became a designated regime. As a consequence of these designations, senior officials of these governments are inadmissible to Canada.

Designation of such regimes is made in consultation with the Department of Foreign Affairs and International Trade. The following are among the factors considered by the Minister of Citizenship and Immigration when determining whether a regime should be designated under the Act:

- condemnation by other countries and organizations;
- the overall position of the Canadian government including whether a refugee claim by a senior member of the government would undermine Canada's strong position on human rights;
- the nature of the human rights violations; and,
- immigration concerns such as the number of persons coming from that specific country and whether there might be a concern for the protection of Canadian society.

Since the authority to designate such regimes was included in the *Immigration Act* in 1993, eight regimes have been designated. For a listing of these regimes, see Appendix D.

Mugesera case

On April 12, 2001, Mr. Justice Nadon of the Federal Court, Trial Division, reached a decision in the case of Léon Mugesera.

This case had originally begun as an immigration inquiry before an adjudicator of the Immigration and Refugee Board on September 11, 1995. On July 11, 1996, after a hearing of 34 days, Mr. Mugesera was determined by an adjudicator to be inadmissible based on four grounds, namely the crimes of counseling to commit murder, advocating genocide and publicly inciting hatred, having committed a crime against humanity, as well as obtaining landing by misrepresentation. The first three grounds were as a result of an inflammatory speech Mr. Mugesera gave in Rwanda on November 22, 1992; the last because of answers on his application form on April 2, 1993, which resulted in his becoming a permanent resident as a refugee on August 12, 1993.

On November 6, 1998, after a hearing of 29 days that began on November 10, 1997, the Immigration Appeal Division of the IRB upheld the deportation orders issued by the adjudicator by agreeing that all the original allegations were established. This was the decision that was examined by the Federal Court, Trial Division.

Mr. Justice Nadon made it clear that he agreed with most of the decision of the Immigration Appeal Division of the IRB, including all the factual findings which he

described as detailed and thorough. He agreed with the finding that Mr. Mugesera gave a speech on November 22, 1992, and that the meaning and the intent of the speech was to incite Hutus to commit murder against their Tutsi compatriots and to commit genocide.

With respect to the other two original allegations against Mr. Mugesera, namely the commission of a crime against humanity and misrepresenting that fact when he applied for immigrant and refugee status in Madrid in 1993, Mr. Justice Nadon indicated that these issues were related. He was of the opinion that no crime against humanity was committed by Mr. Mugesera because the speech did not cause, directly or indirectly, the murder or massacre of Tutsis.

The case has been appealed to the Federal Court of Appeal.

Training

There are two training courses available for CIC staff. The first is intended for hearings officers, investigators, examining officers and other officers involved in the enforcement of the Immigration Act in Canada and at Canadian ports of entry. This three day course covers Canada's policy and international obligations, remedies under the Act including interventions before the IRB, the evidence required to substantiate war crimes allegations, sources of intelligence information and comprehensive case studies. During the last fiscal year, one formal course was delivered in Vancouver to a total of 24 participants. In addition, half-day seminars were delivered to Immigration Control Officers (Officers assigned to Canadian missions abroad with specific enforcement responsibilities), Department of Justice litigators, CSIS officers, and Department of National Defense staff. Two Hearings Officers courses were given to a total of 28 participants which included the half-day module on war crimes. A representative from the Montreal office provided several training sessions covering all the major ports of entry in the Quebec Region.

The second course is intended for visa officers abroad. This course is designed to provide visa officers with the knowledge and tools to be able to identify potential war criminals based on profiles, research and intelligence information, and the types of information required to establish a refusal under the specific grounds of inadmissibility under the *Immigration Act* pertaining to war criminals. This course is designed as a module in four separate visa officer training courses and was delivered to almost 100 visa officers during the year in six separate sessions.

Outreach Activities

Part of the strategy involved in implementing Canada's "no safe haven policy" is to communicate with a broad spectrum of interested parties, both domestically and internationally. The objective is to foster a broad understanding of Canada's policies regarding modern war crimes and the initiatives that have been taken to

put a viable program in place. Target audiences include a wide variety of partners and other stakeholders such as like-minded states, international organizations, NGOs, academics and educational institutions. During the year, representatives of the war crimes program participated in the following:

The Hague, the Netherlands - Presentation to Asser Institute

Counsel for Modern War Crimes, CIC presented a one-half day seminar to officers of the Dutch Immigration and Naturalization Service. The presentation covered provisions under Canadian and international law dealing with war criminals and their exclusion from protection under the UN Convention. The presentation also included an overview of Canada's experiences in applying the exclusion provision.

Oxford, England – Holocaust Conference

The Chief Historian of the War Crimes Section of the Department of Justice presented a paper "The Holocaust goes to court. A view from the Canadian courtroom".

Ottawa, Ontario – Department of Justice War Crimes Conference

The War Crimes Section of the Department of Justice hosted its Second Annual War Crimes Conference. Highlights of the conference included the opening address by the Deputy Minister of Justice, Mr. Morris Rosenberg and a presentation by Klaus Zorn, Liaison Officer of the War Crimes Office of the German Federal Police to the ICTY. In addition, presentations by several members of the Office of the Prosecutor for the ICTY provided a practicum on how the Tribunal conducts its investigations. Participants included members of Department of Justice, CIC and RCMP, representatives of other governmental departments, officials from the Ukrainian Procurator's office, as well as members of the non-governmental organization community and academia.

Cornwallis, Nova Scotia – Lester B. Pearson Canadian International Peacekeeping Training Centre

Counsel for Modern War Crimes, CIC and the Director of the War Crimes Section, Department of Justice, made a presentation at a course entitled "The Legal Framework of Modern Peacekeeping". The presentation covered legal issues surrounding modern war crimes investigations. The audience included members of military, police, government and NGOs from around the world involved in peacekeeping and provided an opportunity for an exchange with others involved in the global effort to address impunity.

Houston, Texas – German Studies Association Conference

The Chief Historian of the War Crimes Section, Department of Justice, attended and presented a paper on KGB Sources in Holocaust Research. The GSA is the largest scholarly association dealing with German studies.

Berlin, Germany – International Seminar

This seminar was entitled "Particular problems with criminal prosecutions following the armed conflicts in the former Yugoslavia" and was sponsored by the European Union and the Government of Germany. This conference was attended by the Director of the Department of Justice War Crimes Section with counsel and two RCMP superintendents. Over thirty-two law enforcement participants from eleven countries attended, including observers from the ICTY. The focus of the meeting was to compare investigative sources and procedures for cases of crimes against humanity and genocide arising from the armed conflicts in the former Yugoslavia. Co-operation between investigators and regular exchanges of information were recognized as having prime importance in these types of investigations.

Riga, Latvia – Meeting on *Kalejs* Case

The acting Deputy Director of the Department of Justice War Crimes Section attended a working meeting in Riga, Latvia, to provide assistance in the *Kalejs* case.

New Orleans, Louisiana – Joint Terrorism Task Force/Office of the General Conference

This meeting of the JTTF/OGC Counsel was sponsored by the United States Immigration and Naturalization Service. Canada was invited to attend this 3 day conference to provide a comprehensive overview of Canadian law, policy, and practice pertaining to security, terrorism and modern war crimes. CIC was represented by the former Director General, Case Management, Counsel for Modern War Crimes, and the Director of Intelligence Co-ordination Modern War Crimes Unit, who made a presentation entitled "Terrorism and Modern War Crimes: A Canadian perspective". This conference was attended by over 100 officials from the US Department of Justice, the FBI as well as other enforcement agencies.

London, England – Four Country Conference

There is an annual meeting with senior officials of the immigration services of the UK, the US, Australia and Canada. These meetings began in the early 1980s, and their objective is to share and exchange information on significant enforcement and control issues. The Assistant Deputy Attorney General for the Immigration Law Portfolio at the Department of Justice made a presentation on

Canada's War Crimes Program that included a proposal for information sharing between the four departments.

Ottawa, Ontario – CIC National War Crimes Conference

This three-day conference was held for approximately 100 participants consisting primarily of CIC officers across the country who deliver the Modern War Crimes Program. The conference provided war crimes specialists with an opportunity to share experiences and expertise with colleagues, acquire new knowledge, and strengthen the network of communication. The conference was enhanced by participation of other CIC program branches, partner departments and agencies, and representatives from the United States, the United Kingdom, Germany and the Australian High Commission. In addition to reviewing and discussing program objectives and accomplishments, the conference emphasized professional development by including workshops to enhance skills required for analyzing client profiles, screening, updating on jurisprudence as well as country-specific information.

Other

Members of the War Crimes Sections of the three departments were also involved in giving lectures and talks about the war crimes program to high schools and universities. They also presented workshops to other departments of the Canadian government and maintained bilateral contact with governments of other countries and the two international tribunals. The regional war crimes units of the Citizenship and Immigration Canada also engaged in similar outreach programs.

Information Technology Development

The supporting computer systems for Modern War Crimes have represented an expenditure of some \$7 million over the past two fiscal years and is nearing completion. These costs reflect the purchase and installation of necessary infrastructure (hardware and software), training costs, and the cost of systems development.

The Modern War Crimes System (MWCS) will consist of two components. The first of these will provide operational support to case processing staff at National Headquarters, across Canada, and to visa officers at missions abroad. MCWS will provide direct case research support to field officers, enhancing the quality and quantity available to them and also enabling quicker decisions on cases.

The second component of MWCS will only be available at National Headquarters and will support the management of information holdings produced by the Modern War Crimes Section and its Resource Centre, as well as the classified information from the Intelligence Co-ordination Unit. This component includes a

Management Information System (WISER) which will support ongoing program evaluation by delivering case, client service, and resource information. These systems are due to be fully implemented early in the first half of fiscal year 2001-2002 and will require testing, support, monitoring, and user training in support of their implementation.

The MWCS will allow users from any immigration mission around the globe to access a centralized repository of information. This repository contains the combined knowledge of a variety of experts. The result is that immigration officers will be much better equipped to identify and prevent the admission of war criminals. Where appropriate, the information in the MWCS will be shared with partner nations and organizations such as the international criminal tribunals.

Other MWCS functionality includes the ability to request special research from the analysts at the Modern War Crimes Section, including its Resource Centre. The results of their research are subsequently entered into the system. Users around the world may also contribute relevant information to the data base by submitting supporting evidence to the analyst team, thus making it available for world-wide use. This will be done on a fairly large scale over the next year as special projects were funded through Canadian missions in Damascus, Guatemala, Buenos Aires, Bogota, and Vienna for research on war crimes within their jurisdictions. The MWCS database is being populated by a special team consisting of four people, that has also entered 1486 look-outs in the general immigration database system (FOSS).

Resources and Program Evaluation

The three-year funding for the War Crimes Program expired on March 31, 2001. In approving financing for the War Crimes Program in 1998, Treasury Board had requested that an evaluation take place during the third year of the program, 2000-2001. To that end, a program evaluation framework was completed in May 1999 that identified evaluation issues and a series of indicators for the measurement of program results. Because of the delays in launching the MWCS and the WISER system (to a large extent due to contingencies such as Y2K and the Kosovo crisis) and the very tight time frame for a program evaluation, CIC and Department of Justice, with the concurrence of the Treasury Board Secretariat, sought bridge financing for one year. Funding was approved by Cabinet, and the program evaluation should be completed by September 2001.

NEW LEGISLATION

On February 11, 2001, Bill C-11 was tabled which will replace the present *Immigration Act* entirely and permit the immigration and refugee system to be more responsive to the needs and challenges of the future. The underlying premise of the new Bill is to open the front door to genuine immigrants and

refugees but close the back door to persons who do not need or who abuse Canada's immigrant and refugee system.

- The Bill does not contain any additional provisions that specifically deal with the issue of war criminals. For the most part, all the provisions, which have proven to be effective in the present *Immigration Act* have been transferred to the new Bill. In a number of instances, the Bill contains sections that have application to suspected war criminals as well as to other categories of persons involved in very serious criminality such as organized crime or terrorism.

Some of these new provisions which would apply to a number of persons, including war criminals, and streamline their removal process are:

- access to the Immigration Appeal Division (IAD) of the Immigration and Refugee Board would be prohibited entirely to all serious criminals. At the moment, permanent residents and refugees, even if they are serious criminals, have access to the IAD on questions of fact and law but not humanitarian and compassionate grounds;
- persons whose refugee claim has been refused by the Refugee Division of the IRB would not enter the refugee stream again. This would include persons who have been excluded for the commission of war crimes and crimes against humanity. At the moment, it is possible for persons who have been rejected to make subsequent claims;
- it would no longer be necessary to have the Minister of Citizenship and Immigration declare that it is contrary to the national interest to deny access to the Refugee Division to people involved in very serious criminality; a finding that a person belongs to such a category by the Immigration Division of the IRB would be sufficient for this purpose;
- the threshold for removing persons to their country of origin who have been found to be refugees but also have committed very serious criminal activities would be changed from "danger to security of Canada" to either "danger to the security of Canada" or "contrary to the national interest";
- for the Pre-Removal Risk Assessment, the Minister would have to take into account whether persons who are serious criminals or excludable would pose a "danger to the security of Canada" or if it would be contrary to the national interest to allow such an application; and,
- the protection of confidential information, which is presently possible before IAD and Federal Court hearings, would be extended to hearings of the new Immigration Division of the IRB.

CONCLUSION

Canada has shown leadership in the manner in which it has dealt with war criminals that reach its shores, and also in the actions it has taken in supporting international efforts to ensure that war criminals are brought to justice.

This year has seen the last legislative component of the war crimes program fall into place. Consequently, Canada can choose the most effective enforcement action in a given situation, be it the criminal prosecution or extradition of suspected war criminals in Canada, their surrender, upon request, to international criminal tribunals or the future International Criminal Court or the application of immigration remedies. As a result, Canada remains a world leader in the fight to ensure that people who commit atrocities are accountable for their actions. Canada is therefore well placed to face the challenges of further unrest and strife which could result in suspected war criminals seeking refuge in Canada.

BACKGROUND

World War II Cases

Following World War II, large immigration movements resulted in the admission to Canada of persons subsequently suspected of having committed war crimes or crimes against humanity. In 1985, the government established the Deschênes Commission of Inquiry on War Criminals which produced three lists of suspects containing 883 names. The principal recommendation of Mr. Justice Deschênes was that the RCMP and the Department of Justice be mandated to carry out investigations of these suspects.

In March of 1987, the government responded to the Deschênes Commission Report by announcing that those alleged to have committed war crimes or crimes against humanity would be subject to criminal prosecution or revocation of citizenship and deportation. Recognizing that the research required to investigate and prepare such cases for prosecution is highly specialized and intensive, the Department of Justice created a Crimes Against Humanity and War Crimes Section (Department of Justice War Crimes Section). The War Crimes and Special Investigations Unit of the RCMP, first established in 1985 to assist the Deschênes Commission, and now called the War Crimes / Immigration and Passport Section, has continued to conduct investigations of all suspected perpetrators.

In order to strengthen immigration legislation, the *Immigration Act* was amended in 1993, creating a new ground of inadmissibility against persons for whom there are reasonable grounds to believe have committed war crimes or crimes against humanity.

At the initial stages of the program, it was necessary to negotiate agreements with several countries in order to gain access to their archives and to obtain permission to contact and interview potential witnesses, either informally or through formal memoranda of understanding. Historians, RCMP investigators and counsel from the Department of Justice travelled overseas to search archives, identify potential witnesses and conduct interviews to further their investigations.

From 1987 to 1992, after extensive investigation, charges were laid under the *Criminal Code* in four cases. None resulted in convictions. The case of *Imre Finta* was appealed and argued before the Supreme Court of Canada. In 1994, the Supreme Court upheld the acquittal, and, as a result, it became clear that it

would be impractical to prosecute further cases under the (then) existing provisions of the *Criminal Code*.

During this period, revocation of citizenship and deportation proceedings under the *Immigration Act* were also initiated in the case of *Jacob Luitjens*. These proceedings resulted in the deportation of Luitjens to the Netherlands where he was immediately incarcerated for an earlier conviction of collaboration.

In January of 1995, the government announced a change in its approach to dealing with war criminals, shifting from the criminal prosecution of these individuals to revocation of citizenship. This effectively meant that it was no longer incumbent on the government to prove that individuals were "war criminals" but instead had to prove that they entered Canada and/or obtained citizenship through misrepresentation, fraud, or the concealment of material facts. As part of this process, 1664 cases have been examined by the Department of Justice's War Crimes Section in order to identify those cases which possess sufficient grounds to warrant the initiation of proceedings.

All cases are evaluated for both criminal prosecution as well as revocation proceedings. It is the position of the government that in some cases where there are allegations of war crimes and crimes against humanity, revocation of citizenship and deportation is the appropriate remedy. The Federal Court of Canada has indicated that this process "in no way diminishes the respondent's right to be treated fairly in strict compliance with the principles of natural justice."

Modern War Crimes Cases

In the late 1980's, the issue of modern-day war crimes and crimes against humanity became more prominent. Political turmoil, internal ethnic strife, the settling of historical grievances, and religious extremism in Latin America, Africa, and the Middle East caused considerable flows of refugee claimants. Within these movements were small numbers of individuals alleged to be involved in war crimes or crimes against humanity.

As a signatory to the 1951 United Nations Convention relating to the Status of Refugees, Canada is committed to providing protection to persons who fear persecution as described in the Convention. This protection prevents refugees from being returned to the country where they have been persecuted. In turn, the Convention maintains that those who have committed crimes against peace, war crimes or crimes against humanity, are not entitled to this protection. In January 1989, the *Immigration Act* was amended to allow for the exclusion from the refugee determination process of individuals who were believed, on reasonable grounds, to have been complicit in crimes against humanity. In addition to denying such individuals protection under the Convention, this exclusion has the effect of reducing the time required to effect their removal from Canada.

In February of 1993, a number of changes were made to the *Immigration Act* intended to bring the classes of criminal inadmissibility up to date with both Canadian and international developments that had occurred in the area. Among these amendments was a provision rendering inadmissible to Canada, senior officials of regimes who have been designated by the Minister of Citizenship and Immigration as being involved in terrorism, systematic or gross human rights violations or crimes against humanity. This provision was a response to a successful immigration application by the Iraqi ambassador to the United States. At that time, the existing grounds of inadmissibility could be used to refuse admission to persons who had been directly involved in crimes against humanity. However, persons in government who were physically removed from these human rights violations but who took part in decisions which led to the commission of these atrocities were not caught by the *Immigration Act*.

The Act was further amended to provide authority to deny access to a refugee hearing for persons described as war criminals or members of designated regimes if the Minister believes it would be contrary to the public interest to have a refugee claim by such a person heard. This situation occurs at an immigration inquiry where the person is brought before an adjudicator to determine his admissibility to enter or remain in Canada.

In May of 1997, amendments were made to the Post Determination Refugee Claimants in Canada Class regulations and the Deferred Removal Order Class regulations. These amendments prohibited persons who have been excluded under Article 1F(A) of the Convention from accessing these additional humanitarian reviews prior to their removal.

As the issues pertaining to the entry of modern-day war criminals grew more numerous and complex, it was apparent that an improved system was required for identifying and screening these individuals. In April of 1996, three employees were assigned to a new Modern War Crimes Section within Citizenship and Immigration Canada. Due to the escalating number of cases and the need for supporting infrastructure, it was evident that this section required increased resources. At the same time, concerns were expressed over the increase in the numbers of persons in Canada whose files were not being processed in a timely manner. It was acknowledged that the initial identification of modern war criminal cases early in the immigration process would be the best strategy. Early detection, particularly through visa screening abroad, had proven to be considerably more effective and efficient than attempting to remove the person after arrival in Canada.

Renewed Approach 1998

In the fall of 1997, the government conducted a review of its War Crimes Program. In a press release dated July 21, 1998, the following decisions were announced to improve effectiveness:

- Implementation of a government-wide initiative to increase co-ordination between departments; enhanced co-operation in such areas as case prioritization, compliance with international obligations, communications, and the sharing of information and expertise in order to benefit both World War II and modern war crimes initiatives;
- Substantial enhancements to the modern war crimes effort in order to strengthen enforcement activities with increased emphasis on prevention;
- An additional fourteen World War II cases would be initiated over the next three years and additional cases would continue to be developed; and
- \$46.8 million would be allocated over the next three years; the government would then review the accomplishments of the program before determining funding requirements for future years. To make this review comprehensive, a program evaluation framework would be established in 1998-1999 and a full program evaluation would be conducted in 2000-2001.

Resources over the three years were distributed among departments as follows:

- The Department of Justice received \$16.5 million to litigate fourteen new World War II cases and to litigate modern-day cases on behalf of CIC (\$5.038 million in the first year, \$5.739 million in the second year, and \$5.739 million in the third year);
- Citizenship and Immigration Canada received \$28.2 million to expand its capacity for prevention at posts abroad, to improve case processing in Canada, and to provide enhanced support for the War Crimes Program (\$6.813 million in the first year, \$12.245 million in the second year, and \$9.179 million in the third year);
- The RCMP received \$2 million for the investigation of modern-day criminal prosecution cases (\$682,000 in each of the three years).

Subsequent to the government's announcement, a number of initiatives were implemented in the remainder of fiscal year 1998-1999.

A substantial amount of the resources allocated to CIC (\$7-8 million) was committed to developing a large Information Technology (IT) infrastructure that would support the information and research material for the entire program, as well as the compilation of statistics for management reporting, on performance and results. Management reporting is critical in delivering program measurement and management information to Treasury Board, CIC senior management as well as departmental War Crimes Units worldwide.

The purpose of the infrastructure is to enable CIC to manage and retrieve information pertaining to modern war crimes and crimes against humanity cases, as well as store specific material pertaining to modern war crimes and crimes against humanity in a reference facility. These systems will be accessible to all immigration officers in Canada and abroad and will assist with the prevention of such people from entering Canada, the identification and research of cases and the development of tracking systems and search systems to assist with investigations. They will provide the capacity to track cases through the immigration adjudication and judicial systems and to ensure removal occurs as promptly as allowed by law.

The staff of the Modern War Crimes Section within Citizenship and Immigration Canada was increased to sixteen employees. This permitted the expansion of the mandate to include strategic management of their modern-day war crimes caseload, encompassing the development of a research function, the ability to provide better analysis and support to field offices, an in-house legal advice capability, the development of a computerized operational support and case-tracking system, and the creation of an intelligence unit mandated to develop specific subject expertise in modern-day war crimes. Comprehensive Operations Memoranda were prepared to guide immigration officers in the proper application of the relevant provisions of the Act and a training program specific to war crimes cases was prepared.

Resources were deployed in Citizenship and Immigration field offices in Canada permitting the creation of regional war crimes units in Vancouver, Toronto, Montreal, Halifax, Winnipeg, and at the Case Processing Centre in Vegreville. Resources were also strategically deployed to key posts abroad to strengthen the ability to identify and refuse visa applicants who pose a risk of involvement in war crimes and also to increase liaison with foreign governments and other contacts on war crimes issues.

SELECTED LEGAL PROVISIONS

Immigration Act

3. **(objectives)** – It is hereby declared that Canadian immigration policy and the rules and regulations made under this Act shall be designed and administered in such a manner as to promote the domestic and international interests of Canada recognizing the need

(i) to maintain and protect the health, safety and good order of Canadian society;

19. (1) **(inadmissible persons)** – No person shall be granted admission who is a member of any of the following classes:

(before October 23, 2000) (j) persons who there are reasonable grounds to believe have committed an act or omission outside Canada that constituted a war crime or a crime against humanity within the meaning of subsection 7(3.76) of the *Criminal Code* and that, if it had been committed in Canada, would have constituted an offence against the laws of Canada in force at the time of the act or omission;

(l) persons who are or were senior members of or senior officials in the service of a government that is or was, in the opinion of the Minister, engaged in terrorism, systematic or gross human rights violations or war crimes or crimes against humanity within the meaning of subsection 7(3.76) of the *Criminal Code*, except persons who have satisfied the Minister that their admission would not be detrimental to the national interest.

(after October 23, 2000) (j) persons who there are reasonable grounds to believe have committed an offence referred to in any of sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*;

(l) persons who are or were senior members of or senior officials in the service of a government that is or was, in the opinion of the Minister, engaged in terrorism, systematic or gross human rights violations, or any act or omission that would be an offence under any of sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*, except persons who have satisfied the Minister that their admission would not be detrimental to the national interest.

(1.1) **(Meaning of “senior members of or senior officials in the service of a government”)** – For the purposes of paragraph (1)(l) “senior members of or senior officials in the service of a government” means persons who, by virtue of the position they hold or have held, are or were able to exert a significant influence on the exercise of government power and, without limiting its generality, includes

(a) heads of state or government;

(b) members of the cabinet or governing council;

- (c) senior advisors to persons described in paragraph (a) or (b);
- (d) senior members of the public service;
- (e) senior members of the military and of the intelligence and internal security apparatus;
- (f) ambassadors and senior diplomatic officials; and
- (g) members of the judiciary.

27.(2) (Reports on Visitors and Other Persons) – An immigration officer or a peace officer shall, unless the person has been arrested pursuant to subsection 103(2), forward a written report to the Deputy Minister setting out the details of any information in the possession of the immigration officer or peace officer indicating that a person in Canada, other than a Canadian citizen or permanent resident, is a person who

- (g) came into Canada or remains in Canada with a false or improperly obtained passport, visa or other document pertaining to that person's admission or by reason of any fraudulent or improper means or misrepresentation of any material fact, whether exercised or made by himself or by any other person;
- (i) ceased to be a Canadian citizen pursuant to subsection 10(1) of the *Citizenship Act* in the circumstances described in subsection 10(2) of that Act;

46.01(1) (Access Criteria) – A person who claims to be a Convention refugee is not eligible to have the claim determined by the Refugee Division if the person (e) has been determined by an adjudicator to be

- (ii) a person described in paragraph 19(1)(e),(f), (g), (j), (k), or (l) and the Minister is of the opinion that it would be contrary to the public interest to have the claim determined under this Act,

Schedule – Sections E and F of Article 1 of the United Nations Convention Relating to the Status of Refugees

- F.** The provisions of this Convention shall not apply to any person with respect to whom there are serious grounds for considering that:
- (a) he 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;

Citizenship Act

10.(1)(Order in Cases of Fraud) – Subject to section 18 but notwithstanding any other section of this Act, where the Governor in Council, on a report from the Minister, is satisfied that any person has obtained, retained, renounced or resumed citizenship under this Act by false representation or fraud or by knowingly concealing material circumstances,

- (a) the person ceases to be a citizen, or
- (b) the renunciation of citizenship by the person shall be deemed to have had no effect,

as of such date as may be fixed by order of the Governor in Council with respect thereto.

(2) (**Presumption**) – A person shall be deemed to have obtained citizenship by false representation or fraud or by knowingly concealing material circumstances if the person was lawfully admitted to Canada for permanent residence by false representation or fraud or by knowingly concealing material circumstances and, because of that admission, the person subsequently obtained citizenship.

18.(1) (**Notice to person in respect of revocation**) – The Minister shall not make a report under section 10 unless the Minister has given notice of his intention to do so to the person in respect of whom the report is to be made and

- (a) that person does not, within thirty days after the day on which the notice is sent, request that the Minister refer the case to the Court (Federal Court, Trial Division); or
- (b) that person does so request and the Court decides that the person has obtained, retained, renounced or resumed citizenship by false representation or fraud or by knowingly concealing material circumstances.

(2) (**Nature of Notice**) – The notice referred to in subsection (1) shall state that the person in respect of whom the report is to be made may, within thirty days after the day on which the notice is sent to him, request that the Minister refer the case to the Court, and such notice is sufficient if it sent by registered mail to the person at his latest known address.

(3) (**Decision Final**) – A decision of the Court made under subsection (1) is final and, notwithstanding any other Act of Parliament, no appeal lies therefrom.

22. (1) (**Prohibition**) Notwithstanding anything in this Act, a person shall not be granted citizenship under section 5 or subsection 11(1) or administered the oath of citizenship

(before October 23, 2000)(c) while the person is under investigation by the Minister of Justice, the Royal Canadian Mounted Police or the Canadian Security Intelligence Service, or is charged with, on trial for, subject to or a party to an appeal relating to, an act or omission referred to in subsection 7(3.71) of the *Criminal Code*;

(d) if the person has been convicted of an offence in respect of an act or omission referred to in subsection 7(3.71) of the *Criminal Code*.

(after October 23, 2000) (c) while the person is under investigation by the Minister of Justice, the Royal Canadian Mounted Police or the Canadian Security Intelligence Service for, or is charged with, on trial for, subject to or a party to an appeal relating to, an offence under any of sections 4 to 7 of the Crimes Against Humanity and War Crimes Act;

(d) if the person has been convicted of an offence under any of sections 4 to 7 of the Crimes Against Humanity and War Crimes Act.

GLOSSARY OF TERMS

Crimes against Humanity

Includes crimes such as murder, extermination, enslavement, torture and any other inhumane act committed against civilians, in a widespread or systematic manner, whether or not the country is in a state of war, and 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

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

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

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, the person contributes, directly or indirectly, to their occurrence.

APPENDIX D

REGIMES DESIGNATED PURSUANT TO SECTION 19(1)(I) OF THE *IMMIGRATION ACT*

- 1) **designated 16 June 1993, extended on August 15, 1997:** the Bosnian Serb regime between 27 March 1992 until 10 October 1996;
- 2) **designated 12 October 1993:** the Siad Barré regime in Somalia between 1969 and 1991;
- 3) **designated 8 April 1994:** the former military governments in Haiti between 1971 and 1986, and between 1991 and 1994, except the period August - December 1993;
- 4) **designated 21 October 1994:** the former Marxist regimes of Afghanistan between 1978 and 1992;
- 5) **designated 3 September 1996:** the governments of Ahmed Hassan Al-Bakr and Saddam Hussein in power since 1968;
- 6) **designated 27 April 1998:** the Government of Rwanda under President Habyarimana between October 1990 and April 1994, as well as the interim government in power between April 1994 and July 1994;
- 7) **designated 30 June 1999, amended March 14, 2001:** the Governments of Federal Republic of Yugoslavia and the Republic of Serbia (Milosevic) between February 28, 1998, and October 7, 2000;
- 8) **designated March 14, 2001:** the Taliban regime in Afghanistan from September 27, 1996

APPENDIX E

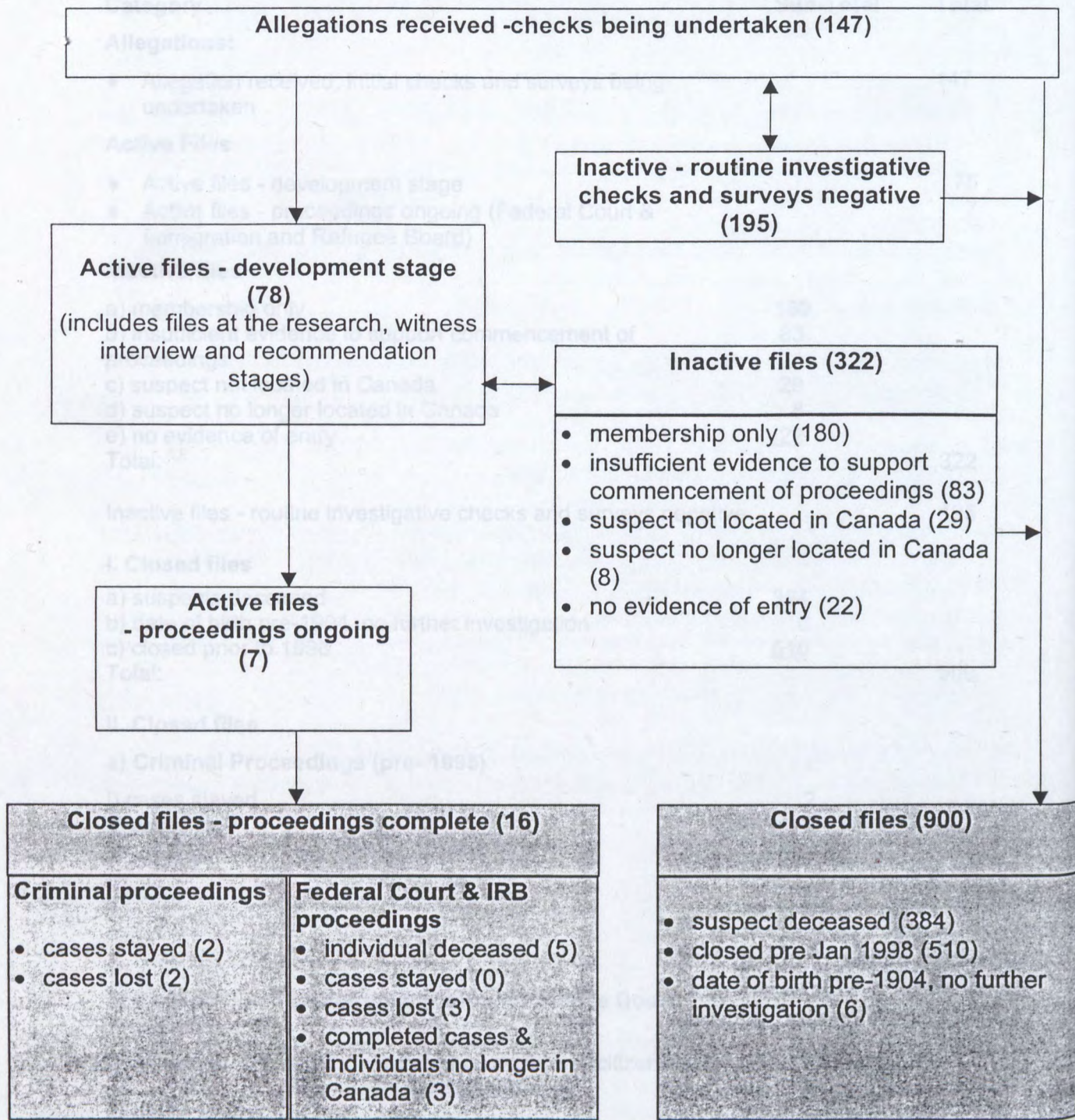
WORLD WAR TWO CASES - INVENTORY

Category	Sub-Total	Total
Allegations:		
◆ Allegation received, initial checks and surveys being undertaken		147
Active Files		
◆ Active files - development stage		78
◆ Active files - proceedings ongoing (Federal Court & Immigration and Refugee Board)		7
Inactive files		
a) membership only	180	
b) insufficient evidence to support commencement of proceedings	83	
c) suspect not located in Canada	29	
d) suspect no longer located in Canada	8	
e) no evidence of entry	<u>22</u>	
Total:		322
Inactive files - routine investigative checks and surveys negative		195
I. Closed files		
a) suspects deceased	384	
b) date of birth pre-1904, no further investigation	6	
c) closed prior to 1998	<u>510</u>	
Total:		900
II. Closed files		
a) Criminal Proceedings (pre- 1995)		
i) cases stayed	2	
ii) cases lost	2	
b) Federal Court and/or Immigration & Refugee Board proceedings		
i) individuals deceased	3	
– during revocation of citizenship	2	
– during deportation	0	
ii) cases stayed	0	
iii) cases lost	3	
iv) completed cases and/or individuals no longer in Canada	<u>3</u>	
Total of Closed Files II:		<u>15</u>

Total number of individuals listed in inventory to date

1,664

OLD WAR TWO CASES – INVENTORY FLOW CHART (total 1664)



APPENDIX F

MODERN-DAY WAR CRIMES IMMIGRATION CASES 2000-2001

Immigration cases (overseas)

Cases under Investigation	300	(125)
Immigrant cases refused 19(1)(j) or (l)	193	(107)
Visitor cases refused 19(1)(j) or (l)	130	(111)
Cases withdrawn with 19(1)(j) or (l) allegations	45	(20)
Cases refused on other grounds	276	(343)
Cases with visas issued after 19(1)(j) or (l) investigation	1430	(302)
Total cases overseas	2384	(1008)

Refugee claimant cases (in Canada)

Cases under investigation by CIC	311	(363)
Cases with insufficient evidence to go to the CRDD	906	(1303)
Cases in which Minister intervened	227	(127)
Exclusions by CRDD	53	(35)
Cases found not to be refugees for other reasons	49	(15)
Cases not excluded and found to be refugees	16	(11)
Cases withdrawn from CRDD or abandoned	23	(12)
Total refugee claimant cases in Canada	1585	(1866)

Immigrant cases (in Canada)

Cases under investigation by CIC	208	(135)
Cases with insufficient evidence to warrant further action	41	(13)
Cases pending before an adjudicator 19(1)(j) or (l)	17	(16)
Cases described before an adjudicator 19(1)(j) or (l)	8	(0)
Cases not described by an adjudicator 19(1)(j) or (l)	3	(1)

Total Immigrant cases in Canada	277	(165)
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<u>TOTAL CASES EXAMINED (Canada and overseas)</u>	4246	(3039)
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Persons removed from Canada	42	(38)
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The numbers in brackets are data from the previous fiscal year.

APPENDIX G

MODERN-DAY WAR CRIMES IMMIGRATION CASES – CUMULATIVE

Immigration cases (overseas)

Cases under Investigation	521
Immigrant cases refused 19(1)(j) or (l)	323
Visitor cases refused 19(1)(j) or (l)	257
Cases withdrawn	65
Cases refused other grounds	921
Cases with visa issued after 19(1)(j) or (l) investigation	1732
Total cases overseas	3819

Refugee claimant cases (in Canada)

Cases under investigation by CIC	686
Cases with insufficient evidence to go to the CRDD	3257
Cases in which Minister intervened	436
Exclusions by CRDD	278
Cases found not to be refugees for other reasons	127
Cases not excluded and found to be refugees	52
Cases withdrawn from CRDD or abandoned	64
Total refugee claimant cases in Canada	4900

Immigration cases (in Canada)

Cases under investigation by CIC	496
Cases with insufficient evidence to warrant further action	71
Cases pending before an adjudicator 19(1)(j) or (l)	51
Cases described by an adjudicator 19(1)(j) or (l)	24
Cases not described by an adjudicator 19(1)(j) or (l)	10
Total immigrant cases in Canada	653

TOTAL CASES EXAMINED (Canada and overseas) 9372

Persons removed from Canada 187

SELECTED CASE SUMMARIES

Only the names of persons whose cases were considered by the Federal Court (as a result of which their names became public knowledge) are provided in the summaries.

Person 1 – citizen of Sudan who arrived at Vancouver International Airport from London on November 12, 2000 without any travel or identity documents and claimed refugee status. Subject was detained for examination and inquiry. Subject admitted that he was a member of the National Democratic Alliance (NDA) an umbrella organization comprised of several opposition groups including the Sudan People's Liberation Army (SPLA), a group which is known to be responsible for gross human rights violations. During examination, the subject also admitted that he was involved in an armed attack on a military garrison near Kassala the week before coming to Canada. An inquiry was opened at which time the subject withdrew his refugee claim and conceded his inadmissibility to Canada. An exclusion order was issued and the subject was removed from Canada on December 2, 2000.

Person 2 – citizen of Guatemala who arrived at the port of Douglas, B.C. on July, 11, 1994 claiming refugee status. During the processing of his claim, information came to light that the subject was a second sergeant in an artillery corps from 1986 to 1989. The timing and location of his military service coincided with human rights violations that occurred which included mass killings, kidnapping, torture, and the systematic destruction of crops, livestock, and housing. He admitted that his duties included village patrols which he conducted with members of the Kabiles, a commando unit. He captured villagers who were turned over to the intelligence unit for interrogation, resulting in their deaths. Action was taken to seek his exclusion from the refugee determination process, but the subject abandoned his claim on December 21, 1999. A new inquiry was opened resulting in a deportation order based on the subject's involvement in war crimes, and he was removed to Guatemala on October 27, 2000.

Person 3 – citizen of Somalia, whose presence in Canada was detected on January 5, 2001. The War Crimes database at NHQ revealed that the subject was a senior military official throughout the duration of the Barré regime, having achieved the position of Brigadier General. It was determined that he was staying in Canada with his spouse, a Canadian citizen, and had been previously refused permanent residence in Canada. As the former Barré government is designated as a regime that has engaged in crimes against humanity, a direction for inquiry was issued and a warrant for the subject's arrest was executed on March 1, 2001. A deportation order was issued on March 29, 2001, and the subject effected his own removal from Canada the following day.

Anselme IKOLO ENGAMBI – citizen of the Democratic Republic of Congo (DRC) claimed to have arrived surreptitiously on foot on July 11, 1996 and made a refugee claim in Montreal one week later. The subject was a member of the Zairian army (FAZ) from 1972 to 1996 and became the Chief of Logistics of the National Gendarmerie in Kinshasa in 1995. The Zairian army is known for its human rights abuses and at that time was directed by the now-deposed dictator Motubu Sese Seko. The Minister's representative intervened, and on December 7, 1998, the Immigration and Refugee Board concluded that Mr. Engambi should be excluded from the refugee determination process under Article 1(F)(a) because he had committed crimes against humanity. His removal order became effective on January 28, 1999. Mr. Engambi initiated legal proceedings before the Federal Court which were subsequently withdrawn. Notwithstanding a policy of suspension of removals to the DRC, the circumstances of this case warranted an exception, and Mr. Engambi was removed from Canada under escort on April 14, 2000.

Person 4 – citizen of Peru who claimed to have entered Canada surreptitiously on foot on May 28, 1998 and claimed refugee status in Montreal the following day. The refugee claim hearing took five days over the period of April 15, 1999 to January 1, 2000. The Minister's representative argued that the exclusion clause be invoked as the person committed crimes against humanity. During his military service in 1986, he participated in quashing a prisoner riot at the El Fronton penitentiary. According to documentary evidence presented to the tribunal by the Minister's representative, rocket launchers and heavy artillery were used by the military to restore order at the prison. It is estimated that of 150 prisoners, only 30 survived the attack. The tribunal found that the person did not have a credible basis for a claim and also determined that the exclusion clause should be applied. He was removed to Peru on June 1, 2000.

Person 5 – citizen of Peru arrived without travel documents and claimed refugee status on his arrival at Lacolle in Quebec on August 25, 1999. At his refugee hearing, the Minister's delegate requested that the person's claim be excluded as he was complicit in crimes against humanity. Several members of the Shining Path, a terrorist organization, lived with him over a three year period. Although the person claims not to have personally committed atrocities, he was involved in surveillance and strategic activities which constitute complicity. The tribunal ordered him excluded from refugee consideration on September 14, 2000; he was detained and removed from Canada under escort on October 7, 2000.

Léopold MUTANDA MALU – citizen of the Democratic Republic of Congo claimed refugee status on arrival at Lacolle on October 17, 1995. The Minister's delegate provided notice on September 12, 1996 that intervention would be made to exclude Mr. Mutanda from refugee consideration due to his military service in the Zairian army which is known for having committed crimes against humanity. Mr. Mutanda served in the Zairian army from 1974 to 1995.

having achieved the rank of Lieutenant-Colonel. Documentary evidence was presented to the tribunal demonstrating the atrocities, including riots and looting, that were inflicted on the civilian population by the armed forces and its senior officers between 1991 and 1993. On October 22, 1998, the tribunal ruled that Mr. Mutanda's claim was excluded from the refugee determination process. On March 16, 1999, the Federal Court refused leave to appeal the decision of the Board and his removal order became effective this date. On March 24, 1999, Mr. Mutanda submitted a request to be allowed to remain in Canada on humanitarian grounds which was rejected. Notwithstanding a policy of suspension of removals to the DRC, an exception was made due to the circumstances of the case and he was removed from Canada under escort on December 3, 2000.

Person 6- citizen of Djibouti arrived in Fort Erie and made a claim to refugee status in Montreal in September 1995. His refugee claim took five sittings, from January 24, 1996 to February 19, 1997. Initially he claimed to be a citizen of Somalia, but during the hearing, claimed that he was actually from Djibouti. Evidence produced at the hearing established that he was a senior official in the security forces working as an intelligence officer and then as chief of the anti-terrorism unit. His work resulted in family members of opposition members being kidnapped and beaten. It is known that during this period, the torturing of civilians was not uncommon. The tribunal concluded that the person should be excluded from the refugee determination process, and he was removed from Canada on March 18, 2001.

Eulalio CABRERA – citizen of Guatemala arrived at Lacolle without travel documents and claimed refugee status on July 29, 1993. He was accompanied by his spouse and three children. A refugee hearing was held on July 19, 1994 and July 21, 1994 where evidence was introduced that Mr. Cabrera was a police officer in Guatemala for 20 years. While a police inspector, he was complicit in the kidnapping and murder of two civilians. The tribunal rendered its decision July 10, 1995, excluding him from refugee determination and finding his accompanying family members not to be refugees. Mr. Cabrera appealed this decision to the Federal Court, and on May 25, 1996, the Court quashed the decision and ordered that the case be reheard. Three sittings were held from January 6, 1997 to May 5, 1997, and on October 15, 1997, the tribunal rendered its decision again excluding Mr. Cabrera from refugee determination due to his complicity in crimes against humanity. This tribunal also determined that his accompanying family members were convention refugees. On October 30, 1997, Mr. Cabrera filed another judicial review application with the Federal Court, but the application was rejected on December 23, 1998. Following this decision, officials were unable to locate him and a warrant was issued for his arrest. Officials were subsequently informed by another government that Mr. Cabrera and his family had entered its territory and his removal order was considered executed on May 25, 2000.

Person 7 – citizen of Honduras arrived at Pearson International Airport on December 7, 1995 and made a claim to refugee status. Before his claim could be heard, he married a Canadian citizen and withdrew his refugee claim. A sponsorship application was submitted, but the department then lost contact with him as he did not respond to call-in notices. The sponsorship was subsequently withdrawn, but during the processing of the application, it was learned that he had previously admitted to having carried out killings while in the Honduran Army. The person was reported for inquiry in February 1996 as a person who had committed crimes against humanity. An inquiry was held, and he was ordered removed from Canada on October 1, 1998. In her reasons for decision, the adjudicator stated that there were reasonable grounds to believe that the person participated in the kidnapping, torture and murder of prisoners and carried out such acts as suffocation of persons with a rubber mask, attaching a wire to genitals and administering electricity, assault with a knife and obtaining statements from prisoners under duress and by coercion. He was removed under escort on March 1, 2001 to Honduras and was met on arrival by representatives from the local and national police, Interpol and the Human Rights Commission.

Person 8 – citizen of Turkey, arrived in Canada on February 27, 2000 and was reported as inadmissible to Canada due to his involvement in war crimes. He was detained for inquiry and found described by the adjudicator as a person who, as a member of the Turkish army for two years, had actively participated in the torture of Kurdish civilian prisoners. He withdrew his refugee claim and was removed from Canada under escort on November 8, 2000.

Person 9 – citizen of Iran, came to Canada with his family in 1993. They destroyed their travel documents en route to Canada and claimed refugee status on arrival. The person concerned was a captain in the Iranian navy during the Shah's regime. The IRB rendered its decision on January 12, 1995 ordering his exclusion from refugee determination by virtue of his participation in the activities of SAVAK (the Shah's security service) during his sixteen years of military service. He appealed to the Federal Court on February 27, 1995 and on October 23, 1995 the Federal Court ordered a new refugee determination hearing. A second tribunal rendered its decision on February 1, 1999 also excluding him from refugee protection. He was convicted in Canada of forgery and fraud in 1997 and made threats to kill and assault his family members and then made threatening phone calls to immigration officials. Prior to his removal, the department received over 200 messages faxed from throughout North America pleading for a stay of his removal to Iran. The person was able to obtain a visa to enter Costa Rica and effected his own removal from Canada on April 4, 2000.

Person 10 – citizen of Lebanon who arrived at Pearson International Airport on September 30, 1998 on a false Belgian passport and claimed refugee status. He claimed that he was a special agent in the Hezbollah involved in planning attacks on Israeli settlements. He subsequently married a permanent resident and withdrew his refugee claim. However, the sponsorship was not pursued as his spouse was under age, and the marriage subsequently broke down. He failed to appear for interview and a warrant was issued for his arrest in October 1999. In the struggle to arrest him, the subject was charged for assaulting two Metro Toronto Police officers and trying to grab their guns. He was charged and convicted for this offence and was removed from Canada under escort on November 26, 2000 upon completion of his jail sentence.

Person 11 – citizen of Rwanda who applied at a Canadian mission for a visa to visit Canada in October 2000. As a result of war crimes screening by the visa officer, the case was referred to the War Crimes unit for further investigation. It was revealed that subject was a senior official in the Rwandan military during the 1994 genocide. The application for a visa was refused as the applicant was an senior official of a designated regime.

Person 12 – Rwandan religious figure who applied for resettlement at a Canadian mission. Although this individual was not included in the War Crimes data base, an alert visa officer had reviewed a report prepared by an NGO on the involvement of religious figures in the genocide and found a chapter on this particular subject. Allegations suggested that the applicant had personally removed Tutsis hiding in his house and compound and handed them over to death squads. Although they were killed before his eyes, he continued to hand over other Tutsis hiding on his property. The request for resettlement was refused for complicity in crimes against humanity.

Person 13 – citizen of Iran who applied at a Canadian mission following sponsorship by his Canadian spouse. The subject had been a martial arts teacher for an internal security service. The subject had previously made a refugee claim in Canada and was excluded from refugee protection due to his involvement in crimes against humanity. It was asserted that the skills taught by him were used to torture dissidents. Based on the previous exclusion by the IRB, the application was refused.

Person 14 – citizen of Sierra Leone, who applied at a Canadian mission for resettlement after having fled the country in 1999. The subject had been a leader of a Civil Defense Unit in Sierra Leone. Investigation revealed that suspected rebels were executed by Civil Defense Units in the area for which the subject was responsible. The subject's application for resettlement was refused for complicity in crimes against humanity.

Person 15 - a senior military official from Bosnia-Herzegovina applied for resettlement at a Canadian mission after being sponsored by his daughter, a Canadian citizen. Investigation revealed that he had held direct command responsibility of military forces which forcibly mobilized ethnic Serb civilians into work units of the Army of Bosnia-Herzegovina and mistreated those who resisted such mobilization. The application was refused after the visa officer determined that the official had been complicit in a war crime (enslavement) and a crime against humanity (forced participation in the army of a hostile power) during the war in Bosnia.