



Citizenship and  
Immigration Canada

Citoyenneté et  
Immigration Canada

# ENF 18

War crimes and crimes against humanity

## ENF 18 War crimes and crimes against humanity

Updates to chapter .....	2
1. What this chapter is about .....	3
2. Program objectives .....	3
3. The Act and Regulations .....	3
3.1. The <i>Crimes Against Humanity and War Crimes Act</i> .....	3
3.2. The <i>Extradition Act</i> .....	4
3.3. The <i>Immigration and Refugee Protection Act</i> .....	4
3.4. The <i>Citizenship Act</i> .....	5
3.5. Forms .....	5
4. Instruments and delegations .....	5
5. Departmental policy .....	5
6. Definitions .....	6
6.1. Differences between genocide and crimes against humanity .....	6
6.2. Differences between war crimes and crimes against humanity .....	6
6.3. Differences between crimes against humanity/war crimes and terrorist acts .....	7
7. Procedure: Establishing inadmissibility under A35(1)(a) .....	7
7.1. Establishing complicity .....	8
7.2. Establishing complicity—brutal (limited purpose) organizations .....	8
7.3. Establishing complicity—non-brutal organizations .....	9
7.4. Defences .....	10
7.5. Cases involving prior exclusion by the Refugee Protection Division (RPD) .....	10
8. Procedure: Establishing inadmissibility under A35(1)(b) .....	11
8.1. Designation of regimes .....	11
8.2. Requirements to establish inadmissibility .....	11
8.3. Opportunity for person to be heard .....	13
8.4. Consultation with RZTW .....	13
9. Procedure: How to identify war criminals .....	13
9.1. Determining the general profile .....	13
9.2. Administering specific questionnaires .....	14
9.3. Security vetting of temporary residents .....	14
10. Procedure: Resources and support available .....	14
10.1. Modern War Crimes System (MWCS) .....	14
10.2. Internet resources .....	15
10.3. General program assistance .....	15
11. Roles and responsibilities of the Modern War Crimes section (RZTW) .....	15
Appendix A War crimes amendments to the <i>Immigration Act</i> and Regulations .....	17
Appendix B <i>Crimes against Humanity and War Crimes Act</i> .....	18
Appendix C <i>Rome Statute of the International Criminal Court</i> .....	19
Appendix D Sample refusal letters .....	25
Appendix E Background to Canada's War Crimes Program .....	30

## **ENF 18 War crimes and crimes against humanity**

### **Updates to chapter**

#### **Listing by date:**

**Date: 2005-12-15**

Changes were made to ENF 18 to reflect the Citizenship and Immigration Canada (CIC) and Canada Border Services Agency (CBSA) policy and service delivery roles.

Appendix E has been removed and a Web site address has been given to direct the reader to the list of designated regimes online. Appendix F was renamed accordingly.

**2004-01-23**

A bullet was added to Appendix E of chapter ENF 18 and now reads as follows:

- designated November 21, 2003, the government of Ethiopia under Mengistu Haile Mariam for the period of September 12, 1974 to May 21, 1991.

# ENF 18 War crimes and crimes against humanity

---

## 1. What this chapter is about

This chapter describes how to determine if persons are inadmissible to Canada under any of the statutes dealing with war crimes and crimes against humanity.

---

## 2. Program objectives

Individuals who have committed or who are complicit in the commission of a war crime, a crime against humanity, genocide, or any other reprehensible act, regardless of when or where these crimes occurred, are not welcome in Canada.

A four-pronged approach is taken when dealing with modern-day war criminals:

- refusing their overseas visa applications as permanent residents, refugees, or temporary residents;
- denying their entry to Canada at ports of entry;
- excluding them from the refugee determination process in Canada; and
- removing them from Canada.

---

## 3. The Act and Regulations

The Canadian statutes which authorize enforcement action against war criminals or persons who have committed genocide or crimes against humanity and a brief description of their relevant provisions are:

- The *Crimes Against Humanity and War Crimes Act*, section 3.1 below;
- The *Extradition Act*, section 3.2 below;
- The *Immigration and Refugee Protection Act*, section 3.3 below;
- The *Citizenship Act*, section 3.4 below.

The complete texts of the four statutes will be found on the Department of Justice web site at: <http://www.canada.justice.gc.ca>

---

### 3.1. The *Crimes Against Humanity and War Crimes Act*

This 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;

## ENF 18 War crimes and crimes against humanity

- recognizes the need to provide restitution to victims of offences; and
- provides a mechanism to do so.

A new "inadmissible class" was created and came into force on February 1, 1993. It was amended on October 23, 2000, with the proclamation of the *Crimes Against Humanity and War Crimes Act*.

Paragraph A35(1)(b) now reads as follows:

### 35. (1)

(b) being a prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the *Crimes Against Humanity and War Crimes Act*.

The meaning of "senior official in the service of a government" is further clarified by R16 which reads:

**16.** For the purposes of paragraph 35(1)(b) of the Act, a prescribed senior official in the service of a government is a person who, by virtue of the position they hold or held, is or was able to exert a significant influence on the exercise of government power or is or was able to benefit from their position, and 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 services;
- (f) ambassadors and senior diplomatic officials; and
- (g) members of the judiciary.

The rationale for these provisions is that, although such persons may never have personally participated in terrorism or gross human rights abuses, they nevertheless must share and accept the responsibility for such practices.

---

### 3.2. **The Extradition Act**

This Act:

- in addition to allowing Canada to extradite to states, allows for the extradition to the International Criminal Tribunals for Rwanda and the former Yugoslavia;
- allows for the use of different forms of evidence that will facilitate extradition 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;
- establishes clear procedures for the extradition process.

---

### 3.3. **The Immigration and Refugee Protection Act**

This Act:

## ENF 18 War crimes and crimes against humanity

- provides for the examination abroad of foreign nationals and persons seeking to visit Canada where there is a temporary resident visa requirement;
- provides two specific grounds of inadmissibility for persons involved in war crimes, genocide 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, genocide or crimes against humanity;
- limits appeal rights of persons involved in war crimes and crimes against humanity.

---

### 3.4. **The *Citizenship Act***

This 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;
- 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.

---

### 3.5. **Forms**

Nil.

---

## 4. **Instruments and delegations**

The authority to designate a regime is not delegated. Only the Minister of Public Safety and Emergency Preparedness (PSEP) may designate a regime pursuant to A35(1).

---

## 5. **Departmental policy**

In dealing with alleged war criminals and persons who have committed crimes against humanity there are several mechanisms available. The use of one or more of these mechanisms is based on a number of factors, including Canada's obligations under domestic and international law, timeliness, effectiveness, and likelihood of success. These mechanisms are:

- criminal prosecution in Canada;
- extradition to a foreign government;
- surrender to an international tribunal;
- revocation of citizenship and deportation;
- denial of visas to persons outside of Canada;

## ENF 18 War crimes and crimes against humanity

- denial of access (exclusion) to Canada's refugee determination system;
- admissibility hearing and removal under the *Immigration and Refugee Protection Act*.

Extradition to a foreign government or surrender to an international tribunal will only occur upon request and will be considered in accordance with Canada's obligations under international law. Criminal prosecution in Canada is taken under Canada's *Crimes Against Humanity and War Crimes Act*. This legislation provides a more effective basis for prosecution than the *Criminal Code*, but still presents many challenges in the research and development of evidence and identification and location of witnesses, given that a great deal of this case development must be done abroad.

---

### 6. Definitions

Crimes against humanity	Criminal conduct such as murder, extermination, enslavement, imprisonment, torture, sexual violence, any other inhumane act or persecution that is committed against any civilian population or any identifiable group whether or not the state is at war, and regardless of whether the act or omission is a violation of the territorial law in force at the time. The acts or omissions may have been committed by state officials or private individuals, and against their own nationals or nationals of other states.
Genocide	An act or omission committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, whether committed in times of peace or war, by state officials or private individuals.
War crimes	Acts or omissions committed during an armed conflict (war between states and civil war) which violate the rules of law as defined by international law. These acts or omissions include the ill-treatment of civilians within occupied territories, the violation and exploitation of individuals and private property, and the torture and execution of prisoners.

Legal definitions are found in section 4 of the *Crimes against Humanity and War Crimes Act*. Also see Appendix B.

---

#### 6.1. Differences between genocide and crimes against humanity

Genocide is considered a particularly reprehensible form of a crime against humanity. As a result, every act of genocide is also a crime against humanity; however, the converse is not true. The difference between genocide and crimes against humanity is:

- genocide means an act committed with intent to destroy the group, while a crime against humanity means an act committed as part of an widespread or systematic attack, the perpetrator being aware of the widespread or systematic attack;
- the behaviour targeted for genocide is more reprehensible, namely the destruction in whole or in part of a group, while for crimes against humanity it is widespread or systematic attack;
- the circle of victims for genocide is smaller, namely a national, ethnic, racial, or religious group compared to any civilian population for crimes against humanity.

---

#### 6.2. Differences between war crimes and crimes against humanity

- Isolated reprehensible acts do not amount to crimes against humanity, while even one atrocity can result in the commission of a war crime. This does not mean that a single act can never be a crime against humanity, but it has to be shown that this one act was the result of the implementation of widespread or systematic policy.

## ENF 18 War crimes and crimes against humanity

- War crimes, even those committed in a civil war, can only occur when a certain threshold of intensity is reached between the two parties in the conflict. For example, police officers conducting themselves in a violent manner during riots does not constitute a war crime but could be a crime against humanity.
- Crimes against humanity can occur in any setting, i.e., during international war, civil war, and in times of peace. This would mean that a particular atrocity, e.g., the killing of a civilian during a civil war, could be both a war crime and a crime against humanity.
- While some types of atrocities can be both war crimes and crimes against humanity, other acts will fall under one category only, regardless of whether they were committed in times of war or peace. For example, destruction of certain types of property can be a war crime but can never be a crime against humanity, while persecution is a crime against humanity but not a war crime.
- In the application of A35(1)(a), the numbers of persons who have committed war crimes is relatively low. The majority of cases described in A35(1)(a) involve crimes against humanity.

---

### 6.3. Differences between crimes against humanity/war crimes and terrorist acts

Terrorist acts have a wider application than war crimes/crimes against humanity because:

- they can be committed against both persons and property;
- they can be isolated incidents—they do not have to be committed in a widespread or systematic manner;
- they can be committed both in times of war or peace.

This wider application is also reflected in the *Immigration and Refugee Protection Act*, which makes any person who is or was a member of a terrorist organization inadmissible.

An officer may have an applicant who fits the description of all three crimes; for example, the person belonged to a group which conducted a bombing campaign during a civil war. It is preferable to find such a person described in A35(1)(c) rather than in A35(1)(a), as the concept of membership is easier to establish than the concept of complicity established by the Canadian courts in A35(1)(a) cases. The definitions of war crimes, genocide, and crimes against humanity contained in Canada's *Crimes Against Humanity and War Crimes Act* are derived from the *Rome Statute of the International Criminal Court*.

---

**Note:** Refer to Appendix C which lists articles 6, 7 and 8 of the Rome Statute. These articles provide further clarification and examples of what constitutes war crimes, crimes against humanity and genocide.

---

## 7. Procedure: Establishing inadmissibility under A35(1)(a)

As amended on October 23, 2000 under the former Act, paragraph A35(1)(a) under the new legislation reads as follows:

**35. (1)**

(a) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*



## ENF 18 War crimes and crimes against humanity

This includes the following:

- persons who commit an offence;
- persons who attempt to commit an offence;
- persons who aid and abet, encourage, or are involved in the planning of an offence; if the person is a member of an organization whose members committed the offence, the higher the position occupied by the person the more likely that the person would be involved;
- persons who are complicit when an offence is committed.

---

### 7.1. Establishing complicity

A person is considered complicit if, while aware of the commission of atrocities, the person contributes, directly or indirectly, remotely or immediately, to their occurrence. Active or formal membership in the organization responsible for committing the atrocities is not required. For example, the act of guarding an execution site, even if one had not participated in an execution, constitutes complicity.

Case law in Canadian courts has determined that complicity can be found in the following three situations:

- being present at the scene of a war crime, a crime against humanity or genocide;
- being a member of an organization involved in such crimes; or
- being a member of an organization with a limited brutal purpose.

---

### 7.2. Establishing complicity—brutal (limited purpose) organizations

The Federal Court has stated that, when looking at membership in an organization, the first step is to look at the type of organization. If the main purpose of the organization is involvement in genocide, war crimes, or crimes against humanity, membership in such an organization is usually sufficient to make the person complicit. (Examples are secret police, security organizations, terrorist groups, death squads, or security courts.)

A brutal limited purpose organization can be described as:

- primarily directed to a limited brutal purpose;
- having perpetrated international offences in the ongoing and everyday course of its activities and with a limited and brutal purpose;
- having the sole intent and purpose of violently and brutally bringing about a course of events; or
- achieving its main purpose by means of crimes against humanity or war crimes.

The second step is to establish the involvement with the organization. Active or formal membership in the organization responsible for committing the atrocities is not required. In order to establish involvement, one or more of the following elements must be present:

- person has devoted themselves full time or almost full time to the activities of the organization;

## ENF 18 War crimes and crimes against humanity

- person is associated with the members of the organization (the longer the period of time, the stronger the involvement); or
- person joins voluntarily and remains in the group to add their personal efforts to the group's cause.

The third step is to establish that the person has knowledge of the limited brutal purpose of the organization. This knowledge may be inferred from the types of activities the organization is involved with. It may be presumed that a person who is involved with an organization is aware of the brutal nature of this organization; however, this presumption is rebuttable.

---

### 7.3. Establishing complicity—non-brutal organizations

If the commission of war crimes or crimes against humanity is not the main function of an organization and is not a part of its regular operations but is incidental to its mandate, the following three elements must be considered:

- the type of organization;
- the activities of the person;
- the intention of that person in relation to the organization.

The types of organizations that could be involved are:

- regular armed forces;
- militias;
- ministries of the interior, including prisons;
- regular police forces;
- liberation movements and political parties;
- other state structures which have the capacity to affect large numbers of people such as ministries and courts.

Canadian courts have determined that the following activities constitute complicity:

- handing over people to organizations (brutal or non-brutal) with the knowledge that these people would come to harm;
- providing information to organizations on individuals which result in harm to these individuals;
- providing support functions, such as being an intelligence officer, a driver, or a bodyguard to members of the organization;
- assisting in increasing the effectiveness of a limited brutal purpose organization, for example, by being a policeman in charge of political prisoners at a military hospital or being in charge of legal training with a police force.

The following can determine the intention of that person in relation to the organization:

## ENF 18 War crimes and crimes against humanity

- knowledge of war crimes or crimes against humanity, in that the individual knew, must have known about the activities committed by the organization or had been wilfully blind to them;
- the greater the number of atrocities committed by the organization, the more complicity may be assumed;
- the longer the duration of time that the individual belonged to the organization, the more likely complicity or direct involvement may be assumed;
- having a common purpose, namely:
  - ◆ if it can be established that a person has refused to participate in or has complained about the commission of atrocities by others, this person does not share their common purpose and lacks intent;
- if the person has been disciplined as a result of the refusal or complaint or resigned from the organization, the lack of intent is even stronger; the circumstances surrounding dissociation, such as the earliest possible time the person had to leave, the reason for leaving, and the consequences of leaving the organization, if any, should be considered.

---

### 7.4. Defences

A common defence of a person who committed a war crime, genocide, or a crime against humanity is based on the concept of superior orders; i.e., the position held required the individual to follow orders from the government or a superior officer. Although this defence may be used in arguing for a lighter sentence in a criminal prosecution, it is not relevant for the purposes of the *Immigration and Refugee Protection Act* and cannot overcome inadmissibility under A35(1)(a).

The only defence that has been considered by the courts (in the context of refugee and immigration law) is that the person acted under duress. The defence of duress can be accepted if the following three conditions are met:

- it results from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person;
- the person acts necessarily and reasonably to avoid this threat;
- the person does not intend to cause a greater harm than the one sought to be avoided.

When this defence is offered and it appears that the ground of inadmissibility may be overcome, it is recommended that the matter be referred to the Modern War Crimes section (RZTW) for legal advice prior to rendering a decision on admissibility.

---

### 7.5. Cases involving prior exclusion by the Refugee Protection Division (RPD)

R15(b) has established that exclusion under section F of Article 1 of the Refugee Convention [1F(a)] is equivalent to a finding of inadmissibility under A35(1)(a). Therefore, where the applicant has previously been in Canada and the officer has evidence that the RPD has excluded the applicant from refugee determination under 1F(a), in most instances there is no need to conduct any further investigation to establish inadmissibility under A35(1)(a).

## ENF 18 War crimes and crimes against humanity

There will be situations where the person provides the officer with additional information that was not available at the time of the RPD exclusion. Any such additional information must be accepted and considered. Where relevant and credible evidence is brought forward that may bring into doubt the validity of the 1F(a) exclusion, the matter should be referred to RZTW for advice.

R15 also considers a decision by any international criminal tribunals established by resolution of the Security Council of the United Nations or by the International Criminal Court as a conclusive finding for the purposes of inadmissibility under A35(1)(a), as well as a decision by a Canadian court pursuant to the *Criminal Code* or the *Crimes against Humanity and War Crimes Act*.

---

**Note:** In all refused cases, a copy of the refusal letter should be faxed to RZTW at (613) 941-0241 in order that a lookout can be placed in EII.

**Note:** For samples of refusal letters under A35(1)(a), refer to Appendix D.

---

### 8. Procedure: Establishing inadmissibility under A35(1)(b)

---

#### 8.1. Designation of regimes

A person cannot be described in A35(1)(b) unless the government concerned has been designated by the Minister of PSEP as a regime that has been involved in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the *Crimes Against Humanity and War Crimes Act*.

---

**Note:** For a listing of governments that have been designated, see [http://www.cbsa-asfc.gc.ca/general/enforcement/annual/annual7-e.html#P532\\_53362](http://www.cbsa-asfc.gc.ca/general/enforcement/annual/annual7-e.html#P532_53362)

---

The Modern War Crimes (RZTW) and the Intelligence Coordination Research (RZI) sections of the Canada Border Services Agency, NHQ, have the responsibility for researching the human rights records of regimes and providing a recommendation to the Minister that a particular government should be designated. This recommendation is provided in consultation with CIC's International Region and Foreign Affairs Canada. The following are among the factors that will be considered in deciding whether a regime should be designated:

- 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.

Where visa offices have information that would support the designation of a particular regime based on the above requirements, they are invited to submit a request to RZTW.

#### 8.2. Requirements to establish inadmissibility

Persons who are described in A35(1)(b) may be broken down into three categories, each with its own evidentiary requirements, as set out in the following table:

Category	Evidence required	Notes
----------	-------------------	-------

## ENF 18 War crimes and crimes against humanity

<p>1. Persons described in R16(a), R16(b), R16(f) ambassadors only, and R16(g)</p>	<ul style="list-style-type: none"> <li>• Designation of regime</li> <li>• Proof of position held</li> </ul>	<p>A person in this group is presumed to be or to have been able to exert significant influence on the exercise of that government's power. This is a non-rebuttable presumption which has been upheld by the Federal Court of Appeal. In other words, the fact that a person is or was an official in this category is determinative of the allegation. Aside from the designation and proof that the person holds or held such a position, no further evidence is required to establish inadmissibility.</p>
<p>2. Persons described in R16(c), R16(d), R16(e), and R16(f) senior diplomatic officials</p>	<ul style="list-style-type: none"> <li>• Designation of regime</li> <li>• Proof of position held</li> <li>• Proof that position is senior (see the note following this table)</li> </ul>	<p>In addition to the evidence required, it must be established that the position the person holds or held is a senior one. In order to establish that the person's position was senior, the position should be related to the hierarchy in which the functionary operates. Copies of organization charts can be located from the <i>Europa World Year Book</i>, <i>Encyclopedia of the Third World</i>, <i>Country Reports on Human Rights Practices</i> (U.S. Department of State) and the Modern War Crimes System (MWCS) database. If it can be demonstrated that the position is in the top half of the organization, the position can be considered senior. This can be further established by evidence of the responsibilities attached to the position and the type of work actually done or the types of decisions made (if not by the applicant then by holders of similar positions).</p>
<p>3. Persons not described in R16</p>	<ul style="list-style-type: none"> <li>• Designation of regime</li> <li>• Proof that the person could exercise significant influence or was able to benefit from the position</li> </ul>	<p>In addition to the designation of the regime, it must be established that the person, although not holding a formal position, is or was able to exercise significant influence on the actions or policies of the regime or was able to benefit from the position.</p> <p>A person who assists in either promoting or sustaining a government designated by the Minister can be characterized as having significant influence over its policies or actions. The concept of significant influence is not limited to persons who made final decisions on behalf of the regime; it also applies to persons who assisted in the formulation of these policies, e.g., by providing advice, as well as persons responsible for carrying them out. If a person conducts activities which directly or indirectly allow the regime to implement its policies, the test for significant influence is met. The phrase "government power" in R16 is not limited to powers exercised by central agencies or departments but can also refer to entities that exercise power at the local level.</p> <p>Once it is established that the person exerted significant influence or benefited, the extent or degree of this influence or benefit is not relevant</p>

## ENF 18 War crimes and crimes against humanity

		to the finding of inadmissibility; however, they are factors that could be considered by the Minister when deciding whether authorizing the person to enter Canada would not be detrimental to the national interest.
--	--	---

**Note:** There is no definition of "senior" in the *Immigration and Refugee Protection Act* and no case law from the Federal Court. However, in considering this issue in relation to a military position, a tribunal of the Immigration Appeal Division determined that:

"A senior member of the military would be a person occupying a high position in the military and would be a person of more advanced standing and often of comparatively long service. Advanced standing would be reflected in the responsibilities given to the person and the positions occupied by the person's immediate superiors." [T99-14995, May 11, 2001]

### 8.3. Opportunity for person to be heard

If an officer is contemplating the refusal of a person under A35(1)(b), the applicant must be given an opportunity to demonstrate that their position is not senior as described in R16 (category 2) or that they did not or could not exert significant influence on their government's actions, decisions, or policies (category 3). This can be done by mail or by personal interview. In either case, the officer should provide the applicant with copies of all unclassified documents that will be considered in assessing admissibility.

### 8.4. Consultation with RZTW

Officers should be aware of the sensitive nature of A35(1)(b) and the need for careful and thorough consideration of all relevant information. It is not intended that officers should cast the net so widely that all employees of a designated regime are considered inadmissible.

Before considering the refusal of an applicant whose position is not listed in R16, officers are requested to consult with RZTW.

CIC officers must seek guidance from RZTW on these types of cases, if the officers believe that an applicant may be inadmissible pursuant to A35(1)(b).

**Note:** In all refused cases, a copy of the refusal letter should be faxed to RZTW in order that a lookout can be placed in EII.

**Note:** For samples of refusal letters under A35(1)(b), refer to Appendix D.

## 9. Procedure: How to identify war criminals

### 9.1. Determining the general profile

When reviewing an application for entry into Canada, applicants who are from countries where there is/was internal turmoil, genocide, war or where human rights abuses are/were widespread and who are one of the following qualify for more in-depth investigation:

- senior government officials, diplomats, or employees of the government;
- current and former military, para-military, security, intelligence and police personnel or individuals employed in technical or scientific backgrounds related to chemical or biological weapons;

## **ENF 18 War crimes and crimes against humanity**

- close family relatives of heads of government/state;
- persons suspected of being members of an organization that is involved in terrorism or crimes against humanity; or
- members of guerrilla groups.

---

### **9.2. Administering specific questionnaires**

RZTW/RZI have developed a series of specific questionnaires that should be employed as appropriate to the situation. Completion of these questionnaires may provide further information to assist officers in determining whether the person is inadmissible or whether more in-depth investigation is required.

These questionnaires are available in the Modern War Crimes System (MWCS).

---

### **9.3. Security vetting of temporary residents**

Chapter 2 of the IC manual outlines procedures for security screening of visitors. In addition, screening for A35(1)(a) and A35(1)(b) will be done by RZTW if the person is from a country where serious human rights abuses have occurred or the person is from a designated government/regime and is one of the following:

- member of a government delegation;
- military official;
- diplomat or employee of embassy or consulate;
- businessperson and/or trade delegate;
- academic;
- special event or conference participant.

Chapter 2 of the IC manual provides the required e-mail addressees/protocol for War Crimes (RZTW) screening of visa applicants. At the same time that the e-mail referral is made, a copy of the application form and supporting documentation should be sent by fax to RZTW at (613) 941-0241.

RZTW will consult with partners and advise the officer of the results of checks. Should insufficient details be provided, RZTW may not be able to complete checks within the 10 working day time frame and will likely request additional information from the officer. In order to minimize such delays, the information provided must be as complete as possible.

---

## **10. Procedure: Resources and support available**

---

### **10.1. Modern War Crimes System (MWCS)**

The MWCS is intended to be an extensive database of war crimes related information compiled by RZTW and provides Internet access to much of the open-source information currently held in the Resource Centre. The data contained in MWCS is a collection of research information gathered from various sources, including research papers, published information on country conditions and factual information related to the processing of individual cases. The database also provides Internet links to open-source information and is continuously populated with relevant information on human rights

## ENF 18 War crimes and crimes against humanity

violations, jurisprudence, organizations of concern and geopolitical conditions. The system indexes and cross-references by name, place, date and event. The Reference Tool/Web site of MWCS contains policy and operational instructions, screening tools, legal opinions, standardized forms and questionnaires, as well as the on-line training for existing and new functions. This research tool was designed to be used in conjunction with existing departmental systems such as FOSS and CAIPS.

MWCS is a unique, on-line tool available to all visa offices, enforcement units in Canada, as well as all ports of entry. If an officer wishes to obtain a password, requires any assistance in accessing information on the system, or would like to recommend material to be included in the system, they should contact NHQ-WC-NHQ-MWCS@cic.gc.ca.

---

### 10.2. Internet resources

Extensive open-source information is available through the Internet to assist officers in researching current and historical information from a wide variety of sources. Officers are encouraged to conduct their own research and identify further links or sites that may provide required information. These links and comments as to their usefulness should be forwarded to RZTW to assist in keeping the list of Internet addresses current.

---

**Note:** A listing of current Internet addresses will be found in MWCS.

---

### 10.3. General program assistance

There will be situations where officers require assistance in researching or obtaining information. As indicated throughout this chapter, there will also be situations where policy or legal advice is required or assistance in dealing with problematic or high profile cases. In such instances, officers may contact RZTW by e-mail at:

NAT-WARCRIMES@cic.gc.ca

Requests will be reviewed and forwarded to the appropriate analyst, researcher, or the legal adviser.

---

## 11. Roles and responsibilities of the Modern War Crimes section (RZTW)

The Modern War Crimes section (RZTW) is located within the Tactical Division, Immigration Intelligence, Canada Border Services Agency. Its mandate is to organize and direct program activities and to be accountable for the CBSA portion of Canada's War Crimes Program. (Appendix E gives the historical background of the Modern War Crimes Program.) A major responsibility of RZTW is to ensure that field officers in Canada and abroad have the tools, support and expertise to apply effectively the provisions of the *Immigration and Refugee Protection Act* pertaining to modern-day war criminals.

The Modern War Crimes section is involved in the following major activities:

#### Program management:

- represents the CBSA on the Interdepartmental Operations Group which is the vehicle through which the CBSA, DOJ and the RCMP
  - ◆ coordinate the activities of Canada's War Crimes Program;
  - ◆ develop policy objectives common to the CBSA, DOJ and the RCMP;
  - ◆ ensures that Canada complies with its international obligations; and



## **ENF 18 War crimes and crimes against humanity**

- ◆ oversees the cooperation with the international tribunals.

### **Case management:**

- provides information and advice to the Minister on contentious and high profile cases;
- provides instructions to the Department of Justice in cases before the courts;
- provides guidance to the field on high-profile cases;
- conducts research into the human rights records of regimes and provides advice to the Minister regarding designation under A35(1)(b).

### **Field support:**

- develops and delivers training;
- provides policy and legal interpretation;
- develops working tools such as guidelines and procedures, country profiles, screening aids and specific questionnaires.

### **Research:**

- conducts research and obtains open-source information in response to field queries;
- serves as a central repository of information gathered from media sources and international organizations which concentrate on human rights violations that have occurred in current and recent history, including legal, military, refugee, historical, and geographic information;
- maintains gateways to several media monitoring databases;
- maintains an extensive database that is continually being expanded.

### **Intelligence coordination (RZI):**

- acts as a clearing house for all information collected by several government departments;
- gathers classified information concerning governments, countries, specific events, and perpetrators of war crimes;
- provides information to international tribunals and like-minded governments.

### **Interdepartmental coordination:**

- the Director and senior staff of the Modern War Crimes section participate in the Interdepartmental Operations Committee, which reviews all cases of war criminals to ensure that the most effective remedy is taken;
- the Interdepartmental Operations Committee ensures that there is effective coordination among the three departments delivering Canada's War Crimes Program.

## ENF 18 War crimes and crimes against humanity

### Appendix A War crimes amendments to the *Immigration Act* and Regulations

#### War crimes amendments to the *Immigration Act* and Regulations

October 30, 1987 - Bill C-71 created 19(1)(j), a new ground of inadmissibility pertaining specifically to war crimes and crimes against humanity.

January 1, 1989 - Bill C-55 added to the *Immigration Act* the exclusionary clauses of the 1951 Convention Relating to the Status of Refugees. Article 1F(a) of the Convention excludes protection under the Convention to persons who have committed or are complicit in war crimes or crimes against humanity.

February 1, 1993 - Bill C-86 created 19(1)(l), a new ground of inadmissibility pertaining to individuals who are or were senior members of regimes designated by the Minister as having committed gross human rights violations or war crimes.

July 10, 1995 - Bill C-44 enabled senior immigration officers to render ineligible decisions at any stage of the refugee determination process. This included the authority to declare a positive refugee decision null and void if it was determined that the original decision on eligibility was based on misrepresentation.

May 1, 1997 - Amendments to the Post Determination Refugee Claimants in Canada Class (PDRCC) and Deferred Removal Orders Class (DROC) Regulations restricted persons excluded under Article 1F(a) of the Convention from accessing these reviews.

June 17, 1999 - Bill C-40 introduced changes to the *Immigration Act* concurrent with the proclamation of the new *Extradition Act*. These included three new provisions 69.1(12), (14), and (15) designed to harmonize the extradition and refugee determination processes.

October 23, 2000 - Bill C-19 modified the description of 19(1)(j) and (l) concurrent with the proclamation of the *Crimes Against Humanity and War Crimes Act*. The grounds of inadmissibility are now based on the definitions of war crimes, crimes against humanity, and genocide contained in the new Act.

## ENF 18 War crimes and crimes against humanity

### Appendix B *Crimes against Humanity and War Crimes Act*

#### ***Crimes against Humanity and War Crimes Act (Section 4)***

4.(1) Every person is guilty of an indictable offence who commits

- (a) genocide;
- (b) a crime against humanity; or
- (c) a war crime.

(1.1) Every person who conspires or attempts to commit, is an accessory after the fact in relation to, or counsels in relation to, an offence referred to in subsection (1) is guilty of an indictable offence.

(2) Every person who commits an offence under subsection (1) or (1.1)

- (a) shall be sentenced to imprisonment for life, if an intentional killing forms the basis of the offence; and
- (b) is liable to imprisonment for life, in any other case.

(3) The definitions in this subsection apply in this section:

"crime against humanity" means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

"genocide" means an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that, at the time and in the place of its commission, constitutes genocide according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

"war crime" means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

(4) For greater certainty, crimes described in Articles 6 and 7 and paragraph 2 of Article 8 of the Rome Statute are, as of July 17, 1998, crimes according to customary international law. This does not limit or prejudice in any way the application of existing or developing rules of international law.

## ENF 18 War crimes and crimes against humanity

### Appendix C *Rome Statute of the International Criminal Court*

***Rome Statute of the International Criminal Court*** (For complete text of this Statute, see <http://www.un.org/law/icc/statute/romefra.htm>)

#### Articles 6, 7 and 8

##### Article 6—Genocide

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

##### Article 7—Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

## ENF 18 War crimes and crimes against humanity

- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

### 2. For the purpose of paragraph 1:

- (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a state or organizational policy to commit such attack;
- (b) "Extermination" includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (c) "Enslavement" means the exercise of any of all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- (e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- (f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- (g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- (h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
- (i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a state or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

## ENF 18 War crimes and crimes against humanity

### Article 8—War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as a part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

## ENF 18 War crimes and crimes against humanity

- (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefined and which are not military objectives;
- (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
- (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- (xii) Declaring that no quarter will be given;
- (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) Pillaging a town or place, even when taken by assault;
- (xvii) Employing poison or poisoned weapons;
- (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict,

## ENF 18 War crimes and crimes against humanity

provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2(c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva



## ENF 18 War crimes and crimes against humanity

Conventions in conformity with international law;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given objects under the law of armed conflict;

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2(f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.

(f) Paragraph 2(e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a state when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

## ENF 18 War crimes and crimes against humanity

### Appendix D Sample refusal letters

#### Sample Refusal Letter [A35(1)(a)]

Dear -----:

This letter concerns your application for admission to Canada.

After careful and thorough consideration of all aspects of your application and the supporting information provided, I regret to inform you that your application is refused.

Your application has been refused because there is reason to believe that you are a member of the inadmissible class of persons described in paragraph 35(1)(a) of the *Immigration and Refugee Protection Act*, namely:

**35.(1)(a)** committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*;

Sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act* state in part:

"crime against humanity" means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

"genocide" means an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that, at the time and in the place of its commission, constitutes genocide according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

"war crime" means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

Specifically, there is reason to believe that, in (specify time period), while (specify active in or member of organization, including in which country) you committed (if personal involvement) /were complicit in (if no personal involvement but indirectly involved) the following war crime, genocide or crime against humanity: (specify the activity plus short description from above; for further specifics refer to Appendix C) against (identify the group of persons who has been victimized by the person concerned or by the organization to which the person belonged).

I realize that this reply will be a disappointment to you.

Sincerely,

## ENF 18 War crimes and crimes against humanity

### Sample Refusal Letter [A35(1)(a) for Previous Exclusion 1F(a)]

Dear -----:

This letter concerns your application for admission to Canada.

After careful and thorough consideration of all aspects of your application and the supporting information provided, I regret to inform you that your application is refused.

Your application has been refused because there is reason to believe that you are a member of the inadmissible class of persons described in paragraph 35(1)(a) of the *Immigration and Refugee Protection Act*, namely:

**35.(1)(a)** committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*;

Sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act* state in part:

"crime against humanity" means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

"genocide" means an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that, at the time and in the place of its commission, constitutes genocide according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

"war crime" means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

You were excluded previously from entitlement to protection as a Convention Refugee, in Canada, by the Refugee Protection Division of the Immigration and Refugee Board by virtue of exclusion ground 1F(a) of the United Nations *Convention Relating to the Status of Refugees* for your involvement with and complicity in the commission of crimes against humanity. This decision was upheld by the Federal Court on (indicate date of decision, if applicable).

Paragraph 15(b) of the *Immigration and Refugee Protection Regulations* establishes that an exclusion under 1F of the United Nations *Convention Relating to the Status of Refugees* results in inadmissibility to Canada under paragraph 35(1)(a) of the *Immigration and Refugee Protection Act*.

I realize that this reply will be a disappointment to you.

Sincerely,

## ENF 18 War crimes and crimes against humanity

### Sample Refusal letter [1F(a)]

Dear -----:

This letter concerns your application for refugee status in Canada.

After careful and thorough consideration of all aspects of your application and the supporting information provided, I regret to inform you that your application is refused.

Your application has been refused because there is reason to believe that you are a member of the class of persons described in exclusion clause 1F(a) of the United Nations *Convention Relating to the Status of Refugees* which is attached as a Schedule to the *Immigration and Refugee Protection Act*, namely:

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons 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.

The most recent and comprehensive international instrument is the *1998 Statute of the International Criminal Court* which contains an exhaustive listing of war crimes and crimes against humanity.

There is reason to believe that, in (specify time period), while (specify active in or member of organization including in which country) you committed (if personal involvement) /were complicit in (if no personal involvement but indirectly involved) the following war crime, genocide or crime against humanity: (specify the activity plus short description from the above; for further specifics refer to Appendix C) against (identify the group of persons who has victimized by the person concerned or by the organization to which he belonged).

I realize that this reply will be a disappointment to you.

Sincerely,

## ENF 18 War crimes and crimes against humanity

### Sample Refusal Letter [A35(1)(b)]

Dear -----:

This letter concerns your application for admission to Canada.

After careful and thorough consideration of all aspects of your application and the supporting information provided, I regret to inform you that your application is refused.

Your application is refused because there is reason to believe that you are a member of the inadmissible class of persons described in paragraph 35(1)(b) of the *Immigration and Refugee Protection Act*, namely:

**35.(1)(b)** being a prescribed senior official in the service of a government, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the *Crimes Against Humanity and War Crimes Act*.

Subsections 6(3) to (5) of the *Crimes Against Humanity and War Crimes Act* state in part:

"crime against humanity" means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

"genocide" means an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that, at the time and in the place of its commission, constitutes genocide according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

"war crime" means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

Section 16 of the *Immigration and Refugee Protection Regulations* provides as follows:

## ENF 18 War crimes and crimes against humanity

16. For the purposes of paragraph 35(1)(b) of the Act, a prescribed senior official in the service of a government is a person who, by virtue of the position they hold or held, is or was able to exert significant influence on the exercise of government power or is or was able to benefit from their position, and 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 services;
- (f) ambassadors and senior diplomatic officials; and
- (g) members of the judiciary.

Specifically, there is reason to believe that, in (specify time period) you were a senior member or official with the government of (specify the designated regime including the time period indicated in the designation), namely, [specify one of the functions set out in R16(a) to (g) or indicate that the person was able to exert significant influence on the exercise of government power of the regime in question if function does not fit with the enumerated ones in R16].

I realize that this reply will be a disappointment to you.

Sincerely,

## ENF 18 War crimes and crimes against humanity

### Appendix E Background to Canada's War Crimes Program

In 1986 the Deschênes Commission concluded that there were war criminals living in Canada and suggested ways of dealing with them. In response to the report, the government announced that Canada would not become a safe haven for war criminals and created dedicated war crimes units within the Department of Justice, the RCMP, and Citizenship and Immigration Canada. On December 12, 2003, the Modern War Crimes Program was moved from CIC to the newly formed Canada Border Services Agency (CBSA). Although the initial primary focus was WW II cases, it was acknowledged that Modern Day War Criminals were making their way to Canada and a series of changes were made to the *Immigration Act* and Regulations beginning in 1987.

---

**Note:** Refer to Appendix A for a chronological listing of these amendments to the *Immigration Act* and Regulations from 1987 to 2000.

---

In 1998 the government introduced changes to its War Crimes Program along with additional resources to strengthen its efforts to deny safe haven to war criminals. The major thrust of these changes was to improve coordination between the three departments delivering Canada's War Crimes Program. The Interdepartmental Operations Committee was created to ensure that the appropriate remedy was taken in the case of all alleged war criminals in Canada. At the same time, an expanded Modern War Crimes section was created within the Case Management Branch at NHQ (moved to the Canada Border Services Agency on 12 December 2003 and located within the Immigration Intelligence, Tactical Division) to provide analytical and research capacity as well as legal and intelligence expertise. Regional War Crimes sections were created in the regions and at CPC Vegreville, and additional resources were allocated to selected visa offices abroad.

In addition to these national initiatives, Canada was and remains very active in international fora, strongly supporting the creation of the International Criminal Tribunals for the former Yugoslavia and Rwanda. In addition, Canada was one of the first states to ratify the Rome Statute and the creation of the International Criminal Court (ICC) by implementing a new Canadian statute, the *Crimes Against Humanity and War Crimes Act*, which was proclaimed on October 23, 2000.

For further background information, copies of the *Annual Reports on Canada's War Crimes Program* are available on the CBSA and Department of Justice Web sites.