

Lacking conviction

After losing a high-profile court case in 1994, the federal government developed a new strategy to go after killers, torturers and other fugitives from brutal foreign regimes who live in Canada. The results, admits one expert, have been 'extremely disappointing.' Juliet O'Neill reports.

They call it an inventory flow chart.

A lifeless term that reveals no hint of the atrocities, the utter frustration of those who seek justice, the slow-motion race against time, the mountain of grisly material collected by the RCMP, Immigration officers and government lawyers. And nothing of the politician or priest or doctor who can do little about the fearful stories from nervous refugees and immigrants.

The inventory: suspected war criminals.

The flow: into or out of a file.

The chart contains alot of numbers, one of which is glaring in its absence: zero

That's how many war criminals from the Second



Josip Budimcic: A former member of the Serbian paramilitary who is wanted by Croatia to serve sentence for war crimes.

World War or Rwanda or former Yugoslavia or Haiti or Afghanistan or Latin America or anywhere else have been convicted as a result of Canada's war crimes initiatives since 1986 when the Deschenes commission found 774 alleged war criminals in Canada. That was more than \$60 million dollars ago.

"At the rate we're going, looking at World War Two



Helmut Oberlander: A former Nazi interpreter who is fighting an effort to strip his citizenship and deport him to the Ukraine.

now, we'll be doing Croatia and Rwanda in the year 2040," says one insider.

The government abandoned criminal prosecutions of Second World War suspects eight years ago, after losing a Supreme Court case against Imre Finta, who had been convicted in absentia in 1948 in Hungary for "crimes against the people" during a purge of Jews to Nazi Germany's concentration camps.



Imre Finta: A military officer in Nazi-occupied Hungary, accused of killing more than 8,000 Jews, was acquitted of war crimes in 1994.

Since then, the government has sought to revoke citizenship and deport Second World War suspects on grounds that they hid their wartime deeds when they arrived in Canada. Almost no success there either.

Nor have there been any criminal prosecutions launched against modern (Post Second World War) war criminals under the War Crimes and



Leon Mugesera: Called by many human rights groups as the architect of Rwanda's genocide, he has yet to be brought to justice.

Crimes Against Humanity Act, a law that Parliament passed nearly two years ago to make it easier to bring to justice killers, torturers and other fugitives from brutal foreign regimes who live in Canada.

So far, officials have identified 72 individuals implicated in modern-day war crimes and atrocities in Canada as warranting criminal investigation.

But the RCMP, which conducts these complex and time-consuming investigations, has the puniest piece of the current annual \$15.6-million war crimes budget -- \$682,000 for a team of 12. "Sufficient resources to conduct a limited number of investigations," was the RCMP's reply when asked if they have enough resources to cope.

Nearly two-thirds of the overall budget goes to Immigration, which has a staff of 55 trying to keep war criminals out of Canada, and Justice, which prosecutes cases in the courts, gets the other third for a staff of 27, 10 of them lawyers and the rest providing historical research and legal assistance.

"One would hope that the track record on WW2 criminals isn't going to be the precedent-setting modus operandi for the other more recent criminals," says Toronto Liberal MP Joe Volpe, who, like many MPs, has constituents seeking immigration help who express anxiety and astonishment that some of the violent people they fled in countries such as Ethiopia, Somalia and Sudan are living among them in Canada.

"They tell you more or less where they live, around the block, and 'These people watch us night and day.' and 'This is what they did to us when we were back home.' 'We're not talking about our family. We're talking about our entire village.'"

Amnesty International is so impatient for some prosecutions, says director Alex Neve, that a non-government organization will be launched in coming months to try to pursue those accused of war crimes, torture or other atrocities in the civil courts. Frank Chalk, co-

founder of the Institute for Genocide Studies at Concordia University in Montreal, says the war crimes prosecution record is so unsuccessful the sincerity of the government's commitment has to be questioned.

"If we're going to end the culture of impunity that surrounds genocide and develop a culture of accountability, it's vital that persons who are implicated in crimes against humanity and war crimes should be brought before the bar of justice wherever they may live," says Mr. Chalk. "It's extremely frustrating and disappointing that the Canadian program has not been successful in doing this."

When asked about the problems in prosecuting modern war criminals, the Justice Department responded with a statement that "thus far there is no 'problem'," adding that given the gathering of evidence abroad and "the complexities of the legal requirements to prosecute them, it was to be expected that it would take some time before the first prosecutions could be commenced. ... We are optimistic that this will occur within a reasonable time."

There's been enough time to get cracking, suggests Mr. Neve, who emphasizes that such prosecutions are a "linchpin critical to the success" of the newly established permanent International Criminal Court which Canada enthusiastically embraced. The international court is envisioned as the tribunal that steps in only when justice is not possible at a national level in Canada and the other 65 countries signed on so far.

"With the reforms that came in 2000 we became hopeful that there was going to be a watershed moment and we were going to start to see a real change in Canadian policy and practice," Mr. Neve said in an interview. "Well, it's been close to two years now and there's no evidence of that."

The current war crimes program, combining units at Justice, Immigration and the RCMP, was established in 1998 and given a three-year \$46.8-million budget. When that expired the government made a little-noticed budget announcement of a "cessation of funds" for the program and it has lurched along on bridge financing since.

In the meantime, the government promised a full program evaluation last year which is scheduled to be made public this summer. Even so, it may not address some of the theories about the ineffective record: too few resources allocated to the RCMP criminal investigation team, too few experienced prosecutors at the Justice unit, cases chosen so far have been weak and bound for failure and a lack of political will on the part of the government.

And what now that more and more critics cringe at the spectacle of government lawyers tangled in court cases aimed at deporting elderly former Nazis, at least six of whom died during proceedings and one of whom, with Alzheimer's, lives in a nursing home?

"I suspect there's still life in it. They won't want to say 'we're shutting it down,'" Liberal MP Derek Lee said of the effort to prosecute Second World War crimes. "For a lot of people, it's such a

hot potato (to shut it down). ... It may sound cynical but most of the WWII cases are going to wind up pretty soon anyway. Time will allow us to rejig the policy."

The Justice department is emphatic that it is still "actively pursuing" dozens of cases from the Second World War: "There is no time limitation on this policy. As in all litigation, a reasonable probability of success is required before proceedings are commenced, but age itself is not a determining factor." As of a year ago, there were 85 active files and 147 others were being examined.

Mr. Lee wonders if there is a huge hunger on the part of the public to spend millions of dollars prosecuting people whose crimes took place far away and sometimes long ago. However, he added that a policy that shifts resources and willpower to prosecuting contemporary war criminals would be welcome as a deterrent to their coming to Canada, if nothing else.

"There is no message going back to Rwanda, etc., that if you go to Canada, you'll get screwed," is how one expert puts it. "Canada is not a safe haven. It is the safe haven," Mr. Lee said.

There are unofficial estimates that more than 1,000 suspected modern war criminals live in Canada. Officially, there were more than 500 cases under investigation as of a year ago. As of now, 72 cases have been identified as warranting criminal investigation.

Meantime, hundreds of people suspected of contemporary war crimes, crimes against humanity and other

atrocities have have been refused entry by Canadian visa and immigration officers around the world -- 1,532 since 1998. Another 113 were prevented from becoming refugees in Canada. And 187 were deported.

The policy emphasis on immigration remedies is unsatisfactory, says Mr. Neve. "It either leads to injustice in those cases where the person who is being deported is going to be exposed, perhaps, to serious human rights abuses themselves, or no justice, in that they're going to walk away scot free," he said. "No proceedings of any sort will be launched and life will go on as it always did."

Once a war criminal is in Canada, working claims for refugee or landed immigrant status through official tribunals and the courts, years can pass as appeals wind through a judicial and quasi-judicial systems shaped to protect the persecuted, but often protecting the persecutors.

Since 1989, on paper at least, people shown to have complicity in war crimes or crimes against humanity have been ineligible for access to Canada's refugee determination process.

And since 1993, people who were senior officials of a regime which committed gross human rights violations are deemed inadmissible to Canada. The regimes now include the Bosnian Serbs, the Siad Barre regime of Somalia, former military governments in Haiti, former Marxist regimes and the Taliban of Afghanistan, Iraq since 1990, Rwanda between October, 1990 and

July 1994, and the Milosevic regime of former Yugoslavia.

But there are cases dating back before these changes and hundreds of others have slipped through. In many cases, there is insufficient evidence or cases turn on legal matters even when the person confesses gross human rights violations. And dealing with the relatively new concepts of war crimes and crimes against humanity is not easy for some adjudicators and some judges.

Take the case of a Guatemalan army deserter who had participated in the torture of peasant farmers, one incident described in the federal court record tells of a man, wife and two teenage children being tortured "by sticking their heads in water-filled containers and pricking their fingers and tongues with thorns." The federal court ruled that the refugee board made a mistake by faulting this man under war crimes instead of crimes against humanity and had not given him proper notice that this was the basis for rejecting his refugee claim. His claim was sent back to the refugee board.

Or, take the case of Leon Mugesera of Quebec City, a former Rwandan official who made an infamous speech inciting genocide by the Hutus against the Tutsis, a speech that was echoed by other community leaders before the 1994 massacres.

Many human rights organizations expected Mr. Mugesera would be brought to justice in Canada. Seven years later, his case is still before the courts. In the most recent ruling in his

favour, the judge disconnected Mr. Mugesera's speech from the actual massacres because he had delivered it two years before the massacres began. The Mugesera case is due in court again in June.

A Chilean couple in Toronto, who described themselves as "note-takers" during torture interrogations when they worked for Dicar, the secret police of the Pinochet regime, have staved off deportation since 1978, partly on grounds they will face reprisals if they are sent back to Chile (see sidebar).

Two alleged members of Khad, the secret police under Afghanistan's former Marxist regime, are living in Edmonton and are under investigation by the RCMP and Immigration Canada, reports the Edmonton Journal, which recently interviewed 19 expatriate Afghans in six countries who told their stories of deaths and atrocities in the hope the men will be brought to justice in Canada under the new war crimes law.

"We have to recognize that under our system of laws in Canada there are rules, regulations and protection for the public and for the accused persons which need to be respected and I would never advocate that we cast those aside," said Mr. Chalk of the Institute for Genocide Studies.

"But I think we have to ask questions about the enthusiasm of the government in prosecuting people for crimes that occurred outside of Canada and the resources devoted to the task."

On top of zero criminal convictions, the government has shown little zeal for extraditing suspects. Croatia, for example, submitted an extradition request more than a year ago for Josip Budimcic, a resident of Weyburn, Sask., who was sentenced to 15 years in absentia for allegedly torturing and executing Croatian prisoners when he was a member of a Serbian paramilitary group in 1991. Canada's response to the request: silence, so far. The Croatian embassy says it has not received any reply.

The concepts of ending the culture of impunity by prosecuting and extraditing are so new, Mr. Chalk said, that Canada's legal and political cultures have not caught up with the international vow to bring to justice "the current crop" of people complicit in crimes against humanity. The prevailing attitude and wheels of justice are still dominated by the notion of providing sanctuary to the persecuted, rather than punishing the persecutors.

"The basic legal culture in our country is one in which we, I think, put more weight on maintaining all of the defences for the accused under Canadian law and this certainly puts a huge burden on the government when it seeks to extradite or convict people for crimes against humanity," he said.

"But the crimes against humanity act was designed to make the prosecution of war criminals and people who committed crimes against humanity a more practical project. And simply by listing the crimes in detail, it removed a lot of the burden that the government carried because there are crimes in the act which previously prosecutors had to

prove were crimes. Now, they're clearly laid out and we've clearly established that people who commit these crimes can either be extradited or prosecuted in the courts of Canada."



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