



*Homeland Security Investigations*

# Human Rights Violators and War Crimes Investigations Handbook

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U.S. Immigration  
and Customs  
Enforcement

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## Foreword

The Human Rights Violators and War Crimes Investigations Handbook provides a uniform source of national policies, procedures, responsibilities, guidelines, and controls to be followed by U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Special Agents when conducting investigations involving human rights violators and persons suspected of having been involved in war crimes. This Handbook contains instructions and guidance to help ensure uniformity and operational consistency among all HSI field offices. Oversight over the national Human Rights Violators and War Crimes Investigations Program resides with the Unit Chief, Human Rights Violators and War Crimes Unit (HRVWCU).

This Handbook is the originating and establishing Handbook for human rights violations and war crimes investigations. It supersedes all previous issuances on this topic issued by the former U.S. Customs Service; U.S. Immigration and Naturalization Service; the ICE Offices of Investigations, Intelligence, or International Affairs; or HSI prior to the date of issuance of this Handbook. (See Appendix G for a list of documents superseded by this Handbook.)

The Human Rights Violators and War Crimes Investigations Handbook is an internal policy of HSI. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter, nor are any limitations hereby placed on otherwise lawful enforcement prerogatives of ICE. This Handbook is For Official Use Only (FOUO) – Law Enforcement Sensitive. It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with Department of Homeland Security policy relating to FOUO information and the ICE Directive on Safeguarding Law Enforcement Sensitive Information. This information shall not be distributed beyond the original addressees without prior authorization of the originator. If disclosure of this Handbook or any portion of it is demanded in any judicial or administrative proceeding, the HSI Records and Disclosure Unit, as well as the Office of the Principal Legal Advisor at Headquarters and/or the U.S. Attorney's Offices, are to be consulted so that appropriate measures can be taken to invoke privileges against disclosure. This Handbook contains information which may be exempt from disclosure to the public under the Freedom of Information Act, Title 5, United States Code, Section 552(b), and protected from disclosure in civil discovery pursuant to the law enforcement privilege. Any further request for disclosure of this Handbook or information contained herein should be referred to the HSI Records and Disclosure Unit.

The HSI Policy Unit is responsible for coordinating the development and issuance of HSI policy. All suggested changes or updates to this Handbook should be submitted to the HSI Policy Unit which will coordinate all revisions with the HRVWCU.



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# HUMAN RIGHTS VIOLATORS AND WAR CRIMES INVESTIGATIONS HANDBOOK

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# HUMAN RIGHTS VIOLATORS AND WAR CRIMES INVESTIGATIONS HANDBOOK

## Chapter 1. PURPOSE AND SCOPE

The Human Rights Violators and War Crimes Investigations Handbook establishes policy and procedures for U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Special Agents (SAs) when conducting investigations involving human rights violators and persons suspected of having been involved in war crimes.

## Chapter 2. INTRODUCTION

Human Rights Violators and War Crimes investigations are part of HSI's mission to defend the national security of the United States. Through these types of investigations, HSI ensures that the United States is not complicit in creating safe havens in the United States for human rights violators and war criminals, which, in turn, would serve to disregard human rights and civil liberties for victims around the world. HSI uses its broad investigative authorities, resources, and legal tools to meet this goal.

HSI has a rich history, starting with the former U.S. Immigration and Naturalization Service, of pursuing human rights violators, most notably Nazi war criminals who entered the United States illegally in violation of U.S. immigration laws. This pursuit of war crimes and human rights violations evolved in the mid-1990s to focus on "modern" human rights violators, i.e., those who entered the United States beginning in the 1970s-80s. Since the creation of ICE in March 2003, the former ICE Office of Investigations (OI) prioritized, and HSI continues to prioritize, the investigations and prosecutions of human rights violators and war criminals.

HSI is uniquely situated to pursue war criminals and human rights violators by employing both its criminal and immigration authorities. Under existing federal criminal statutes and in partnership with the U.S. Department of Justice (DOJ), HSI exercises jurisdiction over foreign human rights offenses, such as torture, genocide, war crimes, and the use and/or recruitment of child soldiers. Where there are barriers to invoking war crime and human rights statutes, HSI pursues other criminal charges related to false statements and material misrepresentations made by these offenders on refugee, visa, resident, or citizenship applications. Under the kleptocracy crime program, HSI applies U.S. asset forfeiture and money laundering laws to seize any illicit gains made by these offenders. In addition to these wide-ranging criminal remedies, HSI invokes its immigration authority to arrest, detain, and remove or deport these offenders from the United States to their respective home countries so that they may face justice before the people they victimized.

## **Chapter 3. DEFINITIONS**

The following definitions are provided for the purposes of this Handbook only:

### **3.1 Alien File**

An Alien File (A-File) is a series of records maintained by U.S. Citizenship and Immigration Services (USCIS) on an individual documenting his or her history of interaction with USCIS, U.S. Customs and Border Protection (CBP), and ICE as prescribed by the Immigration and Nationality Act (INA) and other regulations regarding immigration benefits. Information in an A-File is used to grant or deny immigration related benefits or to support enforcement actions initiated against those who violate immigration laws. A-Files may be classified or unclassified and must be handled accordingly. Each A-File folder is labeled with a unique identifier which is generally the A-Number and should match the barcode label on the folder.

### **3.2 Asylum**

A discretionary form of protection available to aliens physically present in the United States who meet the definition of a refugee under Title 8, United States Code (U.S.C.), Section 1101(a)(42), INA § 101(a)(42), and are not otherwise barred from receiving it. *See* 8 U.S.C. §§ 1158(a), (b), INA §§ 208(a), (b). Once an alien has been granted asylum, he or she may not be removed to his or her country of nationality or, in the case of an alien with no nationality, to his or her country of last habitual residence, absent a revocation of asylum. *See* 8 U.S.C. § 1158(c)(1), INA § 208(c)(1). Once an alien has been granted asylum, he or she becomes eligible for other immigration benefits. *See* 8 U.S.C. §§ 1158(c)(1)(B) and (C), INA §§ 208(c)(1)(B) and (C).

### **3.3 Convention Against Torture**

The United States is a signatory to the United Nations (U.N.) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) signed in New York on December 10, 1984. As a result, and because CAT is not self-executing, the United States implemented regulations to allow an alien to establish in Immigration Court that it is “more likely than not” that the individual would be subjected to torture. *See* Title 8, Code of Federal Regulations (C.F.R.), Section 208.17; Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, div. G, § 2242, 112 Stat. 2681 (1998), 2681-822 (codified as note to 8 U.S.C. § 1231).

### **3.4 Crimes Against Humanity**

The International Criminal Court defines Crimes Against Humanity as any acts or omissions that have been committed as part of a widespread or systematic attack against any civilian population with knowledge of the attack such as murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any form of sexual violence of

comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law; enforced disappearance of persons; apartheid; and other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health.

### **3.5 Denaturalization**

Denaturalization, also known as revocation of naturalization, is the revoking and setting aside of the order admitting a person to citizenship and canceling the certificate of naturalization. 8 U.S.C. § 1451(a) & (e). (Note: See the Denaturalization Investigations Handbook (OI Handbook (HB) 08-01), dated January 15, 2008, or as updated.)

### **3.6 Deportation**

Deportation is the formal removal of an alien from the United States when the alien has been found removable for violating U.S. immigration laws. Deportation is often ordered by an Immigration Judge (IJ) without any criminal punishment being imposed or contemplated. Deportation may also occur based on expedited removal proceedings before an immigration officer. Prior to April 1997, deportation and exclusion were separate removal procedures. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 consolidated these procedures. After April 1, 1997, aliens in, and admitted to, the United States may be subject to removal based on deportability. (Note: See Section 3.25, “Removal Proceedings.”)

### **3.7 Extrajudicial Killing**

Extrajudicial killing is a deliberate killing that is not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees that are recognized as indispensable by civilized peoples. Such term, however, does not include any killing that, under international law, is lawfully carried out under the authority of a foreign nation. In accordance with INA §§ 212(a)(3)(E) and 237(a)(4)(D), in order for ICE to utilize the torture or extrajudicial killings inadmissibility charge, the person committing the act must have been acting under the color of law.

### **3.8 Genocide**

Genocide means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group by killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; and/or forcibly transferring children of the group to another group. *See* 18 U.S.C. § 1091(a); *see also* INA §§ 212(a)(3)(E) and 237(a)(4)(D).

### **3.9 Genocidaire**

A French term for a “person involved in perpetrating genocide.” (Note: This term has been used almost exclusively to relate to perpetrators of the 1994 Rwandan genocide.)

### **3.10 Human Rights Violations**

A human rights violation is any criminal or immigration violation of law pertaining to genocide, torture, extrajudicial killings, war crimes, severe violations of religious freedom, female genital mutilation, recruitment or use of child soldiers, or other persecutory acts.

### **3.11 Lawful Permanent Resident**

A lawful permanent resident (LPR) is an alien who has been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the INA. *See* 8 U.S.C. § 1101(a)(20). LPR status terminates upon the entry of a final administrative order of exclusion, removal, or deportation. 8 C.F.R. § 1.2. Also known as “Permanent Resident Alien,” “Resident Alien Permit Holder,” and “Green Card Holder.”

### **3.12 Leahy Vetting**

Leahy Vetting is a process conducted by the Department of State (DOS) where all foreign security forces, including police and law enforcement units, are vetted for involvement in gross human rights abuses prior to receiving DOS funded aid, including training and equipment. Certain Department of Defense (DOD) training programs also apply. When the vetting process uncovers credible information that an individual or a unit has committed a gross violation of human rights, the United States withholds assistance to the foreign government individual or unit.

### **3.13 Letter of Request**

A Letter of Request is a formal request sent normally to an International Tribunal for information maintained in its archives. (*See* Appendix A.)

### **3.14 Letter Rogatory**

A Letter Rogatory is the customary method of obtaining assistance from a foreign country in the absence of a treaty or executive agreement. A judge in the United States sends a Letter Rogatory to the judiciary of a foreign country to request the performance of an act which, if done without the sanction of the foreign court, would constitute a violation of that country’s sovereignty.

### **3.15 Mass Atrocity**

In the context of human rights violations, mass atrocities are crimes that fall under the umbrella of genocide, war crimes, and crimes against humanity against a civilian population.

### **3.16 Nicaraguan Adjustment and Central American Relief Act**

The Nicaraguan Adjustment and Central American Relief Act (NACARA) applies to certain individuals from Guatemala, El Salvador, Nicaragua, Cuba, and the former Soviet bloc countries who entered the United States and applied for asylum by specified dates or registered for benefits under the settlement agreement in the class action lawsuit *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) (ABC).

### **3.17 Naturalization**

Naturalization is the conferring of the nationality of a state upon a person after birth by any means whatsoever. 8 U.S.C. § 1101(a)(23).

### **3.18 Overstay**

An overstay is an individual admitted to the United States as a nonimmigrant with authorization to remain for a temporary period who has not departed the United States upon the conclusion of the authorized period.

### **3.19 Parole**

Parole is a process granted to an alien who is inadmissible but is allowed into the United States for urgent humanitarian reasons or when the alien's entry is determined to be for a significant public benefit. Types of parole include, but are not limited to, deferred inspection, silent parole, humanitarian parole, advance parole, and law enforcement parole. Parole does not constitute a formal admission to the United States and confers temporary permission only, requiring parolees to leave when the conditions supporting their parole cease to exist, when the parole expires, or when the parole is otherwise terminated. Further, parole does not waive any applicable grounds of inadmissibility.

### **3.20 Passport**

A passport is an official document issued by the government of a country to one of its citizens. Passports authorize travel to foreign countries and authenticate the bearer's identity, citizenship, right to protection while abroad, and right to reenter his or her native country.

### **3.21 Persecution**

Persecution is the infliction of harm or suffering by the government or by persons whom the government is unable or unwilling to control. The United States may grant refugee status to an alien seeking admission to the United States based on either past persecution or a well-founded fear of future persecution. The persecution must be based on the individual's race, religion, nationality, membership in a particular social group, or political opinion.

### **3.22 Prudential Visa Revocation**

Pursuant to INA § 221(i), DOS has the authority to revoke a visa that it previously granted to an alien. The overwhelming majority of visa revocations are prudential. DOS can issue a prudential visa revocation when, after the issuance of a visa, information surfaces that questions either the alien's eligibility at the time of visa issuance or the alien's continued eligibility for the visa. This may be based on an ineligibility ground under INA § 212(a) or a lack of entitlement to the visa classification. Prudential revocations generally do not constitute permanent findings of ineligibility. If the alien is outside the United States, as in the majority of revocations, the revocation takes effect immediately. If the alien is inside the United States, the revocation takes effect upon the alien's departure from the United States. For purposes of the issuance of a Notice to Appear (NTA) (Department of Homeland Security (DHS) Form I-862), this means that if an alien was admitted with a valid visa that was revoked during the authorized period of stay, DHS will not place the alien into removal proceedings based solely on the prudential visa revocation. In very few cases, DOS can issue a "retroactive" visa revocation, which is effectively immediately and renders the alien subject to removability under INA § 237(a)(1)(B). If this is the only charge of removability, however, the immigration judge has the authority, pursuant to INA § 221(i), to review the underlying visa revocation. This is one of the only exceptions to the doctrine of consular non-reviewability. Therefore, it is always advisable to find another viable ground of removability for use in cases of retroactive visa revocation.

### **3.23 Recruitment and Use of Child Soldiers**

A child soldier is a person under the age of 15 who participates actively in hostilities. 18 U.S.C. § 2442 (d) defines this term as taking part in combat or military activities, including sabotage, serving as decoys or couriers or at military checkpoints; and directly supporting functions relating to combat, such as transporting supplies or providing other services. Child soldiers are often forced to live under harsh conditions with insufficient food and little or no access to education or health care. Female child soldiers are at particular risk as they are subjected to rape, sexual harassment, and abuse. *See* INA §§ 212(a)(3)(G) and 237(a)(4)(F).

### **3.24 Refugee**

A refugee is any person who is outside his or her country of nationality who is unable or unwilling to return to that country because of persecution or a well-founded fear of persecution. Persecutors are specifically exempted from the definition of refugee. *See* INA § 101(a)(42).

### **3.25 Removal Proceedings**

Removal proceedings are administrative proceedings to determine an individual's removability under U.S. immigration law. Removal proceedings are typically conducted in Immigration Court by DOJ's Executive Office for Immigration Review, and presided over by an IJ.

### **3.26 Significant Event Notification**

The Significant Event Notification system is an ICE transactional Intranet application and reporting system designed to facilitate the seamless entry, query, and modification of Significant Incident Reports (SIRs) and Significant Prospective Enforcement Action Reports (SPEARs) that contain indicators and warnings. These reports contain information of such significance that they warrant immediate notification to the National Operations Center.

### **3.27 Security Advisory Opinion**

A Security Advisory Opinion is the mechanism used by DOS to provide consular officers with advice and background information to adjudicate both immigrant and nonimmigrant visa applications in cases involving security or foreign policy interest. This long-standing process was implemented to provide a mechanism for additional scrutiny of high-risk categories of travelers seeking visas to enter the United States.

### **3.28 Temporary Protected Status**

Temporary Protected Status (TPS) is a legislative basis for allowing a group of persons, who are already physically present in the United States, temporary refuge to remain in the United States. Under INA § 244, the Secretary of Homeland Security may designate a country or part thereof for TPS if the Secretary finds that there is an ongoing armed conflict, an environmental disaster, or other extraordinary conditions which temporarily prevent a country's nationals from returning safely to their home country.

### **3.29 Torture**

Torture is an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his or her custody or physical control. See INA §§ 212(a)(3)(E) and 237(a)(4)(D); 18 U.S.C. § 2340(a).

### **3.30 Visa**

A visa is an endorsement made by an authorized representative of one country upon a passport issued by another, permitting the passport holder entry into or transit through the country making the endorsement.

### **3.31 War Crime**

A war crime is a serious violation of international humanitarian law, including but not limited to willful killing; torture or inhuman treatment; performing biological experiments; willfully causing great suffering or serious bodily injury; murder, mutilation, or maiming; rape, sexual assault or abuse; taking hostages; extensive destruction or appropriation of property not justified by military necessity and carried out unlawfully; compelling a prisoner of war or other protected

person to serve in the forces of a hostile power; willfully depriving a prisoner of war or other protected person of the rights of a fair and regular trial; unlawful deportation or transfer; and unlawful confinement. *See* 18 U.S.C. § 2441.

## **Chapter 4. AUTHORITIES/REFERENCES**

### **4.1 Customs Officer and Immigration Officer Authorities**

The Homeland Security Act of 2002, in conjunction with the Department of Homeland Security Reorganization Plan of November 25, 2002, and the Reorganization Plan Modification for the Department of Homeland Security of January 30, 2003, authorizes HSI SAs to perform the duties provided to them by law and regulation. The Homeland Security Act transfers the powers granted to customs officers (19 U.S.C. § 1589a and 19 C.F.R., Parts 161-162), and the powers granted to immigration officers (8 U.S.C. § 1357 and 8 C.F.R. § 287.5) to HSI SAs in order to conduct investigations of offenses against the United States; conduct searches without warrant at the border, its functional equivalent, or the extended border; conduct inquiries related to alienage and removability; execute and serve search or arrest warrants; serve subpoenas and summonses; administer oaths; make arrests without warrant; require and receive information relating to offenses; and bear firearms. ICE grants these authorities to SAs who have completed the necessary training.

### **4.2 HSI Investigative Authorities Related to Human Rights Violations and War Crimes**

The United States Code and the Code of Federal Regulations provide specific investigative authorities to customs officers and immigration officers. As stated in Section 4.1, HSI SAs possess these authorities and other authorities provided by law. SAs conducting human rights violations and war crimes investigations will frequently use the following authorities:

- A. **Border Search Authority:** Border searches are a universally recognized exception to the reasonableness requirements of the Fourth Amendment. The authority to conduct such searches is found at 8 U.S.C. § 1357(a) and 19 U.S.C. §§ 482, 1467, 1496, 1499, 1581, 1582, among other statutes. ICE has the ability to conduct both civil and criminal investigations.
- B. 8 U.S.C. § 1225, Inspection by Immigration Officers; Expedited Removal of Inadmissible Arriving Aliens.
- C. 8 U.S.C. § 1357, Powers of Immigration Officers and Employees.
- D. 19 U.S.C. § 482, Search of Vehicles and Persons.
- E. 19 U.S.C. § 507, Assistance for Officers.
- F. 19 U.S.C. § 1401(i), Customs Officers.



- G. 19 U.S.C. § 1461, Inspection of Merchandise and Baggage.
- H. 19 U.S.C. § 1467, Special Inspection, Examination, and Search.
- I. 19 U.S.C. § 1496, Examination of Baggage.
- J. 19 U.S.C. § 1499, Examination of Merchandise.
- K. 19 U.S.C. § 1581, Boarding Vessels.
- L. 19 U.S.C. § 1582, Search of Persons and Baggage, Regulations.
- M. 19 U.S.C. § 1583, Examination of Outbound Mail.
- N. 19 U.S.C. § 1589a, Enforcement Authority of Customs Officers.
- O. 19 U.S.C. § 1595, Searches and Seizures.
- P. 31 U.S.C. § 5317, Search Authority for Compliance with Currency and Monetary Instruments Reporting Act.
- Q. 19 C.F.R. Part 145, Mail Importations.
- R. 19 C.F.R. Part 162, Inspection, Search, and Seizure.
- S. 31 C.F.R. § 594.201, Prohibited Transactions Involving Blocked Property.

### **4.3 Statutory Authority to Revoke Naturalization**

There are both civil and criminal denaturalization proceedings. The laws in effect as of the date of issuance of this Handbook provide procedures for the revocation of naturalization. (Notes: See Sections 4.3.1 and 4.3.2 below. Also see the Denaturalization Investigations Handbook (OI HB 08-01), dated January 15, 2008, or as updated.)

#### **4.3.1 Civil Denaturalization Statute**

The civil statute, 8 U.S.C. § 1451(a), states that U.S. Attorneys for the respective districts have the duty, upon an affidavit showing good cause, to institute proceedings to revoke citizenship and cancel the certificate of naturalization on the grounds that naturalization was “illegally procured” or was “procured by concealment of a material fact or by willful misrepresentation.” Revocation on these bases is also covered by 8 C.F.R. § 340.2. There is no statute of limitations for bringing a civil denaturalization action. See 8 U.S.C. § 1451(a); see also *United States v. Nuñez-Garcia*, 262 F. Supp. 2d 1073, 1087 (C.D. Cal. 2003). There is also no right to a jury trial in civil denaturalization proceedings. *Luria v. United States*, 231 U.S. 9, 27-28 (1913).

### **4.3.2 Criminal Denaturalization Statute**

Authority for the criminal prosecution of unlawful procurement of citizenship or naturalization is found in 18 U.S.C. § 1425. When a person has been convicted of a violation of 18 U.S.C. § 1425, the court where the conviction occurred shall “revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled.” 8 U.S.C. § 1451(e).

### **4.4 Specific Criminal Charges Used in Human Rights Violators and War Crimes Investigations**

- A. 18 U.S.C. § 116, Female Genital Mutilation.
- B. 18 U.S.C. § 1091, Genocide.
- C. 18 U.S.C. § 1425 (a) and (b), Naturalization Fraud.
- D. 18 U.S.C. § 1546, Visa/Immigration Fraud.
- E. 18 U.S.C. § 2339(a), Providing Material Support to Terrorists, Organizations Involved in Torture, or the Recruitment of Child Soldiers.
- F. 18 U.S.C. § 2340(A), Torture.
- G. 18 U.S.C. § 2441, War Crimes.
- H. 18 U.S.C. § 2442, Use or Recruitment of Child Soldiers.

### **4.5 General and ICE-Specific Criminal Charges Used in National Security Investigations**

- A. 8 U.S.C. § 1304(e), Failure to Carry Proof of Permanent Residence.
- B. 8 U.S.C. § 1325, Improper Entry by Alien.
- C. 8 U.S.C. § 1324, Bringing in and Harboring Certain Aliens.
- D. 8 U.S.C. § 1325(c), Marriage Fraud.
- E. 8 U.S.C. § 1326, Re-entry after Deportation/Removal.
- F. 13 U.S.C. § 305, Penalties for Unlawful Export Information Activities.
- G. 18 U.S.C. § 371, Conspiracy.

- H. 18 U.S.C. § 542, Entry of Goods by Means of False Statements.
- I. 18 U.S.C. § 545, Smuggling Goods into the United States.
- J. 18 U.S.C. § 554, Smuggling Goods from the United States.
- K. 18 U.S.C. § 641, Public Money, Property or Records.
- L. 18 U.S.C. § 911, False Claims to U.S. Citizenship.
- M. 18 U.S.C. § 922(g)(5), Alien Unauthorized to Possess a Firearm.
- N. 18 U.S.C. § 951, Agent of Foreign Governments.
- O. 18 U.S.C. § 1001, False Statements.
- P. 18 U.S.C. § 1015, Fraud and Statements Regarding Naturalization, Citizenship or Alien Registry.
- Q. 18 U.S.C. § 1028, Fraud and Related Activity in Connection with Identification Documents, Authentication Features, and Information.
- R. 18 U.S.C. § 1543, Forgery or False Use of Passport.
- S. 18 U.S.C. § 1956, Laundering of Monetary Instruments.
- T. 18 U.S.C. § 1957(a), Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity.
- U. 18 U.S.C. § 1960, Prohibition of Unlicensed Money Transmitting Businesses.
- V. 18 U.S.C. § 1961, Racketeer Influenced and Corrupt Organizations.
- W. 22 U.S.C. § 401, Shipping Export Declaration Violation.
- X. 22 U.S.C. § 611, Unregistered Agent of a Foreign Government.
- Y. 22 U.S.C. § 2778, Conspiracy to Violate the Arms Export Control Act.
- Z. 31 U.S.C. § 5324, Structuring Transactions to Evade a Reporting Requirement.
- AA. 31 U.S.C. § 5332, Bulk Cash Smuggling Into or Out of the United States.

BB. 50 U.S.C. § 1701-05, International Emergency Economic Powers Act and Economic and Commercial Activities Associated with Specially Designated Global Terrorists.

CC. 22 C.F.R. § 129.2(a), Brokering the Sale and Transfer of Defense Articles.

#### **4.6 Human Rights Violators and War Crimes Administrative Charges**

A. INA § 212(a)(2)(G) / § 237(a)(4)(E), Severe Violations of Religious Freedom.

B. INA § 212(a)(3)(E)(ii) / § 237(a)(4)(D), Participation in Genocide.

C. INA § 212(a)(3)(G) / § 237(a)(4)(F), Recruitment or Use of Child Soldiers.

D. INA § 212(a)(3)(E)(iii)(I) / § 237(a)(4)(D), Acts of Torture.

E. INA § 212(a)(3)(E)(iii)(II) / § 237(a)(4)(D), Extrajudicial Killing.

F. INA § 212(a)(3)(E)(i) / § 237(a)(4)(D), Nazi Persecution.

#### **4.7 References**

A. Presidential Study Directive (PSD)-10, Creation of an Interagency Atrocities Prevention Board and Corresponding Interagency Review, dated August 4, 2011.

B. DHS Directive 212-01, “Atrocities and Human Rights,” dated November 6, 2013, or as updated.

C. ICE Directive 10044.1 (former number: 7-6.1), “Border Searches of Electronic Devices,” dated August 18, 2009, or as updated.

D. ICE Directive 10066.1 (former number 7-3.0), Consular Notification of Detained or Arrested Foreign Nationals,” dated February 13, 2006, or as updated.

E. ICE memorandum (Policy Number 10082.1), “Use of Public and Non-Public Online Information,” dated June 28, 2012, or as updated.

F. HSI memorandum, “Superseding Human Rights Violators and War Crimes Case Generation and Reporting Requirements,” dated October 19, 2012, or as updated.

G. HSI HB 12-03, “Informants Handbook,” dated August 2, 2012, or as updated.

H. HSI HB 11-03, “Cyber Crimes Investigations Handbook,” dated August 9, 2011, or as updated.

- I. OI HB 17-04, “Interviewing Techniques Handbook,” dated May 10, 2017, or as updated.
- J. OI HB 08-01, “Denaturalization Investigations Handbook,” dated January 15, 2008, or as updated.
- K. Memorandum of Understanding Between Members of the Five Country Conference with Respect to Investigations Relating to Genocides, War Crimes and Crimes Against Humanity (informally known as the Five Country Agreement between Canada, the United Kingdom, Australia, New Zealand, and the United States), dated April 28, 2014.
- L. Memorandum of Understanding between the United States Attorneys Offices, the Immigration and Naturalization Service, and the Civil Division – Office of Immigration Litigation Regarding Actions to Revoke Naturalization, dated January 22, 2000.

#### 4.8 Websites

Useful websites for human rights related research include:

- A. <http://www.state.gov/g/drl/> – DOS Bureau of Democracy, Human Rights, and Labor.
- B. [http://news.bbc.co.uk/2/hi/country\\_profiles/default.stm](http://news.bbc.co.uk/2/hi/country_profiles/default.stm) – British Broadcasting Corporation News Country Profiles.
- C. <https://www.cia.gov/library/publications/the-world-factbook/> – Central Intelligence Agency (CIA) World Factbook.
- D. <http://z02rscow12:8080/docushare/dsweb/View/Collection-767> – Virtual Library by Xerox Docushare.
- E. <http://books.google.com/books/harvard> – Google book search.
- F. <http://lms01.harvard.edu/F/YE9YHJJBA25C99LR1HE6GCX2X4QNXLYYG4IMF8ATXHDL32G3SH-16273?RN=398149080> – Harvard Library.
- G. <https://www.opensource.gov/public/content/login/login.fcc?> – Open Source Center.
- H. <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain> – U.N. Refugee Agency.
- I. <http://www.reliefweb.int/rw/dbc.nsf/doc100?OpenForm> – Relief Web.
- J. <http://www.un.org/en/rights/index.shtml> – U.N. Human Rights.

- K. <http://www.amnesty.org/> – Amnesty International.
- L. <http://csis.org/> – Center for Strategic & International Studies.
- M. <http://www.hrw.org/> – Human Rights Watch.
- N. <http://www.ictj.org> – International Center for Transitional Justice.
- O. <http://www.crisisgroup.org/> – Crisis Group.
- P. <http://www.usip.org/library/truth.html> – U.S. Institute of Peace
- Q. <http://www.dhs.gov/files/statistics/immigration.shtm> – DHS Immigration Statistics.

## **Chapter 5. RESPONSIBILITIES**

### **5.1 Executive Associate Director, Homeland Security Investigations**

The Executive Associate Director of HSI is responsible for the oversight of the policies and procedures set forth in this Handbook.

### **5.2 Assistant Director, National Security Investigations Division**

The Assistant Director (AD), National Security Investigations Division (NSID), is responsible for the management of the provisions of this Handbook and for ensuring compliance with its contents throughout HSI.

### **5.3 Unit Chief, HRVWCU**

The Unit Chief, Human Rights Violators and War Crimes Unit (HRVWCU), is responsible for the implementation of the provisions of this Handbook. The Unit Chief, HRVWCU, is also responsible for coordinating with HSI Domestic Operations on all aspects of the Human Rights Violators and War Crimes Program, including, but not limited to, operational, investigative, policy, personnel, budget, and logistical issues. The Unit Chief, HRVWCU, also serves as the Director of the Human Rights Violators and War Crimes Center (HRWVCC).

### **5.4 National Program Managers, HRVWCU**

HRVWCU National Program Managers (NPMs) are assigned to each of the HRVWCU Regional Support Teams (RSTs) which are designed to support active field investigations. NPMs are responsible for ensuring that HRVWCU RSTs operate in an effective, efficient, and productive manner consistent with the policies and procedures set forth in this Handbook for overseeing RSTs' development and transmittal of investigative referrals to HSI field offices and for providing oversight of the investigations referred. Upon the opening of an investigation, NPMs

also assist with the coordination of investigative activities between Headquarters (HQ), other HSI offices, and outside entities. These activities include the implementation of investigative strategies, coordination of witness interviews, and source identification and development.

### 5.5 Special Agents in Charge and Attachés

Special Agents in Charge (SACs) and Attachés are responsible for ensuring compliance with the provisions of this Handbook within their respective areas of responsibility (AORs).

### 5.6 Case Agents

Case agents of human rights violators and war crimes investigations are responsible for notifying the appropriate HSI HRVWCU NPM and Domestic Operations Manager at HQ when any enforcement action is planned. Case agents will also notify HRVWCU when additional information or witnesses are necessary when they are unable to develop additional leads before they close their investigation. HRVWCU NPMs are a valuable source for case agents and may be contacted by telephone or e-mail. Case agents should contact their local ICE Office of Chief Counsel (OCC) for legal counsel.

### 5.7 Special Agents

SAs are responsible for complying with the provisions of this Handbook.

## Chapter 6. OVERVIEW OF HUMAN RIGHTS VIOLATORS AND WAR CRIMES

The HSI Strategic Plan (2016-2020, or as updated) designates the investigation of human rights violators and war criminals as a priority objective. (b) (7)(E)

(b) (7)(E)

### 6.1 Brief History of Atrocities since World War II

Following the defeat of Imperial Japan and Nazi Germany in World War II, the international community reacted with horror to the carnage inflicted in the course of the globe-changing wars of conquest. In the immediate post-war years, the international community developed and embraced new international codes of conduct which outlawed genocide and strengthened collective international mechanisms to counteract such crimes.

The post-war order, characterized by the world-wide competition for influence between the West and the communist powers, held many destructive impulses in check. But as this situation changed – in the aftermath of the U.S. withdrawal from Vietnam, in the wake of the collapse of Soviet-American competition in Africa, and in a Europe no longer tightly circumscribed by the Iron Curtain – criminal regimes emboldened by the dissolution of the systems that had imposed checks on their behavior rose to the forefront, and the results were made painfully manifest. From the killing fields of Cambodia to the villages of Rwanda and the deserts of Darfur, from poverty-stricken Central American rural zones and the boulevards of Buenos Aires to the hamlets of Bosnia, a series of massive human rights violations has cast a stain on what was supposed to be the world freed by the “End of History.” (See Appendix B, Matthew Evangelista, *Peace Studies: Critical Concepts in Political Science*, Volume 1. Taylor and Francis, 2005; Table 2, “Deaths in Wars and Conflicts Since the End of World War II: 1945-2000”.) In each of these cases, and many others in which the mass eradication of one set of human beings by another became the order of the day, the world responded slowly, ineffectually, or not at all. It is now the mission of the HRVWCC to help ensure that the sense of impunity that has buoyed so many perpetrators is dispelled, and that the lack of global response is no longer a surety that potential violators can harbor.

### **6.1.1 Africa**

The Rwandan genocide was a widespread killing campaign in which an ethnic Hutu extremist government sanctioned the killing of the country’s minority Tutsi population as well as the killing of moderate Hutus. Between half a million and one million Rwandans, including approximately three-quarters of the country’s Tutsi population, perished during a 13-week period from April 1994 to July 1994. Immediately following the assassination of the Rwandan president in a plane crash on April 6, 1994, Hutu extremists began killing prominent individuals, including moderate Hutu politicians and Tutsi leaders. Military officers and government administrators dispatched soldiers and militia to kill Tutsis and moderate Hutu political leaders, and the genocide quickly spread to local communities throughout the country, with local officials and ordinary civilians participating in the slaughter. Hutu militia members, local administrators, and civilians armed with machetes, clubs, guns, and grenades killed Tutsi civilians and the Hutus who tried to protect them at roadblocks; in public squares, homes, and hiding places; and in hospitals, schools, and places of worship where the victims had sought shelter. The genocide ended in July 1994, when the invading rebel army of the Rwandan Patriotic Front defeated the Rwandan military. By that time, nearly one tenth of the population of Rwanda had been killed. (Note: See Appendix C, *The Rwandan Genocide (A Case Study)*.)

Other massive human rights violations occurred since World War II or continue to occur in Angola, Burundi, Chad, the Democratic Republic of the Congo, Ethiopia, Kenya, Liberia, Nigeria, Sierra Leone, Somalia, South Africa, Sudan, and Uganda.



#### A. Suggested Reading List Related to the Rwandan Genocide

- 1) The Key to My Neighbor's House – Elizabeth Neuffer.
- 2) Season of Blood – Fergal Keane.
- 3) Conspiracy to Murder – Linda Melvern.
- 4) The Rwanda Crisis – Gerard Prunier.
- 5) We Wish to Inform You That Tomorrow We Will Be Killed With Our Families – Philip Gourevitch.
- 6) Machete Season – Jean Hatzfeld.
- 7) Life Laid Bare – Jean Hatzfeld.
- 8) Shake Hands With the Devil – Romeo Dellaire.
- 9) Journey into Darkness – Thomas Odom.
- 10) A People Betrayed – Linda Melvern.
- 11) The Order of Genocide – Scott Straus.
- 12) Leave None to Tell the Story – Alison Desforges.

#### B. Suggested Films/Documentaries about the Rwanda Genocide

- 1) Sometimes in April – HBO Films.
- 2) Ghosts of Rwanda – Frontline/Public Broadcasting Service (PBS).
- 3) Earth Made of Glass – Clover and a Bee Films.
- 4) Journey into Darkness – BBC Panorama Films.

### 6.1.2 The Americas

During the Cold War, many Latin American countries were ruled by repressive military regimes or de facto military governments that waged dirty wars against guerrilla forces and other perceived threats. Guided by the doctrine of national security, the military and security forces focused on the specter of internal threat, often with the overt – and at times covert – support of the U.S. Government. State actors systematically tortured and “disappeared” political enemies, operated death squads, and carried out indiscriminate massacres of civilian populations.

Hundreds of thousands of civilians were killed as a result of state terror, especially during the 1970s and 1980s. Guerrilla forces also committed egregious human rights abuses during these conflicts. Among them, the Shining Path in Peru stands out as an insurgency force that committed human rights abuses on a scale larger than that of the state. Elsewhere, state terror accounted for the vast majority of human rights violations. Many of the countries – including Argentina, Chile, El Salvador, Guatemala, Peru, and most recently Brazil – have conducted truth commissions to investigate and report on the human rights violations that occurred during these conflicts. With some notable exceptions, the perpetrators of these crimes, however, enjoy impunity in their home countries.

In addition to the above-mentioned countries, human rights violations also occurred or continue to occur on a mass scale in Colombia, Haiti, Mexico, and Nicaragua, among others.

### **6.1.3 Asia**

In April 1975 in Cambodia, the Communist Party of Kampuchea (CPK), otherwise known as the “Khmer Rouge,” began to target suspected political dissidents and waged a campaign against education, religion, health care, and technology. To accomplish this, the Khmer Rouge abolished money, free markets, normal schooling, private property, foreign clothing styles, religious practices, and traditional Khmer culture. Public schools, pagodas, mosques, churches, universities, shops, and government buildings were shut or turned into prisons, stables, reeducation camps, and granaries. There was no public or private transportation, no private property, and no non-revolutionary entertainment. Leisure activities were severely restricted. People throughout the country, including the leaders of the CPK, were required to wear black costumes, which were deemed their traditional revolutionary clothes. Cambodian citizens – particularly physicians, teachers, and other educated individuals – were targeted for imprisonment and torture. In four years, approximately two million Cambodians died in the Khmer Rouge’s Killing Fields.

Other massive human rights violations occurred since World War II or continue to occur in Burma, China, Indonesia, the Philippines, and Sri Lanka.

### **6.1.4 The Balkans**

The former Federal Republic of Yugoslavia (FRY) was torn apart by ethnic wars from 1991-1999, in which more than 130,000 persons were killed and more than 2 million were displaced. Most of the victims were civilians. The wars were initiated by the collision of two main forces: the attempt by Slobodan Milosevic’s Serbia to wrest away all territories claimed or inhabited by the Serbian ethnic group into a single state, versus the movements towards independence of first the Slovenes and Croats, then the Bosnians, Macedonians, and ultimately the Kosovar Albanians. The wars in the former FRY introduced the term ‘ethnic cleansing’ into the contemporary lexicon. The chief distinguishing feature of the wars was that civilian populations were the principal targets of the warring parties. The Bosnian conflict (1992-1995) featured the largest number of victims (over 100,000 killed and almost 10,000 still missing since the start of the war), and culminated in the Srebrenica massacre of July 1995, the only adjudicated instance of

genocide in Europe since World War II. The final stage of the conflict was the Serb war in Kosovo (1998-1999), which was brought to an end by North Atlantic Treaty Organization (NATO) airstrikes against Serbia in 1999. While atrocities were committed by all participants in the conflict, the largest number of identified human rights violators from the wars were of Serbian ethnicity. The United States provided a haven for more than 150,000 refugees from the Yugoslav wars; it appears that several hundred of these refugees are in fact the perpetrators of, or participants in, ethnic violence and not innocent victims.

### **6.1.5 The Middle East**

From 1987 until 1989, the Ba'athist Iraqi regime of Saddam Hussein waged war against the country's Kurdish population. Arising in the context of the 1980-1988 Iran-Iraq War and the culmination of more than a decade of anti-Kurdish efforts by the Hussein regime, the "Anfal Campaign" included massive human rights abuses. These violations included summary executions and disappearances of tens of thousands of Kurdish civilians, including children; the widespread use of chemical weapons including mustard gas and the nerve agent Sarin against the town of Halabja on March 16, 1988, as well as chemical attacks on other villages killing thousands of civilians; the total destruction of approximately 4,000 Kurdish villages; the detention of Kurdish civilians in concentration camps, including at Topzawa near Kirkuk; and massive destruction of civilian property. Many human rights organizations contend that the treatment of the Kurds amounted to genocide, with as many as 100,000 total Kurdish deaths attributed to the Anfal Campaign.

Syria has endured two epochs of mass atrocities since World War II. In 1982, the Muslim Brotherhood staged an uprising in the city of Hama. This revolt was brutally suppressed by the Hafez al-Assad regime; human rights organizations allege that the Syrian military killed tens of thousands of civilians. In the spring of 2011, Bashar al-Assad's regime responded to a national uprising and subsequent insurgency by brutally repressing as much of the known or perceived civilian opposition as possible, including through mass arbitrary detentions, torture, and extrajudicial killings. Since that time, the Assad regime and its paramilitary supporters have continued such abuses and committed other widespread and systematic human rights violations and war crimes, including the indiscriminate shelling of civilian populations as well as the use of starve-or-surrender siege tactics and prohibited weapons such as barrel bombs and chemical weapons. In particular, Assad's military is known to have employed Sarin gas in 2013 against civilians in the towns/regions of al-Otaybeh, Adra, Ghouta, Khan al-Assal, Saraqeb, and Sheikh Maqsoud.

In 2013, an extremist insurgent group, calling itself the Islamic State (IS) in Iraq and Syria (ISIS), split off from Al Qaeda in Iraq. By 2014, ISIS, which soon changed its name to IS, began to aggressively claim and control territory in both Iraq and Syria in the name of founding a global Islamic caliphate. IS, which adheres to an extreme form of Sunni Islam, has perpetrated large-scale human rights violations against non-Muslims, Shiite Muslims, and moderate Sunni Muslims. IS committed genocide against the Yazidi population in northern Iraq and has committed mass atrocities against other populations, including the recruitment and use of child

soldiers, extrajudicial killings, torture, slavery, sexual violence, cultural destruction, forced displacements, and other crimes against humanity.

In addition to IS and the Syrian military and paramilitary groups, other parties to the conflicts in Syria and Iraq have also engaged in human rights violations. Extremist groups such as Jabhat al-Nusra (also known as the al-Nusra Front) and more moderate Syrian and Kurdish opposition groups are known to recruit and use child soldiers and to commit reprisal acts against civilian populations in areas they wrest from IS control.

## **6.2 Human Rights Violators and War Crimes Center**

In 2009, HSI established the HRVWCC within NSID to foster a government-wide approach to identifying and prosecuting human rights violators and war criminals. The HRVWCC harnesses the knowledge and expertise of SAs, attorneys, Intelligence Research Specialists (IRSs), and historians in identifying, researching, investigating, and prosecuting human rights violations and war crimes by applying the full range of ICE's investigative authorities. The Federal Bureau of Investigation's (FBI) International Human Rights Unit (IHRU) joined the HRVWCC in 2012, and is co-located with HRVWCU at NSID. DOS, USCIS, and DOJ's Human Rights and Special Prosecutions (HRSP) representatives are also part of the HRVWCC.

The HRVWCC's mission consists of four pillars:

- A. Prevent the admission of foreign war crime suspects, persecutors, and human rights abusers into the United States through proactive efforts; and identify and correct systemic vulnerabilities that these individuals attempt to utilize in order to evade justice in their home jurisdictions.
- B. Deny safe haven in the United States to human rights violators by utilizing all of HSI's investigative techniques and legal authorities to identify and prosecute individuals who were involved in and/or were responsible for the commission of human rights abuses and war crimes across the globe.
- C. Remove human rights violators, torturers, and war criminals located in the United States whenever possible.
- D. Oversee the development of programs in response to former President Obama's PSD-10: the prevention of mass atrocities.

The HRVWCC is composed of experts working within the RSTs who have specialized, regional geographical responsibility for monitoring human rights violations and war crimes. The Human Rights Target Tracking Team (HRT3) proactively identifies and prevents the entry of foreign human rights violators in coordination with DOS and CBP. The HRVWCC coordinates closely on human rights violator and war crimes investigations with designated points of contact (POCs) at each HSI SAC or Attaché office.

HSI prioritizes investigations according to a two-level designation:

(b) (7) (E)

(b) (7)(E)

### 6.2.1 HRVWCC Members

The HRVWCC consists of personnel from the following units/offices and are deployed to the various RSTs and on HRT3:

- A. HSI HRVWCU SAs, IRSs and Historians,
- B. OPLA HRLS Attorneys and Historians,
- C. FBI IHRU SAs and IRSs,
- D. DOJ Human Rights Special Prosecutions Section Attorneys and Historians, and
- E. DOS.

### 6.2.2 Regional Support Teams

(b) (7)(E)

### 6.2.3 Human Rights Target Tracking Team

HRT3 uses an intelligence-led methodology that proactively identifies and prevents the entry of foreign human rights violators into the United States in coordination with DOS and CBP. The methodology employed by HRT3 has been extremely effective at identifying human rights violators and war criminals who are currently in the United States.

### 6.2.4 OPLA's Human Rights Law Section

OPLA's HRLS provides legal and policy advice to HSI and the Office of Chief Counsel in support of HSI investigations and removal proceedings seeking to prevent human rights violators and war criminals from gaining entry into – or finding safe haven in – the United States. ICE created HRLS in August 2003 to support the ICE Human Rights and Public Safety Unit, the predecessor of HRVWCU within the HRVWCC.

In support of this mission, HRLS employs all the available authorities related to human rights violators and war criminals, including the persecutor bar or bars (8 U.S.C. §§ 1101(a)(42)(B), 1158(b)(2)(A)(i), 1231(b)(3)(B)(i)); substantive immigration human rights violator deportation grounds, including severe violations of religious freedom (8 U.S.C. §§ 1182(a)(2)(G), 1227(a)(4)(E)), genocide (8 U.S.C. §§ 1182(a)(3)(E)(ii), 1227(a)(4)(D)), torture (8 U.S.C. §§ 1182(a)(3)(E)(iii)(I), 1227(a)(4)(D)), extrajudicial killing (8 U.S.C. §§ 1182(a)(3)(E)(iii)(II), 1227(a)(4)(D)), and the use or recruitment of child soldiers (8 U.S.C. §§ 1182(a)(3)(G), 1227(a)(4)(F)); INA § 212(f) proclamations involving human rights abuses; serious criminal human rights offenses including genocide (18 U.S.C. § 1091), torture (18 U.S.C. §§ 2340-2340A), war crimes (18 U.S.C. § 2441), use or recruitment of child soldiers (18 U.S.C. § 2442); the criminal offense of material support to organizations engaged in serious human rights offenses (18 U.S.C. § 2339A), and both immigration and criminal fraud and perjury charges.

### 6.2.5 FBI's International Human Rights Unit

The FBI's IHRU conducts independent and joint investigations to advance domestic human rights violation cases and provides select assistance to international partners. IHRU's mission is to mitigate the most significant threats posed by international human rights violators (b) (7)(E)

### 6.2.6 Initiatives

#### A. The Atrocities Prevention Targeting Pilot Project (APT)

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#### B. The Absconder Initiative

The Absconder Initiative is a proactive effort to locate human rights violators who have failed to leave the United States after they receive a final order of removal, deportation, or exclusion. ICE expends significant resources to obtain removal orders by IJs against human rights violators. (b) (7)(E)

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C. Foreign Fugitives

The FBI's IHRU focuses its efforts on locating specially designated, internationally indicted war crimes fugitives. IHRU works in close coordination with DOJ's HRSP, DOS' Office of Global Criminal Justice, ICE's HRVWCC, National Security Staff, various DOD offices and combatant commands, and other government agencies. These war crime fugitives were derived from the Congressionally-approved War Crimes Reward Program. For this endeavor, it is critical to leverage the resources and authorities of foreign law enforcement and intelligence services in addition to International Criminal Tribunals (ICTs).

D. Presidential Study Directive (PSD)-10

On August 4, 2011, former President Obama issued PSD-10, Creation of an Interagency Atrocities Prevention Board and Corresponding Interagency Review, declaring the prevention of mass atrocities and genocide to be a "core national security interest and core moral responsibility" of the United States. In PSD-10, the President ordered the creation of the Atrocities Prevention Board (APB) to coordinate a whole-of-government approach to preventing atrocities, and directed the National Security Advisor to lead a comprehensive review to assess the U.S. Government's anti-atrocity capabilities and recommend reforms that would fill identified gaps in these capabilities. Based on its expertise, HRVWCU has been and continues to be an active participant in the APB interagency process.

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E. Human Rights War Crimes Hunter Program

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**6.2.7 DOS-DHS Standard Operating Procedures for Identifying Aliens Potentially Inadmissible on Human Rights Related Grounds**

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**6.2.8 HSI Field Responsibilities – Waiver Actions in Admitting Known or Suspected Human Rights Violators**

As HSI field offices continue to identify foreign human rights violators and war crime suspects who may seek to enter the United States at a future date, SAs should coordinate with HRVWCU

to ensure that such offenders are properly documented, targeted, and shared within the Interagency Border Inspection Service (IBIS) in order to prevent their entry into the United States.

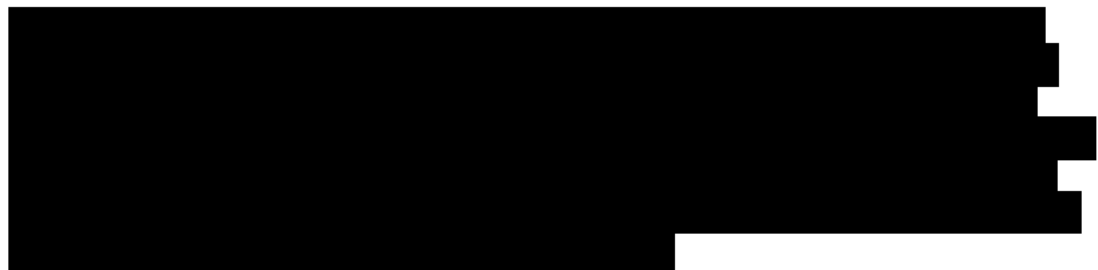
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**6.3 Atrocities Prevention Board**

PSD-10, Creation of an Interagency Atrocities Prevention Board and Corresponding Interagency Review, dated August 4, 2011, states the following:

*Preventing mass atrocities and genocide is a core national security interest and a core moral responsibility of the United States.*

*Our security is affected when masses of civilians are slaughtered, refugees flow across borders, and murderers wreak havoc on regional stability and livelihoods. America's reputation suffers, and our ability to bring about change is constrained, when we are perceived as idle in the face of mass atrocities and genocide. Unfortunately, history has taught us that our pursuit of a world where states do not systematically slaughter civilians will not come to fruition without concerted and coordinated effort.*

Former President Obama stated that, in order to counter atrocities more effectively, the U.S. Government must prioritize this effort, strengthen and expand the tools available to us, and establish a level of organization that matches our commitment. He ordered the creation of a whole-of-government board dealing with global atrocities, directing the National Security Advisor to lead a comprehensive review to assess the U.S. Government's anti-atrocity capabilities and recommend reforms that would fill identified gaps in these capabilities.

*The primary purpose of the APB is to coordinate a whole-of-government approach to preventing mass atrocities and genocide. By institutionalizing the coordination of atrocity prevention, we can ensure: (1) that our national security apparatus recognizes and is responsive to early indicators of potential atrocities; (2) that departments and agencies develop and implement comprehensive atrocity prevention and response strategies in a manner that allows "red flags" and dissent to be raised to decision makers; (3) that we increase the capacity and develop doctrine for our foreign service, armed services, development professionals, and other actors to engage in the full spectrum of smart prevention activities; and (4) that we are optimally positioned to work with our allies in order to ensure that the burdens of atrocity prevention and response are appropriately shared.*

The APB helps the U.S. Government identify and address atrocity threats and oversee institutional changes in order to make the U.S. Government's approach to mass atrocities more nimble and effective. Because strong organization and a whole-of-government approach is needed to counter atrocities effectively, the APB includes representatives of DOS, DOD, DOJ, DHS, the Department of the Treasury, the Joint Chiefs of Staff, the U.S. Agency for International Development, the U.S. Mission to the U.N., the Office of the Director of National Intelligence, the CIA, and the Office of the Vice President. All representatives are at the Assistant Secretary level or higher and have been appointed by their respective Principals. The APB meets on a monthly basis to oversee the development and implementation of atrocity prevention and response policy, and additionally on an ad hoc basis to deal with urgent situations as they arise. The Chair of the APB is the National Security Staff Senior Director for Multilateral Affairs and Human Rights. To ensure senior-level visibility into the work and progress the APB is making, the Deputies meet at least twice a year, and Principals once a year, to review the work of the APB; the Chair reports on this work annually in a memorandum to the President.

## **6.4 U.S. Attorney's Office**

As a result of the complexities of human rights violations investigations, SAs are advised that early engagement by their United States Attorney's Office (USAO) is critical. It is imperative that the importance of the investigation is underscored to the AUSA by highlighting the nature of the underlying offenses, such as genocide, extrajudicial killings, torture, etc. Early communication and engagement is critical for those USAOs requiring *complete* development of probable cause before they accept a case for prosecution. SAs should seek assistance from management in order to engage the USAO early. Due to the complexities of prosecuting these cases, it cannot be overstated that it is worthwhile for an SA to ask that an AUSA be assigned during the initial phase of the investigation. SAs should also brief and seek support from the human rights POC in the local OCC.

Generally, AUSAs from the USAO's National Security Unit or Anti-Terrorism Unit are more familiar with the complexities of prosecuting cases with foreign crime bases. If possible, the SA should ask that both an AUSA and a co-AUSA from one of these units be assigned to the case. The USAO will also provide critical support through interaction and liaison with the local DOJ victim/witness coordinator, as well as the Justice Management Division.

## **6.5 DOJ's Human Rights and Special Prosecutions Section**

HRSP prosecutes human rights violators and war criminals under the federal criminal statutes proscribing torture, war crimes, genocide, and recruitment or use of child soldiers. HRSP also prosecutes human rights violators and war criminals for immigration and naturalization fraud arising out of efforts to hide their involvement in such crimes. Section 9-2.139 of the United States Attorneys Manual (USAM) requires the local USAOs to notify HRSP when they contemplate charging torture, a war crime, genocide, or the recruitment or use of child soldiers, or any other offense (such as a violation of 18 U.S.C. §§ 1001, 1425, or 1546) where its proof (such as a false statement or fraud) will require the government to 1) define torture, war crimes, genocide, or recruitment or use of child soldiers; or 2) prove that torture, a war crime, genocide, or recruitment or use of child soldiers was committed.

## **Chapter 7. CRIMINAL VIOLATIONS RELATING TO HUMAN RIGHTS VIOLATORS AND WAR CRIMES**

HSI conducts both criminal and administrative investigations to combat human rights violations and war crimes. SAs can build criminal cases and apply substantive criminal charges, such as genocide; torture; war crimes; the use and recruitment of child soldiers; and material support to organizations involved in genocide, torture, and child soldiers. In contrast, if there is insufficient evidence to support substantive human rights violations, SAs can also pursue human rights investigations and apply other immigration charges, such as fraud and misuse of visas, permits, and other documents; fraud and related activity in connection with identification documents, authentication features, and information; false statements; and procurement of citizenship or naturalization unlawfully.

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## 7.1 Substantive vs. Non-Substantive Charges

The goals of human rights violators and war crimes investigations are to deny known or suspected human rights violators and war criminals safe haven in the United States and to hold perpetrators accountable for their actions. Human rights violators and war criminals are individuals who have ordered, incited, committed, assisted in, or otherwise participated in torture, genocide, war crimes, extrajudicial killings, recruitment or use of child soldiers, and/or severe forms of religious persecution. Criminal and administrative charges for these violators fall into two broad categories: substantive charges and non-substantive charges.

### 7.1.1 Substantive Criminal Charges

Substantive criminal violations relate to genocide, torture, war crimes, female genital mutilation, material support, and the use or recruitment of child soldiers.

#### A. Torture – 18 U.S.C. § 2340(A)

The U.S. codified CAT on November 20, 1994. The statute prohibits torture committed by public officials under color of law against persons in the public official's custody or control. Torture is defined as acts specifically intended to inflict severe physical or mental pain or suffering; it does not include such pain or suffering incidental to lawful sanctions. The statute applies only to acts of torture committed outside the United States. There is Federal extraterritorial jurisdiction over such acts whenever the perpetrator is a national of the United States or the alleged offender is found within the United States, irrespective of the nationality of the victim or the alleged offender.

B. Genocide – 18 U.S.C. § 1091

This statute was initially enacted in November 1998; it prohibits genocide whether committed in time of peace or in time of war. Genocide is defined in 18 U.S.C. § 1091 and includes violent attacks with the specific intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. When originally enacted, the statute provided jurisdiction if the offense was committed within the United States or extraterritorial jurisdiction if the offender was a national of the United States. In December 2009, the statute was amended to allow for Federal extraterritorial jurisdiction over genocide to include when the offender is found within the United States, irrespective of the nationality of the victim or the alleged offender.

C. War Crimes – 18 U.S.C. § 2441

This statute was enacted in August 1996, and prohibits acts in violation of the 1949 Geneva Conventions, the Hague Convention IV of 1907, and the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (when the United States is a party to that Protocol). The statute establishes Federal extraterritorial jurisdiction over these acts if the offender or the victim is a U.S. national or a member of the U.S. Armed Forces.

D. Use or Recruitment of Child Soldiers – 18 U.S.C. § 2442

This statute was enacted in October 2008. It prohibits the knowing use of a person under 15 years of age for active participation in hostilities; it also prohibits the knowing recruitment, enlistment, or conscription of a person under 15 years of age into an armed force or group. The statute establishes jurisdiction over these acts if the offender is found within the United States, irrespective of the nationality of the victim or the alleged offender.

E. Providing material support to terrorists, organizations involved in torture, genocide, or the recruitment of child soldiers – 18 U.S.C. § 2339a

This statute was enacted in 1994 and amended to include torture, genocide, and the recruitment and use of child soldiers. The statute prohibits persons from providing material support or resources or concealing or disguising the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of 18 U.S.C. §§ 1091, 2340A, or 2442.

F. Female Genital Mutilation – 18 U.S.C. § 116

In 1996, Congress criminalized performing female genital mutilation (FGM) on minors younger than 18 years of age. The statute was amended, effective January 2,

2013, to prohibit the transportation of minors abroad for the purpose of performing FGM on the minor, sometimes referred to as “vacation cutting.”

### **7.1.2 Non-Substantive Criminal Charges**

Non-substantive violations include the prohibition of an individual to remain in the United States legally; these violations are pursued in an effort to deny human rights violators and war criminals safe haven in the United States. These charges include the following:

- A. False statements – 18 U.S.C. § 1001.
- B. False Statements in Naturalization Proceedings – 18 U.S.C. § 1015.
- C. Fraud and related activity in connection with identification documents, authentication features, and information – 18 U.S.C. § 1028.
- D. Procurement of citizenship or naturalization unlawfully – 18 U.S.C. § 1425 (a) and (b).
- E. Obstruction of Proceedings – 18 U.S.C. § 1505.
- F. Fraud and misuse of visas, permits, and other documents – 18 U.S.C. § 1546.
- G. Perjury – 18 U.S.C. § 1621.

### **7.1.3 Substantive Offense Approval Process**

#### **A. Criminal Process**

DOJ handles the internal process for obtaining approval to charge an individual with a substantive criminal human rights violation. The USAM states that “Prior, express approval of the Assistant Attorney General (AAG) of the Criminal Division (or his or her designee) is required for the following court actions involving torture, war crimes, genocide, or child soldiers matter: filing an application for a search warrant; filing an application for a material witness warrant; filing a criminal complaint or information or seeking the return of an indictment; filing a superseding complaint or information, or seeking the return of a superseding indictment; dismissing a charge for which AAG approval was initially required, including as part of a plea agreement; and other specific court filings as requested by the AAG.” USAM 9-2.139(E).

#### **B. Administrative Process**

OPLA handles the internal process for obtaining approval to lodge a substantive administrative human rights charge of inadmissibility or removability.



The local OCC prepares a prosecution memorandum and suggested charges in consultation with HRLS in OPLA. The memorandum must reflect that it has been approved by the OCC management, the HRLS Chief, and the HSILD Chief prior to being forwarded to OPLA management for approval.

## 7.2 *Ex Post Facto* Considerations

An *ex post facto* (“after the fact”) law is legislation passed with declared retroactive effect, thereby changing the legal consequences and/or penalties of conduct performed prior to the passage of the law. Two clauses in the U.S. Constitution prohibit *ex post facto* laws: Article 1, § 9 applies to Congress, and Article 1, § 10 applies to the states. However, the U.S. Supreme Court has held that the *ex post facto* prohibition in the Constitution only applies to criminal matters, not civil matters. *Calder v. Bull*, 3 U.S. 386 (1798).

In administrative law, including application of the INA, “congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result.” *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). In other words, grounds of removability will not apply to conduct that occurred before Congress passed the law, unless Congress also explicitly declares that those grounds should apply retroactively.

All five modern-day human rights violator removal grounds have retroactive effect. Genocide, extrajudicial killing, and torture are covered by the 2004 Intelligence Reform and Terrorism Prevention Act (IRTPA), IRTPA § 5501(c). Although the severe violations of religious freedom grounds have a complex history, they appear to be retroactive as well. See International Religious Freedom Act of 1988, Pub. L. 105-292, 112 Stat. 2787, 2814 (1998) (codified at 8 U.S.C. § 1182(a)(2)(G)); IRTPA § 5502 (removing temporal restrictions). Finally, the Human Rights Enforcement Act (HREA) of 2009 made the child soldiers use/recruitment grounds of inadmissibility and removability explicitly retroactive. See HREA, Pub. L. 111-122, 123 Stat. 3480 (2009).

<b>Title 18 Criminal Charges with Enactment Dates</b>		
<u>Statute</u>	<u>Brief Description</u>	<u>Date Enacted</u>
18 U.S.C. § 116	Female genital mutilation	9/30/1996 for subsections (a) through (c). Subsection (d) was added 1/2/2013.
18 U.S.C. § 956	Conspiracy to murder, kidnap, or maim	6/25/1948
18 U.S.C. § 1001	Statements or entries (false) generally	After 6/25/1948
18 U.S.C. § 1015	Fraud in naturalization, citizenship, or alien registry	On or after 9/30/1996
18 U.S.C. § 1091	Genocide	11/4/1988, amended 12/21/2007 & 12/22/2009

18 U.S.C. § 1116	Murder or manslaughter of foreign officials, official guests, or internationally protected persons	10/24/1972
18 U.S.C. § 1119	Foreign murder of United States nationals	9/13/1994
18 U.S.C. § 1203	Hostage taking	10/12/1984
18 U.S.C. § 1425	Procurement of citizenship or naturalization unlawfully	On or after 9/30/1996
18 U.S.C. § 1546	Fraud and misuse of visas, permits, and other documents	After 6/28/1948
18 U.S.C. § 1621	Perjury generally	6/28/1948
18 U.S.C. § 2332	Homicide	4/24/1996
18 U.S.C. § 2339A	Material support to terrorists (and/or perpetrators of genocide, torture, and use or recruitment of child soldiers)	18 U.S.C. § 2339A became effective 9/13/1994. However, torture was not incorporated until 4/24/1996, and genocide and use/recruitment of child soldier charges were incorporated on 12/22/2009.
18 U.S.C. § 2340A	Torture	11/20/1994
18 U.S.C. § 2441	War crimes	8/21/1996
18 U.S.C. § 2442	Recruitment/Use of child soldiers	10/8/2008

### 7.3 Statute of Limitations

The phrase “statute of limitations” refers to the time period within which formal criminal charges must be brought, usually through grand jury indictment or information, after a crime has been committed. (Charles Doyle, *Federal Criminal Cases: An Overview*, Congressional Research Service (CRS) Report for Congress, Oct. 1, 2012).

In general, non-capital offenses, or those which are not punishable by the death penalty, have a statute of limitations of 5 years, 18 U.S.C. § 3282. Certain exceptions apply, such as violations of nationality, citizenship, and passport laws, or conspiracy to violate such laws. Naturalization fraud or attempted naturalization fraud (18 U.S.C. § 1425) have a 10-year statute of limitations; certain non-capital terrorism-related offenses, such as terrorist acts abroad against U.S. nationals (18 U.S.C. § 2332), have an 8-year statute of limitations; torture, in which the victim did not die and there was no foreseeable risk that the victim would die or suffer serious bodily injury (18 U.S.C. §§ 2340-2340A) has an 8-year statute of limitations; and use or recruitment of child soldiers (18 U.S.C. § 2442) has a 10-year statute of limitations. There is no statute of limitations for bringing a civil denaturalization action. *See* 8 U.S.C. § 1451(a); *see also United States v. Nuñez-Garcia*, 262 F.Supp.2d 1073, 1087 (C.D. Cal. 2003).

Capital offenses have no statute of limitations. Torture is included in this category in instances where the victim has died or where there was foreseeable risk of death or serious bodily injury

(18 U.S.C. §§ 2340-2340A). Offenses in this category also include genocide (18 U.S.C. § 1091), war crimes resulting in death of a victim (18 U.S.C. § 2441), and murder of a U.S. national outside the United States (18 U.S.C. § 1119).

(Note: See USAM, Title 9, Criminal Resource Manual 650, Length of Limitations Period, available at [http://www.justice.gov/usao/eousa/foia\\_reading\\_room/usam/title9/crm00650.htm](http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm00650.htm); this link provides statute of limitations information for specific criminal statutes.)

If a statute of limitations issue exists, the U.S. Government may still be able to prosecute based on related offenses such as lying on immigration documents or conspiracy to defraud the United States. SAs should consult with their AUSA or OPLA attorney concerning the statute of limitations specific to their case.

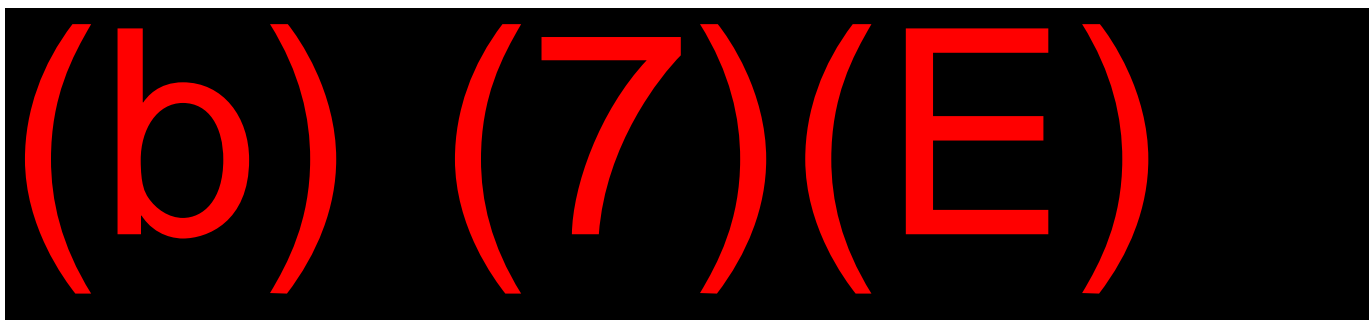
#### 7.4 Tolling of the Statute of Limitations

Many of the allegations involving human rights violators surface years after a violator has entered the United States. SAs may be faced with investigating leads that are close to the statute of limitations. There are two legal justifications contained in the USAM to extend or toll the statute of limitations for a specific investigation:

- A. The running of statutes of limitations is tolled during periods of fugitivity (18 U.S.C. § 3290). Physical absence from the jurisdiction is not required to trigger this tolling provision. See *United States v. Singleton*, 702 F.2d 1159 (D.C. Cir. 1983); *United States v. Wazney*, 529 F.2d 1287 (9th Cir. 1976).
- B. The running of a statute of limitations may also be tolled, on application of the United States, during the pendency of an official request to a foreign court or authority to obtain evidence located in a foreign country. See 18 U.S.C. § 3292. An “official request” is either a request pursuant to a Mutual Legal Assistance Treaty (MLAT) or, if the United States does not have an MLAT with the foreign country, a Letter Rogatory, both of which are processed through DOJ’s Office of International Affairs (OIA).

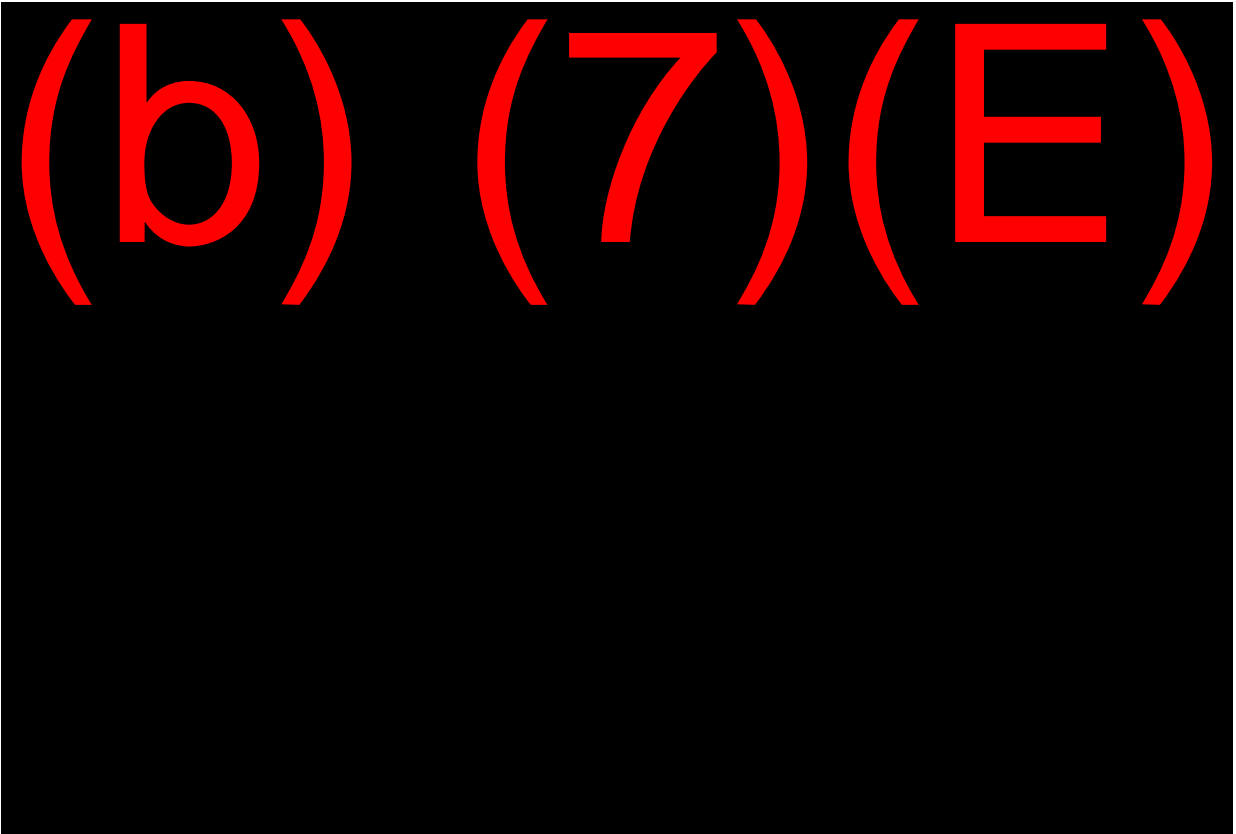
## Chapter 8. INVESTIGATIVE CASE DEVELOPMENT

### 8.1 Investigative Approach



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## B. Detailed Crime-Based Information



## C. Potential Criminal and Administrative Charges

The analysis undertaken by HRVWCU includes the applicable criminal and immigration statutes that the suspect may have violated based on the review of his or her A-file and the scope of participation in the suspected human rights abuse(s) committed abroad. (Note: For a list of criminal and administrative charges, see Chapter 7.)

### 8.3 HSI Tip Line

Law enforcement staff members in the HSI Tip Line Unit analyze the information obtained from the public via 1) HSI's toll-free tip hotline (1-866-347-2423, DHS-2-ICE) in the United States and Canada, 2) the Internet-based HSI Tip Form at [www.ice.gov/tips](http://www.ice.gov/tips), or 3) the international HSI hotline (1-802-872-6199), and quickly forward the information to HSI field offices for investigation or other action. SAs can use this information to initiate cases or possibly to strengthen and/or corroborate existing investigations. Tip Line information may also help identify potential informants in support of ongoing or new investigations. SAs can obtain copies of recorded telephone calls and detailed call logs from the HSI Tip Line Unit.

#### 8.4 OPLA's Human Rights Law Section Historians

HRLS historians play a key role in helping to identify and develop new investigative leads with respect to human rights violations and war crimes. They can apply their historical knowledge and subject matter expertise in evaluating current and historical atrocities. They utilize open source information and current intelligence developed through HSI investigations, as well as information shared from law enforcement agencies around the world.

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## 8.5 Outreach to U.S. Communities Affected by Human Rights Violations and War Crimes



## 8.6 Non-Governmental Organizations

NGOs/Quasi-Governmental Organizations may have a nexus to an investigation. Often, NGOs can offer valuable assistance in locating and identifying witnesses, providing background on conflict areas or crime scenes, and identifying individual or state actor perpetrators. However, SAs should remember that NGOs have a specific mission and need for credibility in the area in which they work. Therefore, NGOs may not be willing to identify specific witnesses or may provide assistance only after receiving assurances from HSI as to how a witness was located. SAs should contact an HRVWCU NPM prior to contacting NGOs. HRVWCU maintains close working relationships with many NGOs, which may assist SAs with an introduction. (b) (7)(E)

## 8.7 International Court of Justice

The International Court of Justice (ICJ) is the principal judicial organ of the U.N. It was established in June 1945 by a U.N. Charter and it began work in April 1946. The seat of the ICJ is the Peace Palace in The Hague (Netherlands). The Court's role is 1) to settle legal disputes submitted by states, per international law, and 2) to give advisory opinions on legal questions referred to it by authorized U.N. organizations and specialized agencies.

The ICJ may entertain two types of cases: 1) legal disputes between states that the states submit (contentious cases); and 2) requests for advisory opinions on legal questions referred to it by U.N. organizations and specialized agencies (advisory proceedings). (Note: For more information on the contentious cases and advisory proceedings, SAs should visit: <http://www.icj-cij.org/court/index.php?p1=1&p2=6>)

## **8.8 International Criminal Tribunal for the Former Yugoslavia and the Mechanism for the International Criminal Tribunals**

In May 1993, the U.N. established the International Criminal Tribunal for the former Yugoslavia (ICTY) in response to mass atrocities then taking place in Croatia and in Bosnia and Herzegovina. Reports depicting horrendous crimes in which thousands of civilians were being killed and wounded, tortured, and sexually abused in detention camps, and hundreds of thousands expelled from their homes, caused outrage across the world and spurred the U.N. Security Council to act. The ICTY was the first war crimes court that the U.N. created, and was the first international war crimes tribunal since the Nuremberg and Tokyo tribunals. The Security Council established it in accordance with Chapter VII of the U.N. Charter.

Situated in The Hague, the Netherlands, the ICTY has charged over 160 persons. Those indicted by the ICTY include heads of state, prime ministers, army chiefs of staff, interior ministers, and many other high- and mid-level political, military, and police leaders from various parties to the Yugoslav conflicts. Its indictments address crimes committed from 1991 to 2001 against members of various ethnic groups in Croatia, Bosnia and Herzegovina, Serbia, Kosovo, and the Former Yugoslav Republic of Macedonia.

The mandate of the ICTY will end and its Tribunal will close at the end of 2017. However, the U.N. has established the International Residual Mechanism for Criminal Tribunals, known more generally as the Mechanism for the International Criminal Tribunals (MICT). Starting in 2018, documents or other investigative support that would have previously been provided by the ICTY will be handled by the MICT. The MICT website has a page specially dedicated to requests for assistance from national jurisdictions: <http://www.unmict.org/en/about/functions/requests-assistance> (last accessed March 14, 2017).

## **8.9 International Criminal Tribunal for Rwanda**

Recognizing that serious violations of humanitarian law were committed in Rwanda, and acting under Chapter VII of the U.N. Charter, the Security Council created the International Criminal Tribunal for Rwanda (ICTR) by Resolution 955 of November 8, 1994. The purpose of the measure was to contribute to the process of national reconciliation in Rwanda and to the maintenance of peace in the region. The ICTR was established for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda between January 1, 1994 and December 31, 1994. It could also deal with the prosecution of Rwandan citizens responsible for genocide and other such violations of international law committed in the territory of neighboring States during the same period.

The ICTR was governed by its statute, which was annexed to Security Council Resolution 955. The Rules of Procedure and Evidence, which the Judges adopted in accordance with Article 14 of the Statute, established the necessary framework for the functioning of the judicial system. The ICTR consists of three divisions: the Chambers and the Appeals Chamber; the Office of the



Prosecutor in charge of investigations and prosecutions; and the Registry, responsible for providing overall judicial and administrative support to the Chambers and the Prosecutor.

On May 10, 2013, the ICTR completed its work at the trial level with respect to all the 93 accused. This work included 55 first-instance judgments involving 75 accused, 10 referrals to national jurisdictions (four apprehended accused and six fugitive cases), three top-priority fugitives whose cases have been transferred to the International Residual Mechanism for Criminal Tribunals (“the Residual Mechanism”), two withdrawn indictments, and three subjects who died prior to or in the course of the trial. The final substantive trial judgment was delivered in December 2012, and appellate proceedings were concluded with respect to 46 persons.

### **8.10 Special Court for Sierra Leone**

The Special Court for Sierra Leone (SCSL) was set up in 2002 as the result of a request to the U.N. in 2000 by the Government of Sierra Leone to address serious crimes against civilians and U.N. peacekeepers committed during the country’s decade-long (1991-2002) civil war. Negotiations between the U.N. and the Government of Sierra Leone on the structure of the court and its mandate produced the world’s first “hybrid” ICT, mandated to try those “bearing the greatest responsibility” for crimes committed in Sierra Leone after November 30, 1996. The SCSL was the first international court to be funded by voluntary contributions and, in 2013, became the first court to complete its mandate and transition to a residual mechanism.

### **8.11 Extraordinary Chambers in the Court of Cambodia**

In 1997, the Cambodian Government requested U.N. assistance in establishing a trial to prosecute the senior leaders of the Khmer Rouge. In 2001, the Cambodian National Assembly passed a law creating the Extraordinary Chambers in the Courts of Cambodia (ECCC) for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea. The court was to try serious crimes committed during the Khmer Rouge regime. An agreement with the U.N. was ultimately reached in June 2003 detailing how the international community would assist and participate in the Extraordinary Chambers.

As a hybrid national-international tribunal, the ECCC features Cambodian staff and judges, as well as foreign personnel. This structure allows foreign personnel with experience in international crimes to assist their Cambodian counterparts.

### **8.12 Special Tribunal for Lebanon**

On February 14, 2005, a large explosion near the St. George Hotel in downtown Beirut killed 23 people, including the former Lebanese prime minister, Rafik Hariri, and injured many others. The blast was so powerful that it left a crater nearly 33 feet wide and over 6 feet deep in the street.

The Special Tribunal for Lebanon (STL) is a tribunal of international character. The STL was inaugurated on March 1, 2009, and has four divisions: Chambers, The Office of the Prosecutor,

The Defense Office, and the Registry. The STL is headquartered on the outskirts of The Hague, the Netherlands, with a tribunal office in Beirut, Lebanon. Its primary mandate is to hold trials for those accused of carrying out the attack of February 14, 2005.

## 8.13 Case Management

### 8.13.1 Case Opening Protocols

Generally, human rights violators and war crime cases should be further coded in the (b) (7)(E) [REDACTED].

### 8.13.2 Mandatory Case Opening Policy

As stated in Chapter 6, the HSI Strategic Plan 2016-2020, or as updated, designates the human rights violators and war crimes investigative mission as a priority objective because this type of investigation has significant national security and foreign policy implications. In addition, such investigations garner huge media scrutiny. In support of the U.S. Government's national security and foreign policy position and also mindful of HSI's historic role in fighting human rights violators and war criminals along with its U.S. partners – the FBI and DOJ – HSI has mandated the case opening of all human rights violator-related IRs generated from the HQ HRVWCU.

(b) (7)(E) [REDACTED]

[REDACTED]

### 8.13.3 ICM Program Codes

(b) (7)(E) [REDACTED]

(b) (7)(E) [REDACTED]

(b) (7)(E)

8.13.4 (b) (7)(E)

(b) (7)(E)

#### 8.14 Coordination with HRVWCU

Since human rights violators and war crimes investigations may often be complex due to the international investigative requirements, including operating in third world countries, SAs should promptly communicate and coordinate their investigations with HRVWCU.

### Chapter 9. FUNDING MECHANISMS FOR HUMAN RIGHTS VIOLATORS AND WAR CRIMES INVESTIGATIONS

As with any major project, funding is a critical component in the successful investigation of a human rights violator or war crime target. There are many funding options available to SAs, and each one should be considered and used so as to optimize the range and impact of the investigation.

#### 9.1 SAC Budget

General criminal investigation support is funded at the discretion of the SAC in the respective AOR. Each SAC designates priorities for his or her office and funding is dispensed accordingly. It is the duty of the Human Rights Violators and War Crimes supervisor in each AOR to request

and justify funding from the SAC to initiate and support local human rights violator investigations.

## **9.2 Domestic Operations Funding**

HSI Domestic Operations at HQ may have special operational funding available on a case-by-case basis. This funding changes from year to year based on available funding sources. SAs conducting criminal human rights violator investigations in need of funding should submit a request from their respective SAC to HSI Domestic Operations for available options and consideration.

## **9.3 Human Rights Violators and War Crimes Unit**

HRVWCU is committed to assisting the field with all human rights violators and war crimes investigations and sets aside funding to assist SAC offices with expenses relating to these investigations. SAs conducting criminal human rights violator and war crimes investigations should prepare a funding request from the SAC to HSI Domestic Operations first, as indicated above in Section 9.2. Should HSI Domestic Operations not have available funding, the funding request will be forwarded to HRVWCU for consideration.

As human rights investigations normally concern violent acts committed on foreign soil during civil unrest by opposing nationalities, it is vital for SAs in field offices to obtain logistical, legal, and historical assistance in support of the investigations. HRVWCU is uniquely qualified to aid the case agent with historical information on the foreign conflict, applicable statutes, foreign law enforcement contacts, research avenues, methods of investigation, and overall guidance.

Upon opening a human rights case (either self-initiated or from an IR from HQ), case agents should contact the appropriate NPM for further guidance. The NPM can then provide additional background information on the subject as well as review the potential actions SAs should take (e.g., obtain the subject's A-file, contact listed witnesses for interview, identify the original USCIS adjudicator, etc.).

After contacting the NPM and, depending upon development of the investigation, the case agent may seek assistance from other elements of ICE as well. HSI International Operations has Attaché offices around the globe that can deliver aid to the case agent in numerous ways: procuring foreign documents, obtaining foreign law enforcement assistance, interviewing witnesses, etc. The NPM is best situated to advise on when and which Attaché office to contact.

## **9.4 Overtime Payments to State and Local Law Enforcement Officers**

Complex human rights violator investigations could require the support of local law enforcement agencies. The Treasury Executive Office for Asset Forfeiture (TEOAF) administers the funding of overtime for state and local officers. Money from the Treasury Forfeiture Fund (TFF) may be used to pay reimbursable costs incurred by local, county, and state police law enforcement agencies when their members participate in joint operations with law enforcement agencies

participating in the TFF. Overtime salaries, travel, fuel, training, equipment, and other similar costs of local, county, and/or state law enforcement officers that are incurred in a joint law enforcement operation with a law enforcement agency participating in the TFF will be authorized for payment.

In order for a local agency to be reimbursed for overtime, an MOU must first be in place; therefore, it is essential that case agent(s) process the requisite documentation for payment of overtime early on in an investigation to ensure case support. Funding for state and local overtime is provided directly to the SAC offices. HRVWCU cannot directly fund state and local overtime.

**Chapter 10. HUMAN RIGHTS VIOLATORS AND WAR CRIMES INVESTIGATIONS**

(b) (7)(E) [Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (7)(E)

## 10.1 Denaturalization Investigations

Many of the human rights violator or war crimes investigations that are conducted by HSI involve persons who have been granted U.S. citizenship by USCIS. Due to the amount of time it takes to uncover evidence of a person's involvement in past atrocities, many of the HSI investigations will require revocation of the violator's U.S. citizenship status before administrative enforcement action can be taken. USAOs, the former INS, and the Office of Immigration Litigation of the Civil Division of DOJ entered into an MOU on January 22, 2000, regarding the parties' mutual responsibilities in denaturalization actions. The MOU details the steps to be followed by the parties in instituting and litigating civil denaturalization actions. (Note: See the Denaturalization Investigations Handbook (OI HB 08-01), dated January 15, 2008, or as updated, for more information on denaturalizations.)

### 10.1.1 Considerations in Charging 18 U.S.C. § 1425 (a) and (b) Violations

(b) (7)(E)

### 10.1.2 Sentencing

(b) (7)(E)

## 10.2 Refugee and Asylum-Related Confidentiality

DHS regulations prohibit disclosure of 1) information “contained in or pertaining to” an asylum application, 2) information relating to a credible fear determination, and 3) records relating to a reasonable fear determination, without the written consent of the subject, except at the discretion of the Secretary of Homeland Security or as permitted by certain limited exceptions, such as the exception for federal investigations. *See* 8 C.F.R. § 208.6. As a matter of law and policy, the asylum confidentiality provisions cover information relating to refugee status and statutory withholding of removal, as well as protection under the regulations implementing CAT. Asylum confidentiality is strictly applied. DHS personnel may not disclose asylum-related information; this rule holds true even under the following circumstances: the applicant widely publicizing that information, federal courts discussing the asylum particulars in published decisions, ICE conducting bilateral negotiations to obtain a travel document for an applicant, a court determining the applicant’s claims to be false, or the furthering a criminal or administrative investigation. Written consent is always required to waive asylum confidentiality in the absence of a Secretarial waiver. (Note: For assistance on whether an exception applies, and prior to disseminating any asylum-related information, SAs should seek OPLA’s advice.)

## 10.3 Potential Claims under the Convention Against Torture

Two forms of protection from removal are available under the regulations implementing the United States’ non-refoulement (non-return) obligations under Article III of CAT:

1) withholding of removal (8 C.F.R. § 208.16 / 8 C.F.R. § 1208.16); and 2) deferral of removal (8 C.F.R. § 208.17 / 8 C.F.R. § 1208.17).

- A. Aliens are eligible for CAT withholding of removal if they demonstrate that it is more likely than not that the government would either torture them, or acquiesce to their torture, if they were removed to the proposed country of removal. Aliens who have ordered, incited, assisted in, or otherwise participated in persecution, on account of a protected ground, are mandatorily barred from receiving withholding of removal under CAT (or the INA).
- B. Aliens are eligible for CAT deferral of removal if they demonstrate that it is more likely than not that the government would either torture them, or acquiesce to their torture, if they were removed to the proposed country of removal, but are otherwise mandatorily barred from CAT withholding of removal (e.g., as a persecutor).

CAT deferral of removal does not confer lawful or permanent immigrant status. Rather, it means that an alien may not be removed to the country or countries identified in an IJ’s order deferring removal. The protection is effective only until terminated. An IJ may terminate deferral of removal upon proof by DHS that previously unavailable evidence (e.g., a change in country conditions) demonstrates that it is not more likely than not that the alien would be tortured if removed to the proposed country of removal. In extremely rare cases, the Secretary of DHS may terminate an alien’s CAT deferral of removal protection after receiving reliable diplomatic

assurances from a foreign country via the Secretary of State that the alien would not be tortured if returned to the proposed country of removal.

#### **10.4 Grounds for Withholding or Relief from Removal**

Once DHS has established in removal proceedings that an alien is removable from the United States under INA §§ 212 or 237 (inadmissibility and deportability, respectively), the alien has the right to apply for relief from removal. The various forms of relief from removal can be categorized into two primary groups: 1) relief based on country conditions in, and/or the alien's fear of return to, the proposed country of removal; and 2) relief based on the alien's family or employment situation and length of presence in the United States.

##### **10.4.1 Country Conditions/Fear of Return**

Asylum and TPS are two forms of relief, permanent and temporary, respectively. To demonstrate eligibility for asylum, aliens must establish that they have suffered past persecution in the proposed country of removal and/or that they have a well-founded fear (i.e., that there is a reasonable possibility) of future persecution if they were returned to that country. To demonstrate eligibility for withholding of removal under the INA, aliens must establish that their life or freedom would be threatened in the proposed country of removal. Aliens can establish this by demonstrating past persecution or that it is more likely than not that they would be persecuted if they were returned to the proposed country of removal.

TPS is a temporary status for which aliens from countries or parts thereof designated by the Secretary of Homeland Security are eligible. The Secretary may designate a foreign country for TPS due to conditions in the country that temporarily prevent the country's nationals from returning safely, or where the country is unable to handle the return of its nationals adequately. TPS-designated countries are generally countries in which there is an ongoing armed conflict, including civil wars, or an environmental disaster or epidemic.

These forms of relief provide a legal status in the United States (albeit temporary for TPS), as well as potential work and travel authorizations. Aliens are barred from receiving any of these forms of relief if they have ordered, incited, assisted in, or otherwise participated in persecution.

##### **10.4.2 Family Situation and Length of Presence in the United States**

Adjustment of Status (AOS) and Cancellation of Removal are the two primary forms of relief from removal under this category. The most common form of AOS is under INA § 245. To be eligible for this form of AOS, an alien must have been lawfully admitted, he or she must be admissible and eligible for an immigrant visa, and the immigrant visa must be immediately available. Notably, aliens in removal proceedings who are applying for this form of relief from removal generally apply on the basis of a family-based visa. Any alien who fails to establish that he or she is not inadmissible to the United States for one of the substantive human rights charges in sections 212(a)(2)(G), 212(a)(3)(E) or (G) of the INA is ineligible to adjust. Aliens who ordered, incited, assisted in or otherwise participated in persecution are not barred from AOS



under Section 245 of the INA. Because it is a discretionary form of relief, however, DHS may argue that the IJ should not grant such individuals AOS as a matter of discretion.

Two types of cancellation of removal are available: one for LPRs and one for non-permanent residents. In each case, to establish eligibility for cancellation of removal, aliens must demonstrate, among other things, that they have been continuously present in the United States for a specified period of time (seven years for LPRs and 10 years for non-permanent residents, unless the applicant is a battered spouse or child). Non-permanent residents additionally must establish that they possessed good moral character during the required period of continuous presence, and that their removal would cause exceptional and extremely unusual hardship to an immediate family member who is an LPR or a U.S. citizen. If the non-permanent resident is a battered spouse or child, the applicant must only establish that the removal would result in extreme hardship to the alien, the alien's child, or the alien's parent. Another common form of cancellation of removal is the special rule cancellation of removal under NACARA, which is available to Nicaraguans, Cubans, Guatemalans, and Salvadorans and individuals from the former Soviet bloc countries.

Aliens who ordered, incited, assisted in, or otherwise participated in persecution are not barred from all forms of cancellation of removal (e.g., the persecutor bar applies to Guatemalans and Salvadorans applying for NACARA, but not to Cubans and Nicaraguans). As with AOS, because it is a discretionary form of relief, DHS may argue that the IJ should not grant such individuals cancellation of removal as a matter of discretion.

A final noteworthy form of relief from removal is voluntary departure. Although voluntary departure requires that removable aliens leave the United States within a specified period of time (30 or 60 days), it allows the alien to depart under his or her own power. In doing so, the alien avoids the five or 10-year visa application bar that DHS sets in effect, thus allowing the aliens the opportunity to potentially return to the United States at a much earlier date than if they were removed.

## **10.5 Coordination with Foreign Law Enforcement**

The crucial evidence needed for successful prosecution of human rights violations and war crimes cases often lies in foreign countries, either with the victims themselves or in documents. Accordingly, it is necessary to work with foreign counterparts to obtain this evidence. Strong cooperation with these officials will lead to obtaining the right evidence for prosecution. Contacting foreign law enforcement is always done via the appropriate Attaché office. SAs can find the correct Attaché office via HSI Net or by contacting HSI International Operations at HQ.

As HSI's representative in that country, the Attaché is most familiar with the customs of local police and the potential for locals to assist in an investigation. The Attaché can advise on what is needed from HSI to procure local assistance, what assistance is available, and how to facilitate this assistance. This support includes obtaining court documents and government records, setting up local interviews, and police assistance. Should a temporary duty assignment (TDY) in a foreign country be necessary for the case agent, the HSI Attaché Office shall arrange it.

### 10.5.1 Working with HSI Attaché Offices

HSI has vast investigative foreign responsibilities outside the arena of human rights violator and war crimes investigations. These responsibilities are exemplified in HSI's broad mission, including investigations relating to counter-proliferation, drug smuggling, trade fraud and intellectual property rights, child exploitation and cybercrime, money laundering and financial violations, and human smuggling and trafficking. Through its Attaché offices, HSI serves also as DHS' investigative component in U.S. Embassies for coordinating policy and operations within DHS and between DHS and other federal departments and agencies, with respect to preventing the entry of human rights violators and war criminals into the United States.

SAs are encouraged to begin communicating with the appropriate HSI Attaché as early as possible. When considering foreign investigative travel, it is imperative to first notify the respective Attaché office and obtain country clearance. The following HSI Net webpage **(b) (7)(E)** has a list of the Attaché offices and their AO

### 10.5.2 Working with U.S. Embassies

Travel to the country where the atrocity occurred will require SAs to interact with a number of different departments within the Embassy (often referred to as Post). Coordination and support by Post has been extremely valuable in previous investigations, such as the Rwanda Genocide, and SAs are encouraged to continue to foster those relationships. Where HSI maintains an Attaché office, SAs should always coordinate logistics and investigative activities with that office. In certain countries, HSI does not have a presence at Post, requiring SAs to handle much of the logistical planning on their own. Below are components of Embassies with which SAs should be familiar:

- A. Regional Security Office (RSO) – The mission of the RSO is to provide a safe and secure environment for the effective implementation of U.S. foreign policy. Diplomatic Security Services SAs assigned to the Post as RSOs are the Chief of Mission (COM)'s primary advisors on all security and law enforcement issues and direct all aspects of the Mission's security programs. They serve as the primary liaison with the law enforcement authorities to obtain assistance with U.S. law enforcement initiatives and investigations.

SAs will often need to give a limited case briefing to the RSO or the Assistant RSO (ARSO). The RSO will provide SAs with information on the current security situation in the country. The RSO will facilitate contacts with law enforcement. The RSO will also assist in the facilitation of meetings with other government officials, such as the Attorney General's Office, the Fugitive Prosecutor, the Genocide Fugitive Tracking Team, etc. The RSO can also provide assistance for other missions as requested.

- B. The Deputy Chief of Mission (DCM) – Second to the Ambassador is the DCM. The day-to-day management of the Embassy is the DCM’s responsibility, as is a share of the high-level representational entertaining, negotiation, appraisal, and reporting on bilateral relations and issues. In the Ambassador’s absence, the DCM becomes the Chargé d’Affaires, thereby assuming all the Ambassador’s functions and responsibilities.

Shortly after arrival in-country, normally the next day, SAs are often called upon to meet with the DCM and provide a briefing on their investigation. The dress code for most meetings at the Embassy is business attire. SAs should assume business attire unless advised otherwise.

Many of the Embassies where the atrocities have occurred are small Posts. As such, SAs are often called upon to attend functions and meetings after hours at the request of the DCM, the Ambassador, or other Embassy personnel. It is extremely important to attend these functions if at all possible. Continuing the positive relationship HSI has built with Post will only aid in current and future investigations.

- C. Consular Affairs Section (CA) – The American Citizen Services under CA is the principal office in the Mission assisting U.S. citizens in a country. It provides services to help protect U.S. citizens’ rights and interests. It also provides essential welfare and humanitarian aid in cases of emergency. Beyond this responsibility to U.S. citizens, CA Immigrant and Non-Immigrant Visa Sections are the prime administrators of U.S. immigration law, issuing immigrant and non-immigrant visas to foreigners traveling to the United States to reside permanently or for a temporary visit, respectively.

CA is an important resource and source of information for SAs. CA has the ability to assist SAs in vetting documents that may have been produced by the target of the investigation or others. Often during human rights violator or war crimes investigations, SAs will encounter fraudulent documents. CA maintains up-to-date intelligence on suspected fraud and should be a primary information source for SAs visiting foreign Posts.

CA will also assist SAs and others when/if witness(es) need to travel to the United States. CA will assist SAs in the parole process and in preparing travel documents when travel by witnesses is necessary.

CA can also assist in certifying records for use in court under 18 U.S.C. § 3505 which states the following.

*(1) In a criminal proceeding in a court of the United States, a foreign record of regularly conducted activity, or a copy of such record, shall not be excluded as evidence by the hearsay rule if a foreign certification attests that —*

*Such record was made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;*

*Such record was kept in the course of a regularly conducted business activity;*

*The business activity made such a record as a regular practice; and*

*If such record is not the original, such record is a duplicate of the original; unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.*

*(2) A foreign certification under this section shall authenticate such record or duplicate.*

CA keeps a list and exemplar of signatures of notaries and other officials on file.

- D. Financial Management Office (FMO) – The FMO coordinates the receipt of funds from HSI offices to be used for various operational expenses, including the payment of interpreters, guides, location services, car rentals, etc.
- E. Government Services Office (GSO) – The GSO and the FMO fall within the Management Office of the Embassy. The Management Office is responsible for staffing, equipping, and supporting the Embassy as a whole. Responsibilities of the Management Officer include personnel, building maintenance, fiscal management, transportation, information systems, and communications.

If SAs decide to use the Embassy for transportation, the GSO will assist them in securing a vehicle from the motor pool and a driver.

The GSO is the entity with whom to check if SAs decide to rent office space for their interviews and need items such as a desk and chairs to furnish the office space. SAs should coordinate with the GSO for availability of equipment and any charges associated with the rental.

- F. The U.S. Ambassador – The Chief of Mission (COM), under the direction of the President of the United States and as designated by the Secretary of State, is the principal officer in charge of a diplomatic mission of the United States or of a U.S. office in a foreign country. The COM is often, though not always, an Ambassador. The COM is fully responsible for the direction, coordination, and supervision of all U.S. Government employees within the Executive Branch assigned to that diplomatic mission, and is informed of their activities and operations.

Past practice has been for SAs to give the Ambassador or DCM an “out brief” of the investigative trip and case prior to departure from Post. However, SAs should always be prepared to brief the Ambassador or DCM upon arrival in-country.

G. The Political Section (POL) – POL assists the Ambassador in managing the bilateral relationship between the United States and the host government and serves as the primary interlocutors with host country foreign affairs ministries on a wide range of foreign policy issues, including the promotion of democracy and human rights, social issues, and rule of law efforts. POL monitors and prepares reports on human rights conditions in host countries and can be a valuable resource for SAs investigating subjects complicit in human rights violations.

### 10.5.3 Working with Foreign Governments

SAs are advised to contact the HRVWCC/RST and HSI International Operations for the latest information on assistance by, or working with, the foreign government, prior to any foreign investigative travel.

### 10.6 Interviewing Victims and Witnesses

(b) (7)(E)



### 10.7 External Factors Affecting Witness Testimony

(b) (7)(E)



(b) (7)(E) [Redacted]

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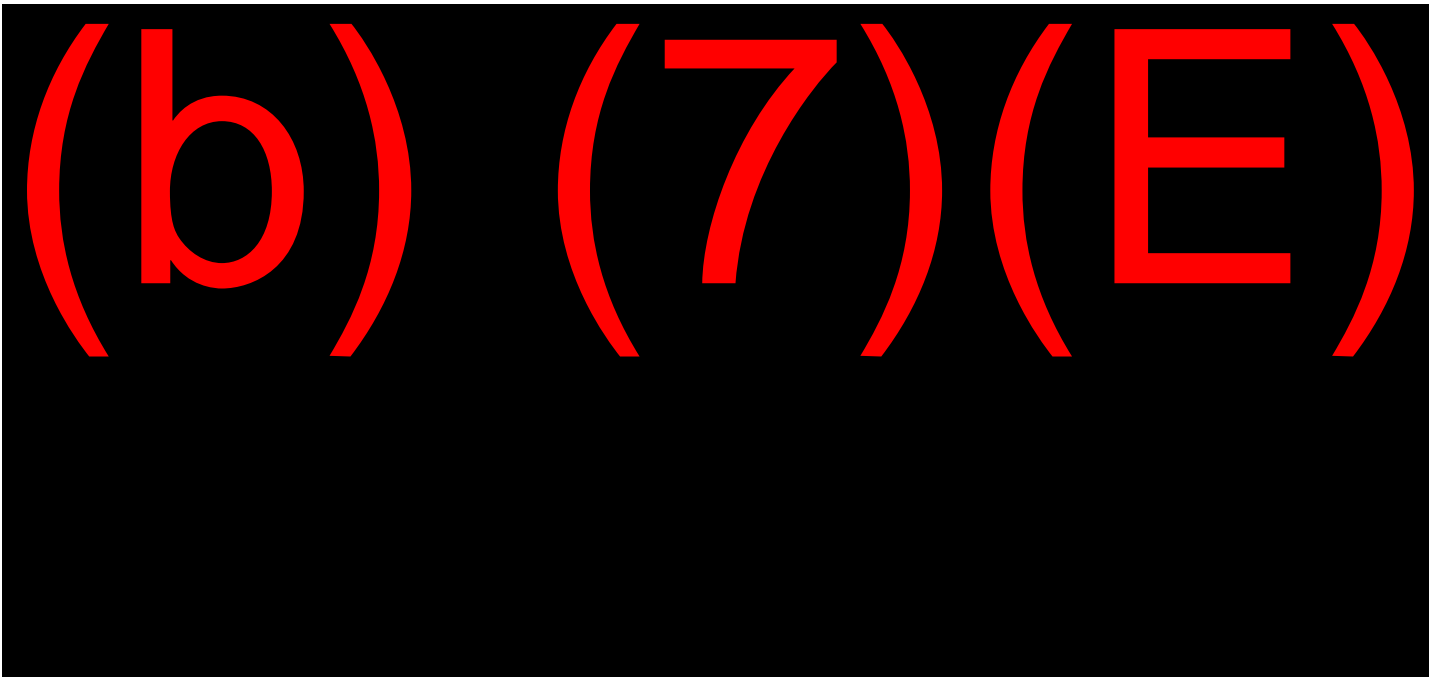
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## 10.8 Identifying Witnesses

In human rights violator or war crimes investigations, there are potentially numerous domestic and foreign witnesses, so it is incumbent on SAs to fully identify as many of these individuals as possible in order to build a comprehensive case.

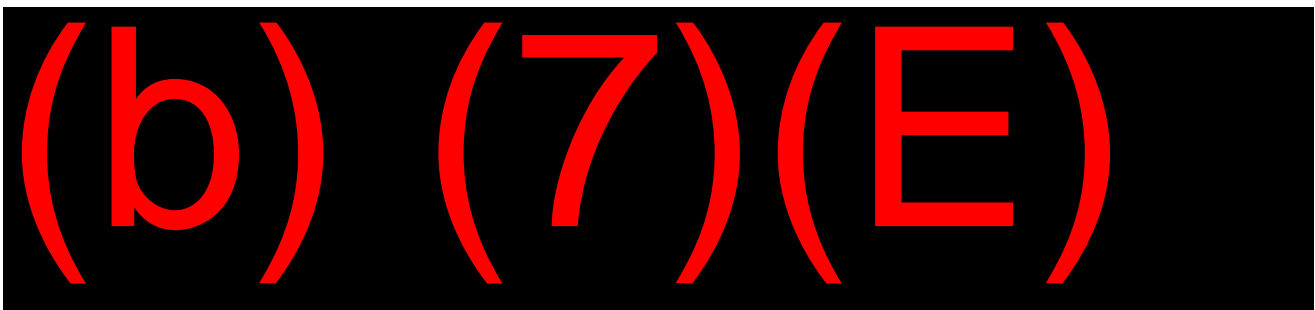
### 10.8.1 Domestic Witnesses

SAs should consider all available databases for identifying and cross checking for potential witnesses, as well as reaching out to victims or organizations representing different diasporas in the community.



### 10.8.2 Non-Governmental Organizations

NGOs can be of valuable assistance in locating and identifying witnesses. However, SAs should remember that NGOs have a specific mission and need for credibility within the area in which they work. Therefore, NGOs may not be willing to identify specific witnesses or may assist only after receiving assurances from HSI as to how a witness was located. HSI has received assistance and cooperation in previous investigations from various NGOs that are active on this issue.



### 10.8.3 Foreign Law Enforcement Partners

SAs should consider contacting foreign law enforcement partners who have had similar investigations of the same crime scene for witnesses residing in the United States. Many times they will not only be able to identify witnesses, but often will be able to provide valuable insight into the current investigation. Contact should be coordinated through HRVWCC/RSTs and HSI Attachés as they are the most likely to have the best contact information for the respective foreign law enforcement agency. HSI has an information sharing MOU relating to human rights violation investigations titled, “Memorandum of Understanding Between Members of the Five

Country Conference with Respect to Investigations Relating to Genocides, War Crimes and Crimes Against Humanity” (informally known as the Five Country Agreement between Canada, the United Kingdom, Australia, New Zealand, and the United States), dated April 2014, that provides guidance on sharing information with certain safeguards for privacy. SAs should contact the HRVWCC for assistance in requesting the information.

#### 10.8.4 Foreign Witnesses

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(b) (7) (E)

## 10.9 Protecting Victims and Witnesses

Initially, victims and other witnesses in human rights violator and war crimes cases are often interviewed on foreign soil. When they are brought to the United States for trial or to attend other legal proceedings, they should be provided the same safeguards as U.S.-based victims and witnesses.

Between 1982 and 2000, Congress enacted a series of laws designed to protect and enhance the necessary role of crime victims and witnesses in the federal criminal justice process and inform them of their rights and available services. Congress recognized that, without the cooperation of victims and witnesses, the criminal justice system would cease to function. Yet, those very individuals who were needed in a case were often ignored by the system or simply used as “evidence” to identify and punish offenders. Congress found that victims suffered additional hardships as a result of contact with the criminal justice system.

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<sup>1</sup> <http://www.ibuka.rw/>

The first of the victims' statutes, the Victim and Witness Protection Act of 1982 (18 U.S.C. § 1512, Historical and Statutory Notes) instructed the Attorney General to develop and implement guidelines for DOJ. In 1983, DOJ promulgated the first Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines). The AG Guidelines combine both legislative requirements and DOJ policy and have been revised periodically to incorporate new legislative provisions.

The HSI HQ Victim Assistance Program (VAP) is available to SAs to support potential victim witnesses in human rights violator or war crimes cases. The HQ VAP can be contacted through the local field office Victim Assistance Specialist for further support.

### **10.10 Witness Security, Parole, and S Nonimmigrant Status (Visa) Program**

Most, if not all, human rights violator and war crimes cases involve interaction with a variety of witnesses. Some of the most vital witnesses in human rights violator or war crimes cases are those who have first-hand knowledge of the specific atrocities. Witness security and protection is an integral part of securing these testimonies. Many of these witnesses were not just witnesses to the crime but also victims of the atrocity.

Many of these human rights violator or war crimes conflict areas have a history that has substantiated that victim/witness intimidation and persecution was not just occurring, but, in fact, was the prevailing practice. Many crimes in these areas, even though charged, were never brought to justice due to witness tampering. As a result, witness protection is of the utmost importance in these cases. The Parole and Law Enforcement Programs Unit (PLEPU) at HQ administers such coordination. It is the SAC office's initial responsibility to provide the needed protection. If the need falls beyond what the SAC office can provide, the SAC office should forward a memorandum to PLEPU to request assistance.



## 10.11 Maintaining Contact with Foreign Witnesses

### 10.11.1 Checking in with the Witnesses

(b) (7)(E)



### 10.11.2 Preparation for Travel

Bringing witnesses and any escorts to the United States from a foreign country takes considerable advance planning to ensure a smooth process. Once the prosecution team has decided that a foreign witness is needed for trial in the United States, the case agent needs to quickly begin coordinating with the POC in-country (such as the HSI Attaché, Consular Officer, or RSO at Post, or other designated persons such as the escort) in order to prepare for travel. Some of the travel-related requirements are the following:

- A. A passport photo;
- B. A passport;
- C. Any transit visas, if needed;
- D. Any medical or health screening;
- E. Preparation of U.S. parole packages and travel letters; and
- F. Any unique items to pack for the duration of travel to the United States.

### 10.11.3 Witness Travel

#### A. Official Passports and Visas

Foreign witnesses for the government or defense must obtain and travel on a passport issued by their country of citizenship or other travel document issued by the sovereign jurisdiction in which they reside. Any escort accompanying witnesses must also have a valid passport or travel document. Depending on the escort, he or she may or may not have a visa for the United States. If an escort does not have a U.S. visa, SAs will have to arrange for him or her to be paroled into the United States and have a travel letter issued through the Consular Section at Post.

For example, in the past the Government of Rwanda charged \$50 per official passport. The payment for the passport fee is made through the DOJ Justice Management Division by funding cable to the Post. At Post, the RSO, ARSO, Foreign Service National Investigator, Consular Officer, and even the escort will play an important role in obtaining the official passport for the witness. Typically, an HSI Attaché or the case agent may not be on the ground to facilitate this requirement.

#### B. Witness Travel Logistics

The actual travel by the witnesses may be filled with confusion and excitement since this may be the first time that they are on an airplane and/or the first time outside their home country, let alone traveling to the United States. For this reason, it is essential that the designated escort or representatives at Post provide assistance and support to the witnesses until they depart for the United States. The case agent in-country will have to address numerous issues, such as ensuring that in-country pre-departure travel arrangements and arrangements for transit through third countries have been made. Some other logistical issues to be aware of include the following:

- 1) Coordinating with HSI Attachés or RSOs at U.S. Embassies in countries where there is no HSI Attaché present, in order to ensure that post and Consular Affairs Sections are prepared for facilitating the necessary documents to travel to the United States;
- 2) Ensuring that travel documents are in-hand;
- 3) Ensuring that airline tickets are purchased via the Embassy travel office;
- 4) Ensuring that transit visas are obtained, if required, for travel that requires a stopover in a different country prior to arriving in the United States;
- 5) Coordinating with the appropriate HSI Attaché for assistance when witnesses are transiting a third country without HSI personnel;

- 6) Ensuring arrangements in local hotels and transportation of witnesses from their home or staging point prior to departure;
- 7) Seeking assistance from GSO at Post for the transportation of witnesses and escorts to the airport;
- 8) Arriving at the airport timely to obtain boarding passes, clear security and immigration screening, and address any other issues raised by the airlines;
- 9) Seeking assistance of personnel at Post to physically be present at the airport to ensure a smooth departure from the airport; and
- 10) Ensuring that witnesses and escorts are assisted at the U.S. POE upon arrival with any connecting flights or getting to the local hotel.

All per diem funds and transportation expenses are handled at Post. Witnesses will be paid for their *actual* time for witness preparation, as well as the per diem rate for their location. These payments, when paid in a foreign country, are conducted through the DOJ Embassy Fund Site. Hotel payment, when paid in a foreign country, is normally arranged and paid for through the Embassy.

#### **10.12 Factors Affecting Foreign Witnesses**

As stated earlier, foreign witnesses generally fall in two categories: 1) victim witnesses; and 2) perpetrator witnesses. There are several issues that can arise when bringing foreign witnesses to the United States to testify, such as the following.

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## **10.13 Extradition and INTERPOL Notices**

### **10.13.1 Extradition**

Extradition is the legal process by which one country seeks from another country the surrender and return of a person who has been charged with, found guilty of, or sentenced for, a crime; the country seeking extradition does so for the purpose of prosecution or imposition or service of a sentence. Usually, but not always, extradition is based on an extradition treaty in force between the two countries.

For the United States, extradition is largely treaty-driven; see 18 U.S.C. § 3181(a). A bilateral extradition treaty regulates the process by which surrender of fugitives is requested, determined, and accomplished between the United States and its treaty partner. Each treaty is unique, although most treaties exclude certain political crimes. 18 U.S.C. § 3181(b) authorizes the exercise of comity to surrender fugitives without treaty (other than U.S. nationals, citizens, or permanent residents) who have committed acts of violence against U.S. nationals abroad, upon

AG certification, but is rarely used. Extradition proceedings begin with a formal request from one nation to another. Extradition requests come through DOS diplomatic channels, although DOJ OIA may receive an advance copy. After the request, a DOJ OIA attorney reviews the extradition request for treaty requirements and looks for (i) extraditability (offense punishable by more than one year imprisonment); (ii) dual criminality (conduct which is a crime in both countries); (iii) warrant/judgment; (iv) laws violated/penalties; (v) statute of limitations; (vi) proof establishing probable cause of offense(s) charged; and (vii) identification. The DOJ OIA attorney then determines whether the request can be presented in federal court on behalf of the foreign country, and a federal magistrate or judge makes the determination.

Individuals found outside the United States may likewise be extradited to the United States for prosecution or to serve a sentence.

### 10.13.2 INTERPOL Notices

INTERPOL is an international police organization comprised of 190 countries. INTERPOL utilizes a system of color-coded international notices and wanted person diffusion notices that share crime-related information with each member country. This information concerns fugitives and individuals wanted for serious crimes, missing persons, unidentified bodies, possible threats to public safety, missing/stolen works of art, criminals' *modi operandi*, and terrorists who are subject to U.N. sanctions.

INTERPOL Notices include the following.

- A. Red Notice: To seek the location and arrest of wanted persons with a view to extradition or similar lawful action;
- B. Blue Notice: To collect additional information about a person's identity, location, or activities in relation to a crime;
- C. Yellow Notice: To help locate missing persons, often minors, or to help identify persons who are unable to identify themselves;
- D. Black Notice: To seek information on unidentified bodies;
- E. Green Notice: To provide warnings and intelligence about persons who have committed criminal offenses and are likely to repeat these crimes in other countries;
- F. Orange Notice: To warn of an event, a person, an object, or a process representing a serious and imminent threat to public safety; and
- G. Purple Notice: To seek or provide information on *modi operandi*, objects, devices, and concealment methods used by criminals.

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## 10.14 Trial Preparation

### 10.14.1 Witness Preparation

Witness preparation can take place either in a foreign country or in the United States. Based on past experience, it would be best for witness preparation to take place in the United States. The following is based on preparation taking place in the United States:

### 10.14.2 Scheduling and Conducting Trial Preparation Sessions

After the witnesses and escorts arrive in the United States, it is best to give them a day to acclimate from the international travel and to their surroundings. Acclimating activities can include showing the witnesses the court room, explaining to them in general terms the trial procedure, as well as showing them the locations that will be used to prepare them for their testimony. This day can also be used for a variety of administrative functions, including introducing witnesses to the victim/witness coordinator(s).

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Preparing the witnesses for trial is normally conducted by all the AUSAs assigned to the case. As previously stated, human rights violator and war crimes cases based mostly on foreign witness testimony are challenging and it is best if the AUSA has at least one, if not two, co-case attorneys. For example, in the HSI Boston marathon bombing investigations, there were three AUSAs assigned to the case, and all engaged in the preparation of the government witnesses.

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### **10.15 Coordination with the Department of Justice**

The primary goal of all human rights violator and war crimes investigations is to obtain a criminal conviction and seek the removal of the offender from the United States. Therefore, the case agent should first seek counsel with the local USAO when preliminary evidence has been collected. As with any criminal investigation, the case agent shall go through the proper procedures of the local USAO for assignment of an AUSA. HRVWCU recommends that, prior to presenting the case to the USAO, the case agent contact the HRVWCC RST NPM to obtain background information on the atrocity in which the suspect was involved. Once the case agent has the background information on the atrocity and the specifics on how the suspect was involved, the case can be presented to the AUSA. The HRVWCC is also willing to assist during the presentation of the case if requested by the case agent.

In combination with this counsel, when substantive violations are uncovered, HRVWCU will work with DOJ's HRSP in Washington, DC. HRSP is DOJ's HQ unit specifically assigned to aid and assist in the prosecution of human rights violators. HRSP's role mirrors HRVWCU's: assist field units in the prosecution of human rights violators. Working together with HRSP, HRVWCU can obtain additional historical information on the target, as well as prosecutorial expertise on charging such cases. HRSP can also advise the local AUSAs directly on case law, common practice, and charges.

### **10.16 Investigative Travel Abroad by HSI Special Agents**

Most of the evidence of foreign human rights violations is in foreign countries and/or where the atrocity occurred. Hence, it may become necessary at some point for the case agent to retrieve such evidence directly from that country. The following steps should be completed prior to commencing foreign travel:

- A. Contact the HSI International Operations Manager covering the geographic area in question. The International Operations Manager can assist with required documents (e.g., a Foreign Travel Authorization Request (FTAR) (ICE Form 70-002), budget, etc.), as well as appropriate contacts.
- B. Consult with the country Attaché. Before doing any paperwork, SAs need to confirm that the mission is possible to accomplish in the requested time period. Second, SAs will get a verbal support for country clearance from the Attaché. The Attaché will also advise the case agent on additional in-country responsibilities that are necessary, such as RSO briefing, meeting with the Ambassador, local protocols, etc.
- C. Prepare a funding request and obtain approval via the chain of command. If the funding is provided outside of the SAC budget, for example by HRVWCU or Domestic Operations, the NPM or the International Operations Manager can provide further information in preparing the funding request memorandum, including which funding string to use.
- D. Prepare and submit an FTAR in order to obtain a country clearance from Post. The FTAR is notification sent from the SAC, via HSI Domestic Operations, to HSI International Operations requesting permission to enter the country on official business. The FTAR includes biographical data (e.g., passport number, emergency contact, travel information, etc.) for the Attaché to grant country clearance. SAs need to remember that an approved country clearance is required before travel.

### **10.17 Joint HSI / FBI Investigations**

HSI and the FBI have concurrent jurisdiction over substantive human rights violations involving 18 U.S.C. § 1091 (Genocide), 18 U.S.C. § 2340A (Torture), 18 U.S.C. § 2441 (War Crimes), 18 U.S.C. § 2442 (Recruitment or Use of Child Soldiers), and 18 U.S.C. § 116 (Female Genital Mutilation) in which the victim or perpetrator is a U.S. person, or the perpetrator is located in the United States, regardless of nationality. The IHRU provides programmatic oversight for these investigations for the FBI.

In September 2012, the IHRU joined the HRVWCC and is now embedded with HRVWCU at the same location. In joining the HRVWCC, both HSI and the FBI work together to pursue investigations to deny safe haven in the United States to violators of human rights and war criminals. The FBI IHRU is fully integrated into the HRVWCC and works hand in hand with HSI counterparts on the various RSTs. When appropriate, the FBI and HSI send simultaneous leads to their field offices.

HSI SAs receiving investigative referrals from the HRVWCC are advised to check the information received to determine whether the referral was sent as a joint investigation. Typically, the language in the IR will state: “This information has been shared for deconfliction and collaboration. The case agent should contact the local FBI office regarding this case.”

Occasionally, SAs will also receive collateral investigation requests that originate at the HRVWCC on behalf of a particular field office. On joint HSI/FBI investigations, these collateral investigation requests will have language which will state, for example: “This is a joint HSI/FBI investigation and it is requested that the assigned HSI SAs and their local FBI counterparts communicate and coordinate investigative strategy, including, but not limited to, conducting appropriate interagency database checks, obtaining relevant financial records, and conducting joint interviews.”

SAs are reminded that, when receiving such a referral or collateral request, it is expected that both agencies will collaborate and collectively take the investigative steps necessary to further the investigation. Any conflicts that cannot be addressed at the local level should be elevated to the HRVWCC NPMs.

## **Chapter 11. LANGUAGE SERVICES**

Many cases involving suspected human rights violators and war criminals will require the translation of relevant documents into English.

HSI has created a new site on HSI Net called “[Language Access Program](#).” HSI personnel may access information on several different language access services available to them, as well as related forms and training. Such services include translation, interpretation, and transcription services. HSI personnel may send any questions to (b) (7)(E) [@ice.dhs.gov](mailto: @ice.dhs.gov).

The HSI Language Access Plan, dated July 11, 2017, provides an overview of Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” the DHS and ICE Language Access Plans, definitions of key terms, current HSI activities and future priorities, a discussion of language services provided by different vendors, foreign languages most commonly used by HSI, and related contact information.

## **Chapter 12. INVESTIGATIVE TOOLS USED IN HUMAN RIGHTS VIOLATOR AND WAR CRIMES INVESTIGATIONS**

### **12.1 Administrative Subpoenas**

There are a variety of administrative procedures which can compel the production of documents and testimony. These administrative tools are characterized as subpoenas and may be issued under the authority of HSI without a court order. However, judicial assistance may be necessary to enforce compliance. HSI SAs have access to several different kinds of administrative procedures; however, in HRVWCU cases, the Immigration Enforcement Subpoena (DHS Form I-138) is the most likely to be used.

The Immigration Enforcement Subpoena (DHS Form I-138) is issued pursuant to 8 U.S.C. § 1225(d) and 8 C.F.R. § 287.4. Immigration Enforcement Subpoenas require the person or entity

to which they are addressed to attend and give testimony, and require such persons or entities to produce records (books, papers, or other documents) for use in criminal or civil investigations. In the event that the person or entity named in a subpoena neglects or refuses to comply with the requirement to attend and give testimony or to produce records, SAs can request 1) the United States Attorney for the district in which the subpoena was issued to report such neglect or refusal to the U.S. District Court, and 2) such court to issue an order requiring the witness to appear and testify, and to produce the records designated in the subpoena.

## 12.2 Preservation of Evidence

With respect to Internet platforms, such as websites, email, instant messaging, and social media and networks, an 18 U.S.C. § 2703(f) letter, commonly referred to as a “Preservation Letter,” sent by a government entity, orders the system administrator of wire or electronic communications to “take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other legal process.” The period of retention is 90 days, which may be extended for an additional 90-day period upon a renewed request by the government entity. The scope is only for information already possessed, not for future information. (Note: See the Cyber Crimes Investigations Handbook (HSI HB 11-03), dated August 9, 2011, or as updated.)

## 12.3 Non-Disclosure of Legal Process by Internet Service Providers

Internet Service Providers (ISPs) such as Verizon, Comcast, and AT&T and internet sites such as Google, Yahoo, Facebook, and Apple have instituted policies to notify their users of any legal process served by law enforcement. (b) (7)(E)

In order to prevent disclosure, SAs should clarify with the ISP or internet site as to how the subscriber notification policy will operate prior to serving legal process.

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[REDACTED]

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## B. User Notification

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### 12.4 Border Searches of Documents and Electronic Devices

Border searches are a well-recognized and long-established exception to the probable cause and warrant requirements of the Fourth Amendment. Even so, the conduct of such border searches, as with any search, must be reasonable. A lawful border search is one that is both reasonable under the Fourth Amendment and consistent with current statutes. Under 19 C.F.R. § 162.6, 19 U.S.C. § 1401(i), and 19 U.S.C. § 507, border search authority is granted only to Customs Officers. Within ICE, the term “Customs Officers” includes HSI SAs. The primary purpose of a border search by Customs Officers is to search for merchandise or for evidence relating to merchandise. Gathering evidence related to the past, present, or future admissibility or inadmissibility of those individuals seeking admission to the United States is also an authorized purpose. This authority was historically granted to Immigration Officers, but is now included within the authorities granted to HSI SAs and other authorized law enforcement personnel within ICE and CBP.

The use of border search authority provides HSI SAs with an exceptional law enforcement tool. However, it is critical to ensure that information or evidence obtained during a border search, particularly those searches related to documents and electronic media, is obtained lawfully and preserved appropriately so that it may be used in judicial proceedings. (Note: See ICE Directive 10044.1 (former number: 7-6.1), Border Searches of Electronic Devices, dated August 18, 2009, or as updated.)

Because ICE’s authority to conduct suspicionless searches of electronic devices at the border may be challenged, it is imperative that all HSI SAs understand and follow ICE policy. Compliance with ICE policy ensures the best possible chance at a successful defense, should an SA’s actions be challenged in court. Questions related to border searches should be directed to the local OCC or to the NPM for Border Search Authority in NSID.

## 12.5 Mutual Legal Assistant Treaties

When human rights investigations involve crime scenes that have occurred outside the United States, SAs should give careful consideration to requesting information from foreign countries utilizing existing MLATs, also referred to as Mutual Legal Assistance in Criminal Matters. Utilization of the MLAT process may provide evidence that confirms existing evidence and testimony.

The United States is a party to various bilateral MLATs. Each country designates a central authority, generally the two DOJ's, for direct communication. The treaties include the power to summon witnesses, compel the production of documents and other real evidence, issue search warrants, and serve process.

The U.S. Central Authority for MLATs is DOJ OIA. DOS' Office of the Legal Adviser for Law Enforcement and HSI International Operations are also responsible for questions related to MLATs.

SAs are advised to consult with their local USAO and DOJ OIA to determine whether the United States has an MLAT with the country from which the evidence is sought. The MLAT will define the obligation to provide assistance, the scope of the assistance, and the contents of the request. It may also contain evidentiary provisions that vary from the Federal Rules of Evidence. Because MLATs are negotiated separately, each one differs from the others. Experience with one should not be considered universally applicable. DOJ OIA will provide models tailored to the treaty under which assistance is being requested from the USAO. In general, a treaty request includes the same information that must be provided in a Letter Rogatory, except that the promise of reciprocity is omitted and certain additional information (e.g., name, address, and citizenship of all persons affected by the request) may be required.

While the USAO is normally responsible for drafting an MLAT request, SAs will often be tasked with assisting in its preparation. When this occurs, SAs should obtain the model MLAT from DOJ OIA through their USAO. SAs should prepare a draft based on the model and are encouraged to consult with their representative in their local OCC before sending it to their local USAO for clearance. DOJ OIA will either prepare the final request or return it to the USAO to make necessary changes. All MLATs in force as of the date of issuance of this Handbook designate DOJ as the "central authority" assigned to make the request; because of these provisions, the request is signed by DOJ rather than by a judge.

Should the MLAT require translation, the translation should occur after the MLAT has been signed or as otherwise directed by DOJ OIA. Generally, DOJ OIA will transmit the request only after receipt of the translation. DOJ OIA will send the request, along with its translation, directly to the foreign central authority that oversees its execution.

## 12.6 Letters Rogatory

Letters Rogatory are the customary means of obtaining judicial assistance from overseas in the absence of a treaty or other agreement. Letters Rogatory are requests from courts in one country to the courts of another country, requesting the performance of an act which, if done without the sanction of the foreign court, could constitute a violation of that country's sovereignty. Letters Rogatory may be used to effect service of process or to obtain evidence if permitted by the laws of the foreign country. Letters Rogatory are handled by DOJ OIA.

Before initiating the Letters Rogatory process, SAs should determine whether the country where they are seeking to serve process or take evidence is a party to any multilateral treaties on judicial assistance, such as The Hague Service or Evidence Conventions, or the Inter-American Convention on Letters Rogatory and Additional Protocol. Streamlined procedures for requesting judicial assistance under these conventions greatly reduce the time and burden associated with traditional Letters Rogatory. SAs should also review the DOS website's country specific judicial assistance pages to determine whether other alternatives are available, such as serving process by mail or in person, or hiring a local attorney to petition a court directly to collect evidence.

### 12.6.1 Timeframe for the Execution of Letters Rogatory

The execution of Letters Rogatory may take a year or more. Letters Rogatory are customarily transmitted via diplomatic channels, which is a time-consuming means of transmission.

### 12.6.2 Drafting Letters Rogatory

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### 12.6.3 Essential Elements of Letters Rogatory

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### 12.6.4 Signature and Authentication

Letters Rogatory must be signed by a judge. The clerk should not sign on behalf of the judge. For most countries, the seal of the court and the signature of the judge are sufficient. SAs should consult HSI's country-specific information for guidance about authentication procedures for particular countries. Many countries will not accept Letters Rogatory issued by an Administrative Law Judge. In administrative cases, it may be possible to obtain Letters Rogatory issued by a federal district court under 28 U.S.C. § 1651.



### **12.6.5 Translation**

Letters Rogatory and any accompanying documents must be translated into the official language of the foreign country. The translator should execute an affidavit as to the validity of the translation before a notary. (Note: See Chapter 11 for guidance on obtaining translations.)

### **12.6.6 Number of Copies**

SAs should forward the following to DOS for transmittal to the foreign authorities:

- A. The original English version bearing the seal of the court and the signature of the judge or a certified copy and a photocopy of the English original.
- B. The original translation and a photocopy of the translation.
- C. The original documents that will be served upon the designated recipient or deposited with the foreign court in connection with a request for evidence, and the copies returned to the court in the United States as proof of execution.
- D. For requests involving multiple witnesses in diverse locations, either separate Letters Rogatory for each witness or a certified copy of the Letters Rogatory (plus translation and duplicate copy noted above) for each witness. The foreign country may assign the matter to different courts.

### **12.6.7 Execution of Letters Rogatory by the Foreign Court**

Foreign courts will generally execute Letters Rogatory in accordance with the laws and regulations of the foreign country. In compelling evidence, for example, many foreign courts do not permit foreign attorneys to participate in their court proceedings. Not all foreign countries utilize the services of court reporters or routinely provide verbatim transcripts. Sometimes, the presiding judge will dictate his or her recollection of the witnesses' responses.

### **12.6.8 Return of Executed Letters Rogatory**

When foreign authorities execute Letters Rogatory, they are generally returned via DOS (via diplomatic channels) to DOJ OIA.

## **Chapter 13. ADMINISTRATIVE IMMIGRATION PROCEEDINGS**

### **13.1 Coordination with the Local ICE Office of Chief Counsel and HRVWCC**

Many cases involving suspected human rights violators will originate through IRs sent by HRVWCU to the field. The IR will specify the NPM for the particular RST. SAs should routinely update the NPM as their investigation progresses. RST NPMs coordinate with SAs

nationwide and are in the best position to advise case agents of similar investigations in other parts of the country, potential witnesses, sources of background materials, and evidence. In addition, the NPM meets regularly with HRVWCC historians, IRSs, and attorneys to coordinate various cases within their portfolios and to support requests for assistance from field offices.

When a case agent opens an investigation, he or she should contact the designated human rights attorney in the local OCC. Each OCC has designated attorneys who have been specifically trained to support the investigation and prosecution of human rights violator cases. These attorneys are familiar with administrative and criminal charges, including human rights charges (i.e., torture, genocide, extrajudicial killing, use or recruitment of child soldiers, severe violations of religious freedom, Nazi persecution, and material support in violation of genocide, torture, or use or recruitment of child soldiers) and fraud-related charges (e.g., fraud, false statements, and perjury).

OCC attorneys are available to assist case agents in developing criminal charges, preparing criminal cases for presentation to AUSAs, ensuring that NTAs (DHS Form I-862) are legally sufficient, and that the evidence will support the proposed charges, avoiding violations of applicable confidentiality regulations, litigating detention matters and removal proceedings, and drafting stipulated judicial orders of removal. OCC attorneys and case agents should work together from the onset to ensure a successful investigation, prosecution, and subsequent removal of the violator.

### 13.2 Drafting the Notice to Appear

The NTA is the written instrument which initiates proceedings before the IJ. (b) (7)(E)

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### 13.3 Necessary Documents and Evidence for Immigration Court

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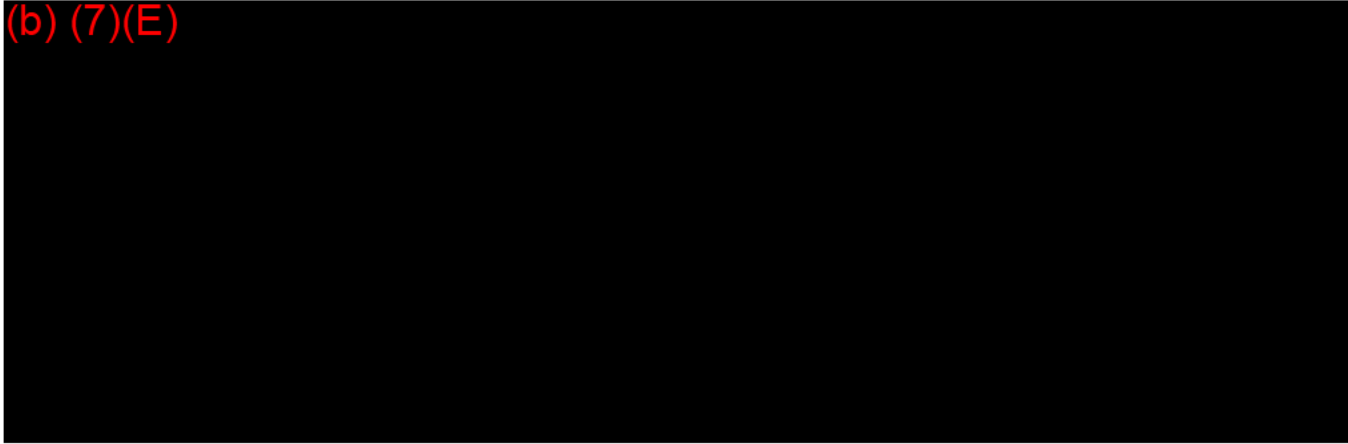


### 13.4 Potential Witnesses

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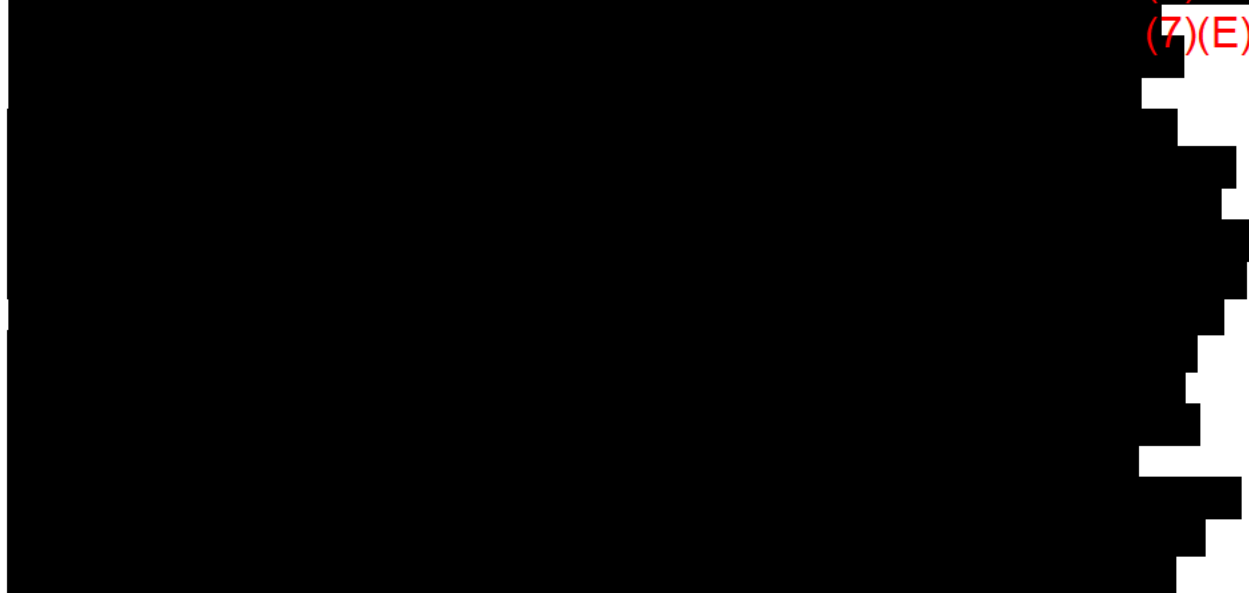
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### 13.5 Bond Determination

Generally, the arresting office, HSI or ERO, makes the initial bond determination, and an alien may request to have a custody redetermination made by an IJ (8 C.F.R. § 1236.1(d)(1)). HSI offices are encouraged to set bonds in consultation with the local OCC and ERO office.

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## **Chapter 14. COORDINATION OF ENFORCEMENT ACTIONS**

### **14.1 Advanced Notification to Headquarters, HSI Attachés, and U.S. Embassies**

Due to the often sensitive nature of human rights violators and war crimes investigations, advance notification should be made when possible prior to the arrest or indictment of suspected violators. Many times, these individuals are or were important, high ranking members of foreign governments. Advance notification allows the U.S. Government to avoid or ameliorate negative diplomatic effects. Before apprehending a target, SAs should consider communicating with the following offices:

#### **A. HSI International Operations**

Most negative effects on diplomatic relationships may be avoided by providing early notification of pending enforcement actions to HSI International Operations and Attachés, who will review the information provided and notify relevant DOS offices and Embassies, respectively.

#### **B. HSI Domestic Operations**

Prior to the apprehension of a human rights violator, the case agent should prepare and submit a SPEAR. This is to ensure that HSI management is fully informed. A SIR should be prepared after apprehension, providing details of the arrest.

#### **C. Office of Public Affairs (OPA)**

All public affairs issues will be coordinated through the Assistant Director, OPA, or his or her designee. Prior to the enforcement action, the local HSI office should coordinate with OPA to ensure that a clear, consistent message is presented to the media. All HSI personnel should be instructed to refer all media requests to the local Public Affairs Officer (PAO) or to OPA at HQ if no local PAO is available. In the case of criminal investigations, any press release will be coordinated with the PAOs for the affected USAO.

#### **D. Enforcement and Removal Operations**

Coordination with ERO should be conducted prior to the apprehension of a human rights violator or war criminal, whenever possible. This coordination allows ERO to take stronger measures to improve the likelihood of the individual being detained and to make any special provisions for where and how the individual will be detained.

### **14.2 Consular Notification at Foreign Embassy**

Due to the media attention and diplomatic concerns that may arise, consular notification should be made when a human rights violator or war criminal is apprehended, even when notification is

not mandatory. This notification will be made by SAs at the local level. Current policy and contact information is maintained by, and may be obtained from, the local ERO office. Documentation of attempts to provide consular notification should be maintained in the immigration file. (Note: See ICE Directive 10066.1 (former number 7-3.0), Consular Notification of Detained or Arrested Foreign Nationals, dated February 13, 2006, or as updated.)

## **Chapter 15. PRE-TRIAL CONSIDERATIONS**

### **15.1 Certification of Foreign Documents**

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#### **15.1.1 Certification by an Internationally Recognized Body**

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#### **15.1.2 Circumstantial Certification**

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### **15.1.3 Local Certification**

Whenever possible, certification by local authorities is desired. It is imperative to record the circumstances of the collection of the document, including whether the document came from an official government archive, and the credentials of the official who certified the record.

### **15.2 Translation Certification of Original Non-English Written Materials**

HSI has access to several translation service options. It is preferable to utilize one of these service options to certify the translated material. If, for some unforeseen reason, another service must be used, SAs should ensure that the translation service is recognized by the local judicial jurisdiction. If the original is received with an English translation but was not conducted by a

recognized translation service, SAs should discuss with their AUSA what steps should be taken to validate/certify the translation. (Note: See Chapter 11 for guidance on requesting language services.)

### 15.3 Expert Witnesses

Expert witnesses can be critical to establishing the framework within which the atrocity occurred. It can be difficult for a juror to grasp how an atrocity occurred. The juror might have a problem believing prosecution witnesses, not because the witnesses are not credible but because the juror is having difficulty believing that something so horrendous could actually occur. Providing the background sets the scene for the juror and makes specific witness testimony more pertinent, especially when the atrocity was government sanctioned. HRVWCU can assist in locating expert witnesses for human rights violators and war crimes cases.

### 15.4 Sentencing Considerations

Courts are required to follow a three-step process in sentencing, *Departure and Variance Primer*, Office of General Counsel, U.S. Sentencing Commission, June 2013, *citing Gall v. United States*, 552 U.S. 38 (2007). First, the court must calculate the applicable guideline range; however, courts are not required to sentence within the guidelines. *United States v. Booker*, 543 U.S. 220 (2005). Second, the court must determine whether to apply any of the guidelines' departure policy statements to adjust the guideline range. Third, the court must consider the factors set forth in 18 U.S.C. § 3553(a), including whether a variance above or below the calculated guideline range is appropriate. A "departure" is typically a change in the computed sentencing range, while a "variance" occurs when a court imposes a sentence above or below the guideline range.

First, the guideline range is calculated by using the U.S.S.G.'s Sentencing Table and is based on the offense level (or seriousness), including any specific offense characteristics which may increase or decrease the sentence (e.g., using a firearm during the offense) and the criminal history of the defendant. The range is stated in terms of months of imprisonment (e.g., 0-6 months). Note that, before a sentencing hearing, a probation officer will normally conduct an investigation and write a pre-sentence report for use by the court and as reference for the parties. The specifics of the report may vary based on the location and the officer, but will generally include the history and background of the defendant, including the criminal history and the circumstances affecting the defendant's behavior, a sentencing guideline calculation, and a recommendation for sentence. Courts may heavily weigh the sentencing calculation and recommendation in the report; therefore, if possible, the AUSA should discuss these issues with the parole officer before the sentencing hearing. Probation officers will often reach out to both parties for information as well. Additionally, the defense and the government will also be provided an opportunity to brief the court on the date of sentencing, including the provision of their own guideline calculation.

Second, the court must determine whether to depart from the applicable guideline range, *see* U.S.S.G. § 5K, including determining whether aggravating or mitigating circumstances were



adequately taken into consideration in the guideline calculation. U.S.S.G. § 5K2.0; *see also* 18 U.S.C. § 3553. Courts may not consider certain factors, including lack of guidance as a youth, or nationality, race, or socioeconomic status, in order to depart from the applicable guideline range. *See* U.S.S.G. § 5H. For example, in *United States v. Jordan*, 432 F. App'x. 950 (11th Cir. 2011), where a former Guatemalan soldier was convicted of naturalization fraud (18 U.S.C. § 1425), the U.S. District Court in the Southern District of Florida found that a departure from the 0-6 month guideline range was warranted under U.S.S.G. § 5K2.0 due to Jordan's 1982 participation in the mass murder of innocent civilians in Guatemala, including throwing a baby down a well and subsequent attempt to obtain U.S. citizenship, in part to elude justice in Guatemala. The Eleventh Circuit upheld the departure.

Third, the court must consider the sentencing factors in 18 U.S.C. § 3553 in determining whether to vary the sentence outside the guideline range. These factors include the following.

- A. The nature and circumstances of the offense and the history and characteristics of the defendant;
- B. The need to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense:
  - a) Afford adequate deterrence to criminal conduct,
  - b) Protect the public from further crimes of the defendant, and
  - c) Provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- C. The kinds of sentences available;
- D. The guideline range, as determined by the U.S.S.G.;
- E. Any pertinent policy statement of the U.S. Sentencing Commission;
- F. The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- G. The need to provide restitution to any victims of the offense.

These factors will be case and court-specific. For example, in *U.S. v. Kantengwa*, 2012 WL 4591891 (1st Cir. 2012), in which a Rwandan national was convicted of false statements on immigration documents (18 U.S.C. § 1546), perjury (18 U.S.C. § 1621), and obstructing justice before an agency (18 U.S.C. § 1505) and sentenced to 21 months imprisonment in relation to her involvement in the 1994 Rwandan genocide, the court found the defendant's position as an attorney to be a relevant factor for an upward departure because she should have known the importance of telling the truth under oath. In most human rights violator and war crimes cases,

particularly those which are charged as immigration fraud, the egregious nature of the defendant's human rights violations abroad will be strong factors for an upward variance from the guideline range. SAs should note also that, as of November 1, 2012, an increase in the guideline range exists for defendants who lied to conceal their membership in a military or similar organization which was involved in human rights violations and/or war crimes and for those defendants who lied to conceal their commission of "serious human rights violations," such as torture, genocide, or use or recruitment of child soldiers. See U.S.S.G. § 2L2.2. While *ex post facto* issues may exist in applying these amendments to offenses which occurred prior to November 1, 2012, and while the amendments are limited to certain immigration fraud charges, the government can still argue that the court should take the current guidelines into consideration in determining whether an upward variance is warranted.

SAs should note that, separate from the U.S.S.G. and 18 U.S.C. § 3553, statutes often include a maximum sentence; as a result, courts may not sentence a defendant above a specific time of imprisonment (e.g., a 10-year maximum). Statutes may also carry mandatory minimum sentences which require a minimum length of sentence unless the government motions otherwise, but these mandatory minimum sentences are less frequent. SAs should consult with their AUSAs to determine if these factors are applicable to their case.

Judicial Orders of Removal (JOR) or Judicial Removal Orders permit an alien's removal from the United States without issuance of an NTA or an appearance before an immigration court. Under INA § 238(d), a U.S. District Court has jurisdiction to enter an order of removal at the time of a criminal alien's sentencing. This order becomes final upon execution of a valid waiver of the right to appeal the conviction on which the order of removal is based, the expiration of the appeals period, or the dismissal of an appeal of the underlying conviction. See 8 U.S.C. § 1228(d)(3)(A)(iii). SAs should discuss the possibility of a JOR with prosecutors whenever a plea agreement is contemplated in a case.

# **Letter of Request**

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# **Deaths in Wars and Conflicts Since the End of World War II: 1945-2000**

**Matthew Evangelista, *Peace Studies: Critical Concepts in Political Science*, Volume I. Taylor and Francis, 2005, Table 2**

**Table 2**  
**Deaths in Wars and Conflicts Since the End of World War II: 1945 to 2000**

Region	Conflict	Deaths <sup>a</sup>		Total
		Civilian	Military	
<b>Latin America</b>				
Argentina				
1955	armed forces vs. Peron	2,000	2,000	4,000
1976–79	“disappearances”	15–30,000	...	15–30,000
1982	Falklands/Malvinas	0	1,000	1,000
Bolivia				
1952	revolution vs. government	1,000	1,000	2,000
1955–67	guerrilla insurgency	...	...	200,000
Brazil				
1980	rightist terrorism	...	...	1,000
Chile				
1973	military coup vs. Allende government	...	...	5,000
1974	executions by military junta	20,000	0	20,000
Colombia				
1948	conservatives vs. government	...	...	1,000
1949–62	liberals vs. conservatives	200,000	100,000	300,000
1980–89	government vs. left opposition	8,000	0	8,000
Costa Rica				
1948	National Union vs. government	1,000	1,000	2,000
Cuba				
1958–59	Cuban revolution	2,000	3,000	5,000
Dominican Republic				
1965	civil war/U.S. intervention	1,000	2,000	3,000
El Salvador				
1979–89	FMLN vs. government	50,000	23,000	73,000
Guatemala				
1954	conservatives vs. government/ U.S. intervention	...	...	1,000
1966–89	government vs. URNG vs. military opposition	200,000	17,500	212,500
1990–95	slaughter of indigenous peoples <sup>b</sup>	10,000	...	10,000
Honduras				
1969	Soccer War with El Salvador	3,000	2,000	5,000
Jamaica				
1980	election violence	1,000	0	1,000

Region	Conflict	Deaths <sup>a</sup>		
		Civilian	Military	Total
Nicaragua				
1978–79	civil war vs. Somoza government	25,000	10,000	35,000
Peru				
1980–92	Sendero Luminoso vs. government	62,000	7,000	69,000
<b>Middle East</b>				
Cyprus				
1974	National Guard/Turkish invasion	3,000	2,000	5,000
Egypt				
1955	Suez invasion/France, Israel, UK	1,000	3,000	4,000
1967–70	Six-Day War; War of Attrition	50,000	25,000	75,000
Iran				
1979–89	Government vs. opposition (esp. Kurds)	...	0	17,000
1980–88	Iran-Iraq war	0	1,000,000	1,000,000
Iraq				
1959	Shammar tribe vs. government	1,000	1,000	2,000
1961–74	Kurds vs. government	...	...	200,000
1980–88	Iran-Iraq War <sup>b</sup>	...	800,000	800,000
1988	“Anfall” killings of Kurds	100,000	0	100,000
1980–89	government vs. Kurds (KDP, PUK)	...	...	67,000
1991	Gulf War <sup>b</sup>	...	...	75,000
1991–95	Shia/South <sup>b</sup>	50,000	...	50,000
1982–2002	additional political killings by Iraq government	350,000	...	350,000
Israel				
1948	Arab League vs. Israel	0	8,000	8,000
1973	Yom Kippur War vs. Egypt, Syria	0	16,000	16,000
1987–2000	Intifada <sup>b</sup>	13,000	0	13,000
Jordan				
1970	Palestinians/Syrians vs. government	1,000	1,000	2,000
Lebanon				
1958	civil war	1,000	1,000	2,000
1975–89	civil war/Syrian and Israeli interventions	...	...	131,000
Syria				
1981	government massacre of Muslim Brotherhood at Hamah	10,000	0	10,000
Turkey				
1984–2000	government vs. Kurdish Workers’ Party (PKK)	30,000	0	30,000



Region	Conflict	Deaths <sup>a</sup>		
		Civilian	Military	Total
<b>Yemen, Republic of</b>				
1948	Yahya family vs. government	2,000	2,000	4,000
1962–69	civil war, including Egyptian intervention	...	...	10,000
1994	Border war vs government of Yemen PDR <sup>b</sup>	...	4,000	4,000
<b>Yemen, (former) People's Democratic Republic of</b>				
1986	civil war	...	...	10,000
<b>South Asia</b>				
<b>Afghanistan</b>				
1978–89	civil war/Soviet intervention <sup>b</sup>	...	...	1,000,000
1990–2000 <sup>b</sup>	civil war	...	...	1,000,000 <sup>c</sup>
<b>Bangladesh</b>				
1971	civil war/Indian intervention	1,000,000	500,000	1,500,000
1975–89	autonomy struggle in Chittagong	...	...	1,000
<b>India</b>				
1946–48	partition-related strife	800,000	0	800,000
1947–49	India vs. Pakistan over Kashmir	1,000	2,000	3,000
1948	India vs. Hyderabad	1,000	1,000	2,000
1962	Sino-Indian war	1,000	1,000	2,000
1965	India vs. Pakistan/Rann of Kutch war	13,000	7,000	20,000
1971	India vs. Pakistan (associated with Pakistani civil war)	0	11,000	11,000
1983	Assam election violence	3,000	...	3,000
1983–2000	Sikh autonomy campaign <sup>b</sup>	...	...	25,200
1990–2000	Kashmir <sup>b</sup>	9,000	20,000	29,000
<b>Nepal</b>				
1996–	Maoist insurgency vs. government	...	...	5,000
<b>Pakistan</b>				
1973–77	Baluchis vs. government/Afghan intervention	6,000	3,000	9,000
<b>Sri Lanka</b>				
1971	Maoists vs. government	1,000	1,000	2,000
1983–89	Government vs. Tamil Elam separatists/Indian... intervention/Singhalese People's Liberation Front intervention	...	...	15,000
1990–2002	Government vs Tamil Elam (LTTE) <sup>b</sup>	...	...	50,000
<b>Far East</b>				
<b>Burma</b>				
1948–51	Karens vs. government/Chinese intervention	...	...	8,000
1980	Burma Communist Party vs. government	...	...	5,000
1981–93	Government vs. opposition (mostly Karen)	0	9,000	9,000

Region	Conflict	Deaths <sup>a</sup>		Total
		Civilian	Military	
<b>Cambodia</b>				
1970–75	Civil war/Indochina conflict	...	...	156,000
1975–78	Pol Pot government vs. civilians	1,770,000	...	1,770,000
1978–90	Vietnamese invasion and civil war	20,000	50,000	70,000
1990–94	government vs Khmer Rouge <sup>b</sup>	...	...	25,000
<b>China</b>				
1946–50	Civil war <sup>b</sup>	5,000,000	1,200,000	6,200,000
1950–51	takeover of Tibet	0	1,000	1,000
1951–53	Chinese PLA mortality in Korean war listed together with Korean war			
1956–59	Tibetan revolt <sup>b</sup>	...	...	200,000
1983–84	government executions	5,000	0	5,000
1989	Tiananmen Square	1,000	0	1,000
<b>Indonesia</b>				
1945–46	independence struggle	4,000	1,000	5,000
1950	Moluccans vs. government	...	...	5,000
1953	Darul Islam vs. government	...	...	1,000
1956–60	Communists vs. government	...	...	30,000
1965–66	massacres following attempted coup	500,000	0	500,000
1975–89	annexation of East Timor	120,000	11,000	131,000
2000	post-Timor plebiscite <sup>b</sup>	2–3,000	...	2–3,000
2000	Aceh province insurgency <sup>b</sup>	2,000	...	2,000
<b>Korea (North and South)</b>				
1948	Yosu Rebellion	0	1,000	1,000
1950–53	Korean War <sup>b</sup> (includes Chinese PLA, U.S. and UN mortality)	2,828,000	1,672,000	4,500,000
<b>Laos</b>				
1960–73	civil war/Indochina conflict	12,000	12,000	24,000
1975–87	government/Vietnam vs. National Liberation Front	30,000	10,000	40,000
<b>Malaya (now Malaysia)</b>				
1950–60	UK intervention in civil war	...	...	13,000
<b>Philippines</b>				
1950–52	Hukbalahop vs. government	5,000	4,000	9,000
1972–2000	Muslims (MNLF, MILF), and New People's Army vs. government; Muslims (MNLF, MILF), and New People's Army vs. government <sup>b</sup>	100,000	20,000	120,000
<b>Taiwan (China)</b>				
1954–55	civil strife	...	...	5,000

Region	Conflict	Deaths <sup>a</sup>		
		Civilian	Military	Total
<b>Vietnam</b>				
1945–54	independence struggle vs. France <sup>b</sup>	300,000	300,000	600,000
1960–75	N. Vietnam vs. S. Vietnam/United States <sup>b</sup>	1,200,000	1,158,000	2,358,000
1979	China vs. Vietnam	0	56,000	56,000
1979	Vietnamese invasion of Cambodia	...	25,300	25,300
1980–88	China vs. Vietnam/border	0	1,000	1,000
<b>Sub-Saharan Africa</b>				
<b>Angola</b>				
1961–75	Independence struggle vs. Portugal	300,000	300,000	600,000
1980–95	Civil war/Cuban-South African intervention <sup>b</sup>	...	...	1,000,000
1995–2000	Civil War continued <sup>b</sup>	...	...	100,000
<b>Burundi</b>				
1972	Hutus vs. government/massacre	80,000	20,000	100,000
1988	civil strife	200,000	0	200,000
10–12/1993 <sup>b</sup>	civil strife	200,000	0	200,000
<b>Cameroon</b>				
1955–60	independence struggle vs. France	...	...	32,000
<b>Chad</b>				
1965–89	government vs. opposition/Libyan intervention	...	...	28,000
<b>Ethiopia</b>				
1978	Somalian invasion <sup>b</sup>	...	...	150,000
1962–89	Eritrean and other opposition vs. government <sup>b</sup>	...	...	1,000,000
1998	Ethiopia-Eritrea War	...	100,000	100,000
<b>Ghana</b>				
1981	Konkomba vs. Nanumba	...	...	1,000
<b>Guinea-Bissau</b>				
1962–74	independence struggle vs. Portugal	5,000	10,000	15,000
<b>Kenya</b>				
1952–63	independence struggle vs. UK	...	...100–300,000	
<b>Liberia</b>				
1990–95	civil war <sup>b</sup>	100,000	...	100,000
<b>Madagascar</b>				
1947–48	independence struggle vs. France	3,000	2,000	5,000
<b>Mozambique</b>				
1965–75	independence struggle vs. Portugal	...	...	30,000
1981–88	civil war <sup>b</sup>	...	...	900,000

Region	Conflict	Deaths <sup>a</sup>		Total
		Civilian	Military	
Namibia				
1967–89	SWAPO independence vs. South Africa	...	...	13,000
Nigeria				
1967–70	civil war	1,000,000	1,000,000	2,000,000
1980–81	fundamentalist Muslims vs. government	...	...	5,000
1984	fundamentalist Muslims vs. government	...	...	1,000
1999-	regional civil unrest	10,000	...	10,000
Rwanda				
1956–65	Tutsis vs. government/massacre	102,000	3,000	105,000
1990–95 <sup>b</sup>	civil strife and genocide	...	...	1,000,000
Sierra Leone				
1991–2000	government vs. insurgents <sup>b</sup>	50,000	...	50,000
Somalia				
1980–90	civil strife	5,000	5,000	10,000
1990–93 <sup>b</sup>	civil strife	...	...	300,000
South Africa				
1985–89	African National Congress vs. Inkatha <sup>b</sup>	5,000	0	5,000
Sudan				
1955–72	civil war <sup>b</sup>	...	...	750,000
1983–90	civil war <sup>b</sup>	500,000	10,000	510,000
1990–95	civil war <sup>b</sup>	...	...	500,000
1995–2000	civil war <sup>b</sup>	...	...	1,000,000
Uganda				
1966	Bungandans vs. government	1,000	1,000	2,000
1971–78	Idi Amin massacres	300,000	0	300,000
1978–79	Tanzanian invasion	...	3,000	3,000
1981–85	Obote government massacres <sup>b</sup>	300,000	0	300,000
1981–88	National Resistance Army vs. government/NRA vs. opposition	100,000	6,000	106,000
1990	Lord's Resistance Army vs. government	50,000	...	50,000
West Sahara				
1975–89	Polisario vs. Morocco	4,000	8,000	12,000
Zaire/Congo				
1960–65	civil war	...	...	100,000
1996–97	Hutu refugees in Zaire	200,000	0	200,000
1998–2000	civil war <sup>b</sup>	...	...	1,500,000
Zambia				
1964	civil strife	...	...	1,000

Region	Conflict	Deaths <sup>a</sup>		Total
		Civilian	Military	
<b>Zimbabwe</b>				
1972–79	struggle for majority rule	...	...	12,000
1979–87	government vs. ZAPU, MNR	2,000	0	2,000
<b>Northern Africa</b>				
<b>Algeria</b>				
1954–62	independence struggle vs. France	...	...	1,000,000
1962–63	rebel leaders vs. government	1,000	1,000	2,000
1990–95	government vs Muslim extremists <sup>b</sup>	...	...	30,000
1993–2000	government vs Muslim extremists <sup>b</sup>	...	...	100,000
<b>Morocco</b>				
1953–56	independence struggle vs. France	3,000	0	3,000
<b>Tunisia</b>				
1952–54	independence struggle vs. France	3,000	0	3,000
<b>Russia, Balkan and CIS States</b>				
<b>Armenia/Azerbaijan</b>				
1992–94	war over Nagorno-Karabakh <sup>b</sup>	...	10,000	10,000
<b>Chechnya</b>				
1994–96	Russia vs. Chechen insurgents <sup>b</sup>	...	...	(Chechens) 80,000
		...	15,000	(Russians) 15,000
1999–2000	Russia vs. Chechen insurgents <sup>b</sup>	...	...	(Chechens) 15,000
		...	3,500	(Russians) 3,500
<b>“Former Yugoslavia” (Serbia, Croatia, Bosnia, Herzegovina)</b>				
1991–96	civil war <sup>b</sup>	...	...	300,000
<b>Georgia</b>				
1994	Civil War vs. Abkhazia <sup>b</sup>	...	2,500	2,500
<b>Kosovo</b>				
1998–99	Serbia vs Kosovo insurgents <sup>b</sup>	10,000	...	10,000
<b>Tajikistan</b>				
1992–96	civil war <sup>b</sup>	...	...	100,000
<b>Total</b>		<b>approximately 40,968,000, rounded to 41 million</b>		

*Notes for the table:* Wars are defined as conflicts that result in the death of at least 1,000 individuals by any cause and include inter- and intrastate conflicts. While every attempt has been made to include all relevant conflicts, some events meeting the criterion for inclusion may inadvertently have been excluded. Where data is not available, the notation of “...” has been used.

a. The data on war and war-related deaths must be considered approximate. In some cases, particularly those in which large numbers of people have been killed, the estimates can vary substantially. Although data published by the Stockholm International Peace Research Institute attempt to *exclude* war-related deaths due to famines and diseases, as indicated in the text, an effort has been made to include all war-related deaths wherever possible in this list.

- b. The estimates for these conflicts have been derived from the private archives of Milton Leitenberg, University of Maryland (see below).
- c. There are no available figures for tabulated combat and excess mortality estimates in Afghanistan for the entire decade 1990 to 2000. Some approximations apparently reached 1 million, and there is a possibility that an NGO may produce an excess deaths estimate analogous to the one that the IRC released for the Eastern Congo at the end of April 2001, and again in early 2003, but this has not yet appeared.

It may at times be difficult for readers to grasp the meaning of the mid-range level of deaths when the numbers do not appear to be extremely high. The following example is helpful. Between 1967–68 and 1972, deaths in Laos caused by local combat and daily U.S. bombing from the air averaged 30 people per day, or around 11,000 per year. That level of killing was maintained for at least four years. However, if one compares the size of the Laotian population and that of the United States and applies a proportionate rate of deaths to the U.S. population at the time, that would amount to 3,000 people per day, or 4.38 million people in four years.

*Source:* The table, as of 1990, was compiled by Nicole Ball with the assistance of Milton Leitenberg, with Milton Leitenberg responsible for the years since 1990, from the following sources:

The private archives of Milton Leitenberg, University of Maryland, which include hundreds of individual items. The following examples are provided because they may be the more accessible for readers, or simply to indicate the range of sources used: William Eckhardt's table, "Wars and War-Related Deaths, 1700–1987," in *World Military and Social Expenditures: 1987–1988*, ed. Ruth Leger Sivard (Washington, DC: World Priorities, 1987), pp. 29–31; the annual compilations of major armed conflicts published by the Stockholm International Peace Research Institute since 1987, which are produced by a group of researchers at the University of Uppsala in Sweden; R.J. Rummel, *China's Bloody Century: Genocide and Mass Murder Since 1900* (New Brunswick: Transaction Books, 1991), chapters 7, 9, 10, 12, and appendix II; Joseph Eaton, "35 Years After Warsaw, and Genocide is Thriving," *New York Times*, April 19, 1978; United Nations, Africa Recovery Programme/Economic Commission for Africa, *South African Destabilization: The Economic Cost of Frontline Resistance to Apartheid* (New York, October 1989), p. 6; Bernard Brodie, "The Test of Korea," *War and Politics* (New York: Macmillan, 1973), p. 106; Jon Halliday and Bruce Cumming, *Korea: The Unknown War* (New York: Pantheon Books, 1988), p. 200; Larry Minear, "Civil Strife and Humanitarian Aid: A Bruising Decade," in *World Refugee Survey, 1989* (Washington, DC: U.S. Committee for Refugees, 1990).

After the first edition of this study was published in 2003, a reader supplied the reference to a series of web-based compendia produced by Matthew White. The link to these is supplied below without implying that specific entries among the data that they contain are being endorsed. In fact, White's figures frequently differ from the values appearing in this study in Table 2. However, since White's data set is so ambitious, it may be of interest for the reader: <http://users.erols.com/mwhite28/war-1900.htm>.

The literature on genocide, particularly individual genocide, is of course also enormous. Several references are listed here to provide a general introduction for readers: Leo Kuper, *Genocide: Its Political Use in the Twentieth Century* (Middlesex: Penguin, 1981); Israel W. Charny, *The Widening Circle of Genocide*, vol. 1 in *Genocide: A Critical Bibliographic Review* (New Brunswick: Transaction Publishers, 1994); Israel W. Charny, ed., *Encyclopedia of Genocide*, 2 vols. (Santa Barbara: ABC-CLIO, 1999); Eric D. Weitz, *A Century of Genocide: Utopias of Race and Nation* (Princeton: Princeton University Press, 2003); Kristian Gerner and Klas-Goran Karlsson, "Genocide: A Background Paper," prepared for the Stockholm International Forum, January 26–28, 2004, Stockholm, Sweden (<http://www.preventinggenocide.com/>); Samuel Totten, William S. Parsons, and Israel W. Charny, eds., *Century of Genocide: Eyewitness Accounts and Critical Views* (New York: Garland, 1997); Steven B. Jensen and Gwynneth Llewellyn, eds., *Genocide: Cases, Comparisons and Contemporary Debates*

# The Rwanda Genocide (A Case Study)

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# **Consent**

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# **Confidentiality Agreement for Expert Witnesses and Litigation Consultants**

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# Confidentiality Agreement for Interpreters and Translators

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## SUPERSEDED DOCUMENTS

The following policy documents are superseded by the Human Rights Violators and War Crimes Investigations Handbook or were superseded or cancelled prior to the date of issuance of this Handbook:

### ICE Office of Investigations (OI) Memorandums

- “Reporting Requirements to the Human Rights Violations Unit,” dated September 22, 2003 [Cancelled on 7/31/2014].
- “Priorities of ICE Human Rights Violators and Public Safety Unit (HRVPSU) Cases,” dated July 16, 2004 [Superseded by OI memorandum, “Human Rights Violators and War Crimes Case Generation and Reporting Requirements,” dated April 29, 2009].
- “Coordinating Human Rights Violator Denaturalization Investigations with the Office of Special Investigations,” dated June 21, 2007 [Cancelled on 12/31/2009].
- “Human Rights Violator Public Awareness Campaign,” dated August 25, 2008 [Cancelled on 7/31/2014].
- “Human Rights Violator and War Assessment and Outreach Strategy,” dated September 2, 2008 [Cancelled on 7/31/2014].
- Human Rights Violator and War Crimes Unit – Update and Relocation of Headquarters Unit from Division Two to Division One,” dated January 5, 2009.
- “Human Rights Violators and War Crimes Case Generation and Reporting Requirements,” dated April 29, 2009 [Cancelled on 7/31/2014].

### ICE Homeland Security Investigations Memorandums

- “Superseding Human Rights Violators and War Crimes Case Generation and Reporting Requirements,” dated October 19, 2012.
- “Guidance on Inadmissibility of Foreign Human Rights Violators,” dated January 15, 2013.

## ACRONYMS

AAG	Assistant Attorney General
AD	Assistant Director
A-File	Alien Registration File
AG	Attorney General
AOR	Area of Responsibility
AOS	Adjustment of Status
APB	Atrocities Prevention Board
APT	Atrocities Prevention Targeting Pilot Project
ARSO	Assistant Regional Security Officer
ARST	African Regional Support Team
ATS	Automated Targeting System
ATS-P	Automated Targeting System – Passengers
AUSA	Assistant United States Attorney
BBC	British Broadcasting Corporation
CA	Consular Affairs Section
CAT	The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBP	U.S. Customs and Border Protection
CCD	Consular Consolidated Database
C.F.R.	Code of Federal Regulations
CIA	Central Intelligence Agency
CIS	Central Index System
CLEAR	Consolidated Lead Evaluation and Reporting
CMIR	Case Management Investigative Referral
COM	Chief of Mission
CPK	Communist Party of Kampuchea
DCM	Deputy Chief of Mission
DHS	Department of Homeland Security
DOD	Department of Defense
DOJ	Department of Justice
DOS	Department of State
DRC	Democratic Republic of the Congo
DSS	Diplomatic Security Services
ECCC	Extraordinary Chambers in the Court of Cambodia
EDMS	Enterprise Document Management System
ERO	Enforcement and Removal Operations
FAR	Forces Armées Rwandaises
FBI	Federal Bureau of Investigation
FGM	Female Genital Mutilation
FMO	Financial Management Office
FOUO	For Official Use Only



FRY	Federal Republic of Yugoslavia
FSNI	Foreign Service National Investigator
FTAR	Foreign Travel Authorization Request
GER	Gross Enrollment Rate
GSA	General Services Administration
GSO	Government Services Office
GWCU	Genocide and War Crimes Unit (now the International Human Rights Unit (IHRU))
HB	Handbook
HQ	Headquarters
HREA	Human Rights Enforcement Act
HRLS	Human Rights Law Section
HRSP	Human Rights and Special Prosecutions
HRT3	Human Rights Targeting and Tracking Team
HRVRR	Human Rights Violators Rapid Response Team
HRVWCC	Human Rights Violators and War Crimes Center
HRVWCU	Human Rights Violators and War Crimes Unit
HSI	Homeland Security Investigations
HSILD	Homeland Security Investigations Law Division
IBIS	Interagency Border Inspection System
ICE	U.S. Immigration and Customs Enforcement
ICJ	International Court of Justice
ICM	Investigative Case Management
ICT	International Criminal Tribunal
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IHRU	International Human Rights Unit
IJ	Immigration Judge
INA	Immigration and Nationality Act
INS	U.S. Immigration and Naturalization Service
INTERPOL	International Criminal Police Organization
IP	Internet Protocol
IR	Investigative Referral
IRS	Intelligence Research Specialist
IRTPA	Intelligence Reform and Terrorism Prevention Act
IS	Islamic State
ISIS	Islamic State in Iraq and Syria
ISP	Internet Service Provider
JMD	Justice Management Division
JOR	Judicial Order of Removal
JRO	Judicial Removal Order
JVA	Joint Voluntary Agency
LPR	Lawful Permanent Resident
LSS	Language Services Section
MDR	Mouvement Démocratique Républicain

MDR-PARMEHUTU	Mouvement Démocratique Republicain – Parti de Mouvement d’Emancipation Hutu
MICT	Mechanism for International Criminal Tribunals
MLAT	Mutual Legal Assistance Treaty
MOU	Memorandum of Understanding
MRND	Mouvement Révolutionnaire National pour le Développement
NACARA	Nicaraguan Adjustment and Central American Relief Act
NATO	North Atlantic Treaty Organization
NGIA	National Geospatial-Intelligence Agency
NGO	Non-Governmental Organization
NOC	National Operations Center
NPM	National Program Manager
NRA	National Resistance Army
NSID	National Security Investigations Division
NTA	Notice to Appear
OCC	Office of the Chief Counsel
OI	Office of Investigations
OIA	Office of International Affairs
OPA	Office of Public Affairs
OPLA	Office of the Principal Legal Advisor
PAO	Public Affairs Officer
PBS	Public Broadcasting Service
PL	Parti Libéral
PLEPU	Parole and Law Enforcement Programs Unit
POC	Point of Contact
POE	Port of Entry
POL	Political Section
PSD	Parti Social Démocratique
PSD	Presidential Study Directive
RCMP	Royal Canadian Mounted Police
ROI	Report of Investigation
RPA	Rwanda Patriotic Army
RPF	Rwandan Patriotic Front
RSO	Regional Security Officer
RST	Regional Support Team
RTL	Radio-Télévision Libre des Mille Collines
SA	Special Agent
SAC	Special Agent in Charge
SCR	Significant Case Report
SCSL	Special Court for Sierra Leone
SIR	Significant Incident Report
SOP	Standard Operating Procedure
SPBP	Significant Public Benefit Parole
SPEAR	Significant Prospective Enforcement Action Report
STL	Special Tribunal for Lebanon

TDY	Temporary Duty Assignment
TEOAF	Treasury Executive Office for Asset Forfeiture
TFF	Treasury Forfeiture Fund
TFO	Task Force Officer
TPS	Temporary Protected Status
UK	United Kingdom
U.N.	United Nations
USAM	United States Attorneys Manual
USAO	U.S. Attorney's Office
U.S.C.	United States Code
USCIS	U.S. Citizenship and Immigration Services
USMS	U.S. Marshals Service
USNCB	U.S. National Central Bureau
U.S.S.G.	U.S. Sentencing Guidelines
VAP	Victim Assistance Program
VTC	Video Teleconference