

Federal Court



Cour fédérale

**Date: 20170109**

**Docket: IMM-222-16**

**Citation: 2017 FC 29**

**Toronto, Ontario, January 09, 2017**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

**CORDLYNE VITALIS NWANKWO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr. Nwankwo is a citizen of Nigeria who originally came to Canada in 2000 and claimed refugee status on the basis that he was at risk as a Christian and leader of the Christian Youth Organization [CYO] in Kaduna State. His claim was denied in 2003 by the Refugee Protection Division [RPD] on the grounds that he was excluded from the definition of a Convention refugee under subsection 1F(b) of the Convention. He was found to have committed serious non-political

crimes in Nigeria related to his involvement in the 2000 Kaduna riots. The riots involved fighting between Christians and Muslims. He was deported in 2004 leaving his spouse and two Canadian children in Canada.

[2] In March 2012, Mr. Nwankwo made his fifth application for permanent residence, having been refused on four previous occasions. The application was submitted under the Overseas Spousal Sponsorship Class and was processed at the Canadian High Commission in Accra, Ghana.

[3] The Program Manager [PM] who assessed the application determined that Mr. Nwankwo did not meet the requirements of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA]. The PM was not satisfied that he was admissible to Canada on the basis that his statements concerning his participation in the 2000 Kaduna riots were reasonable evidence of a crime rendering him inadmissible under section 35 of the IRPA. Specifically, the PM concluded that his participation in the riots constituted an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24 [CAHWCA].

[4] In seeking judicial review, Mr. Nwankwo submits that the decision should be set aside as there was a denial of procedural fairness resulting from: (1) the failure to disclose a report completed by the Canadian Border Services Agency [CBSA]; and (2) the failure to provide Mr. Nwankwo an opportunity to address credibility concerns and respond to the allegations where there was no RPD transcript and no evidence linking him to a crime against humanity.

[5] The sole issue I need to address is whether there was a denial of procedural fairness. For the reasons that follow, I am of the opinion that there was no breach of procedural fairness and that the decision is reasonable.

## II. Background

### A. *2003 RPD Decision*

[6] In its 2003 decision, the RPD summarized Mr. Nwankwo's Personal Information Form [PIF] noting he alleged that: (1) in late 1998, he was involved in the Christian Association of Nigeria [CAN] and the CYO, becoming a social organizer of the CYO; (2) he, and the groups he was involved in, opposed the introduction of Sharia law into the Nigerian legal system; (3) by early February 2000, there was open resistance to the introduction of Sharia law under the auspices of CAN; (4) he was seen as a radical opponent to Sharia law, was very vocal and attracted attention through his participation in negotiations with Muslim leaders, media briefings and his submission of news articles; (5) when Muslim attacks began on Christians, attacks which included the burning of churches, homes, businesses and the killing and maiming of Christians, he organized a group to fight back; (6) Christians fought back burning mosques, Muslim homes and killing Muslims; (7) he was an active participant in the conflict; and (8) having lost confidence in the State's ability to protect him, he departed Nigeria in late February 2000.

[7] The RPD found Mr. Nwankwo not to be credible or trustworthy in respect of certain aspects of his claim. The RPD noted that he was evasive in respect of the advice he gave to Christian groups and the role he played in the February 2000 violence. The RPD also found that

he continually minimized the role of Christians in the riots and was not credible in his allegations that he was a very prominent or active Christian who had therefore been targeted.

[8] The RPD accepted that Mr. Nwankwo: (1) had established his identity; (2) was an activist fighting against the introduction of Sharia law in Kaduna State; (3) organized a large group of Christians to fight back in kind against Muslim violence; (4) was a social organizer for the CYO; and (5) through the CYO, was a member of CAN. The RPD also found that he had encouraged Christians to avenge in kind the burning of Christian churches and homes and that he participated in the February 2000 violence including the setting of fire to a mosque and the use of weapons. The RPD cited the following testimony:

Claimant: Yeah, I participated in all the activities.

RCO: Okay, what were some of the activities?

Claimant: Fighting back. Like there was open competition between us and the Muslim...

RCO: On the street or was this at a particular location?

Claimant: On the street.

RCO: Okay

Claimant: Because it was just like fighting just on the street too, also where I was involved with other group too, which – because some churches were burned, so we kind of revenged too, we had to burn some mosque too.

[9] The RPD then considered the documentary evidence relating to the February 2000 violence. It noted that the violence had led to a large number of deaths, the setting of fire to hundreds of vehicles and houses, and reports of Christian youth roaming the streets with clubs, axes and cans of petrol. On the basis of this evidence, the RPD rejected the submission that Mr.

Nwankwo's actions were pursued in self-defence. The RPD concluded that there was a serious reason to believe that Mr. Nwankwo committed serious non-political crimes outside Canada prior to his admission to Canada as a refugee claimant and that pursuant to subsection 1F(b) of the Convention, he was a person to whom the Convention does not apply.

B. *The CBSA Report*

[10] In the course of processing Mr. Nwankwo's permanent residence application, the National Security Screening Division [NSSD] within the CBSA was requested to prepare an assessment of the application [CBSA report or report]. The report was completed and delivered to the PM.

[11] The CBSA report sets out the details relating to Mr. Nwankwo's application, noting his membership in CAN and CYO, his role in the riots and noting that "He also admitted to participating in these attacks, specifically fighting in the street and burning down a mosque" While the report notes that Mr. Nwankwo claimed this information to be false and fabricated, it gives greater weight to the information provided in the course of his refugee claim. Therefore, only the information provided in the course of the refugee claim was considered in preparing the report.

[12] The CBSA report details the Kaduna riots in February 2000, describes the cause of the riots, the violence that ensued and summarizes the results of the riots. The report also provides an overview of CAN, noting that (1) it emerged in the early 1980s as an umbrella Christian

missionary organization, (2) it aimed at increasing Christian activism in combatting the threat of radical Islam, and (3) the rhetoric used reached incendiary levels.

[13] The CBSA report then conducts an analysis of the meaning of “crimes against humanity”, as that term is used in Canadian domestic legislation, international instruments and Canadian jurisprudence. Considering this analysis in the context of the evidence of what occurred during the Kaduna riots, the CBSA report finds that the acts committed were “part of a widespread and systematic attack against a civilian population by persons **who knew of the attacks and knew that their acts comprised part of the attacks**”. [Emphasis in original] The CBSA report notes that Mr. Nwankwo’s evidence was that he organized a group that fought back against Muslim attacks on Christians by “burning mosques, Muslim homes and killing Muslims”. The CBSA report concludes that these actions amount to crimes against humanity and that there are reasonable grounds to believe Mr. Nwankwo committed these crimes and incited others to take part in the violence.

[14] The CBSA report recommends a determination that there are reasonable grounds to believe that Mr. Nwankwo is inadmissible pursuant to subsection 35(1)(a) of the IRPA, but notes that this is a decision that rests solely with the PM.

C. *Decision under Review*

[15] Mr. Nwankwo was interviewed in Accra, Ghana in September 2012. The notes in the Global Case Management System [GCMS notes] indicate that during this interview, he acknowledged his prior claim for protection in Canada and that the claim had been denied.

However, he stated that in pursuing the refugee claim, he had lied in order to stay longer in Canada, that the claim was false and that his lawyer, at that time, told him to exploit the story of the conflict between the Muslims and the Christians in the north of the country to get refugee status.

[16] A Procedural Fairness Letter [PFL] was sent in September 2015 advising Mr. Nwankwo that the assessment of his application was being completed and that the PM had reasonable grounds to believe that he may have committed crimes against humanity and was inadmissible by virtue of subsection 35(1)(a) of the IRPA. These concerns arose out of the evidence of his active participation in the Kaduna riots in 2000.

[17] In response to the PFL, Mr. Nwankwo's counsel reiterated that the applicant had recanted his claim of participation in the Kaduna riots and that as a result, there is no evidence to establish his participation in the riots.

[18] The GCMS notes indicate that the PM reviewed the response to the PFL and the RPD decision. The PM noted that while the RPD found the applicant not to be credible in some respects, the RPD concluded that there were serious reasons to believe that Mr. Nwankwo committed serious crimes prior to his admission to Canada. The PM gave little weight to Mr. Nwankwo's assertions that he lied before the RPD. The PM noted that the RPD had described his testimony as detailed, spontaneous and consistent in respect of his role in the CYO and that he recanted this evidence only after he became aware of the consequences of his participation in the riots.

[19] The PM concluded that there were reasonable grounds to believe that the applicant was inadmissible for having committed acts which would constitute an offence under sections 4 to 7 of the CAHWCA.

### III. Applicable Law

[20] Sections 33, 35 and 52 of the IRPA, and sections 4 through 7 of the CAHWCA are reproduced for ease of reference at Appendix 1 of this Judgment and Reasons.

### IV. Standard of Review

[21] The parties do not dispute that where it is alleged there has been a denial of procedural fairness the Court will review the issues using a standard of correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43 and *Husien v Canada (Minister of Citizenship and Immigration)*, 2016 FC 490 at para 13).

### V. Analysis

#### A. *Was there a denial of procedural fairness?*

[22] Mr. Nwankwo argues that the failure to disclose the CBSA report and to conduct an interview was a denial of procedural fairness. He submits, relying on *Bhagwandass v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 49 [*Bhagwandass*], that the PM relied heavily on the report's conclusions and that the report was an instrument of advocacy that laid out the legal and factual foundation for finding him inadmissible. He submits that disclosure was



required to “level the playing field” and to provide a reasonable opportunity to participate in a meaningful way in the decision-making process (*Bhagwandass* at para 22 referring to *Haghighi v Canada (Minister of Citizenship and Immigration)*, (2000) 257 NR 139 (CA)). He submits that the report contained new information and errors that were incorporated into the decision. He adds that the procedural fairness letter does not cure the denial of fairness as it makes no reference to the report and does not describe how the active participation in the riots constituted a crime against humanity, participation that was subsequently denied. I disagree.

[23] The failure to disclose the CBSA report does not evidence a denial of procedural fairness (*Gebremedhin v Canada (Minister of Citizenship and Immigration)*, 2013 FC 380 [*Gebremedhin*] at para 9). It is true that a failure to disclose may well raise the question of whether the applicant had the opportunity to meaningfully participate in the decision-making process (*Bhagwandass* at para 22). However, the issue to be addressed is not disclosure of the document but whether the applicant was aware of the information being relied upon by the decision-maker (*Gebremedhin* at para 9).

[24] The CBSA report relies heavily on the findings made by the RPD. This, of course, does not amount to a denial of procedural fairness as Mr. Nwankwo was well aware of the content of the RPD decision. I am also not convinced that the CBSA report incorrectly attributes acts of violence to Mr. Nwankwo or introduces new information. The CBSA report does not misrepresent or misstate Mr. Nwankwo’s evidence, or the findings of the RPD as they relate to his role in the incitement and commission of acts of violence and membership in the CYO and CAN. As Justice Richard Mosley stated in *Yang v Canada (Minister of Citizenship and*

*Immigration*), 2013 FC 20: “The question is whether meaningful facts essential or potentially crucial to the decision had been used to support a decision without providing an opportunity to the affected party to respond to or comment upon these facts.”

[25] In this case, Mr. Nwankwo was well aware of the concerns of the PM. The concerns were based on his own declarations and testimony in the context of his refugee claim a decade earlier. Contrary to Mr. Nwankwo’s submissions, the CBSA report does nothing more than pull together the facts as reported by Mr. Nwankwo in the course of his refugee claim and apply those facts to the law. There was no denial of procedural fairness arising out of the failure to disclose the report or to conduct an interview based on the contents of the report. As stated by the respondent in its written submissions: “... the Applicant was well aware of the issues concerning the Respondent”.

[26] Mr. Nwankwo also submits that because his 2012 statements were determined not to be credible, he should have been provided the opportunity to address that finding.

[27] Mr. Nwankwo was provided a procedural fairness letter in September 2015, three years after he recanted his prior story. The letter identified the inadmissibility concerns stating: “I have grounds to believe that you were an active participant in the Christian riots that took place in Kaduna State in February, 2000.” In my opinion, this letter provided ample notice to Mr. Nwankwo that the PM did not find his 2012 statements to be credible. The procedural fairness letter provided an opportunity to respond and a response was provided.

[28] In the circumstances, it was reasonably open to the PM to prefer the evidence provided in support of the refugee claim over the later denials. In preferring the earlier statements, the PM identified the reasons for doing so. The possibility of inadmissibility under subsection 35(1)(a) of the IRPA was clearly flagged, Mr. Nwankwo was well aware of the meaningful facts essential or potentially crucial to the decision and was given an opportunity to respond. The decision is justified, transparent and intelligible, falling well within a range of possible, acceptable outcomes defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[29] There was no denial of procedural fairness, the decision was reasonable.

## VI. Conclusion

[30] The application is dismissed. The parties have not identified a question of general importance, and none arises.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is dismissed. No question is certified.

"Patrick Gleeson"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-222-16

**STYLE OF CAUSE:** CORDLYNE VITALIS NWANKWO v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 12, 2016

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** JANUARY 09, 2017

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## Annex A

*Immigration and Refugee Protection Act*, SC 2001, c 27, sections 33, 35, and 52:

[...]

33 The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

[...]

35 (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for

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

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

(c) being a person, other than a permanent resident, whose entry into or stay in Canada is restricted pursuant to a decision, resolution or measure of an international organization of states or association of states, of which Canada is a member, that imposes sanctions on a country against which Canada has imposed or has agreed to impose sanctions in concert with that organization or association.

[...]

33 Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.

[...]

35 (1) Emportent interdiction de territoire pour atteinte aux droits humains ou internationaux les faits suivants :

a) commettre, hors du Canada, une des infractions visées aux articles 4 à 7 de la *Loi sur les crimes contre l'humanité et les crimes de guerre*;

b) occuper un poste de rang supérieur — au sens du règlement — au sein d'un gouvernement qui, de l'avis du ministre, se livre ou s'est livré au terrorisme, à des violations graves ou répétées des droits de la personne ou commet ou a commis un génocide, un crime contre l'humanité ou un crime de guerre au sens des paragraphes 6(3) à (5) de la *Loi sur les crimes contre l'humanité et les crimes de guerre*;

c) être, sauf s'agissant du résident permanent, une personne dont l'entrée ou le séjour au Canada est limité au titre d'une décision, d'une résolution ou d'une mesure d'une organisation internationale d'États ou une association d'États dont le Canada est membre et qui impose des sanctions à l'égard d'un pays contre lequel le Canada a imposé — ou s'est engagé à imposer — des sanctions de concert

avec cette organisation ou association.

[...]

[...]

52 (1) If a removal order has been enforced, the foreign national shall not return to Canada, unless authorized by an officer or in other prescribed circumstances.

52 (1) L'exécution de la mesure de renvoi emporte interdiction de revenir au Canada, sauf autorisation de l'agent ou dans les autres cas prévus par règlement.

(2) If a removal order for which there is no right of appeal has been enforced and is subsequently set aside in a judicial review, the foreign national is entitled to return to Canada at the expense of the Minister.

(2) L'étranger peut revenir au Canada aux frais du ministre si la mesure de renvoi non susceptible d'appel est cassée à la suite d'un contrôle judiciaire.

*Crimes Against Humanity and War Crimes Act*, SC 2000, c. 24, sections 4 to 7:

[...]

[...]

4 (1) Every person is guilty of an indictable offence who commits:  
(a) genocide;  
(b) a crime against humanity; or  
(c) a war crime.

4 (1) Quiconque commet une des infractions ci-après est coupable d'un acte criminel :  
a) génocide;  
b) crime contre l'humanité;  
c) crime de guerre.

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

(1.1) Est coupable d'un acte criminel quiconque complotte ou tente de commettre une des infractions visées au paragraphe (1), est complice après le fait à son égard ou conseille de la commettre.

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

(2) Quiconque commet une infraction visée aux paragraphes (1) ou (1.1) :

(a) shall be sentenced to imprisonment for life, if an intentional killing forms the basis of the offence; and

a) est condamné à l'emprisonnement à perpétuité, si le meurtre intentionnel est à l'origine de l'infraction;

(b) is liable to imprisonment for life, in any other case.

b) est passible de l'emprisonnement à perpétuité, dans les autres cas.

(3) The definitions in this subsection apply in this section.  
crime against humanity means murder, extermination, enslavement, deportation,

(3) Les définitions qui suivent s'appliquent au présent article.  
crime contre l'humanité Meurtre, extermination, réduction en esclavage,

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

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

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

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

déportation, emprisonnement, torture, violence sexuelle, persécution ou autre fait — acte ou omission — inhumain, d'une part, commis contre une population civile ou un groupe identifiable de personnes et, d'autre part, qui constitue, au moment et au lieu de la perpétration, un crime contre l'humanité selon le droit international coutumier ou le droit international conventionnel, ou en raison de son caractère criminel d'après les principes généraux de droit reconnus par l'ensemble des nations, qu'il constitue ou non une transgression du droit en vigueur à ce moment et dans ce lieu. (crime against humanity)

crime de guerre Fait — acte ou omission — commis au cours d'un conflit armé et constituant, au moment et au lieu de la perpétration, un crime de guerre selon le droit international coutumier ou le droit international conventionnel applicables à ces conflits, qu'il constitue ou non une transgression du droit en vigueur à ce moment et dans ce lieu. (war crime)

génocide Fait — acte ou omission — commis dans l'intention de détruire, en tout ou en partie, un groupe identifiable de personnes et constituant, au moment et au lieu de la perpétration, un génocide selon le droit international coutumier ou le droit international conventionnel, ou en raison de son caractère criminel d'après les principes généraux de droit reconnus par l'ensemble des nations, qu'il constitue ou non une transgression du droit en vigueur à ce moment et dans ce lieu. (genocide)

(4) Il est entendu que, pour l'application du présent article, les crimes visés aux articles 6 et 7 et au paragraphe 2 de l'article 8 du Statut de Rome sont, au 17 juillet 1998, des crimes selon le droit international coutumier sans que soit limitée ou entravée de quelque manière que ce soit l'application des règles de droit international existantes ou en formation.



5 (1) A military commander commits an indictable offence if

(a) the military commander

(i) fails to exercise control properly over a person under their effective command and control or effective authority and control, and as a result the person commits an offence under section 4, or

(ii) fails, after the coming into force of this section, to exercise control properly over a person under their effective command and control or effective authority and control, and as a result the person commits an offence under section 6;

(b) the military commander knows, or is criminally negligent in failing to know, that the person is about to commit or is committing such an offence; and

(c) the military commander subsequently

(i) fails to take, as soon as practicable, all necessary and reasonable measures within their power to prevent or repress the commission of the offence, or the further commission of offences under section 4 or 6, or

(ii) fails to take, as soon as practicable, all necessary and reasonable measures within their power to submit the matter to the competent authorities for investigation and prosecution.

(2) A superior commits an indictable offence if

5 (1) Tout chef militaire est coupable d'un acte criminel si les conditions suivantes sont réunies :

a) selon le cas :

(i) il n'exerce pas le contrôle qui convient sur une personne placée sous son commandement et son contrôle effectifs ou sous son autorité et son contrôle effectifs et, en conséquence, la personne commet l'infraction visée à l'article 4,

(ii) il n'exerce pas, après l'entrée en vigueur du présent article, le contrôle qui convient sur une personne placée sous son commandement et son contrôle effectifs ou son autorité et son contrôle effectifs et, en conséquence, la personne commet l'infraction visée à l'article 6;

b) il sait que la personne est sur le point ou en train de commettre l'infraction ou il se rend coupable de négligence criminelle du fait qu'il ignore qu'elle est sur le point ou en train de commettre l'infraction;

c) en conséquence, il ne prend pas, dès que possible, toutes les mesures nécessaires et raisonnables en son pouvoir pour :

(i) soit empêcher ou réprimer la perpétration de l'infraction ou empêcher la perpétration d'autres infractions visées aux articles 4 ou 6,

(ii) soit en référer aux autorités compétentes aux fins d'enquête et de poursuite.

(2) Tout supérieur est coupable d'un acte criminel si les conditions suivantes sont réunies :

(a) the superior

(i) fails to exercise control properly over a person under their effective authority and control, and as a result the person commits an offence under section 4, or

(ii) fails, after the coming into force of this section, to exercise control properly over a person under their effective authority and control, and as a result the person commits an offence under section 6;

(b) the superior knows that the person is about to commit or is committing such an offence, or consciously disregards information that clearly indicates that such an offence is about to be committed or is being committed by the person;

(c) the offence relates to activities for which the superior has effective authority and control; and

(d) the superior subsequently

(i) fails to take, as soon as practicable, all necessary and reasonable measures within their power to prevent or repress the commission of the offence, or the further commission of offences under section 4 or 6, or

(ii) fails to take, as soon as practicable, all necessary and reasonable measures within their power to submit the matter to the competent authorities for investigation and prosecution.

(2.1) Every person who conspires or attempts to commit, is an accessory after the fact in relation to, or counsels in relation to, an offence referred to in subsection (1) or (2) is

a) selon le cas :

(i) il n'exerce pas le contrôle qui convient sur une personne placée sous son autorité et son contrôle effectifs et, en conséquence, la personne commet l'infraction visée à l'article 4,

(ii) il n'exerce pas, après l'entrée en vigueur du présent article, le contrôle qui convient sur une personne placée sous son autorité et son contrôle effectifs et, en conséquence, la personne commet l'infraction visée à l'article 6;

b) il sait que la personne est sur le point ou en train de commettre l'infraction ou il néglige délibérément de tenir compte de renseignements qui indiquent clairement qu'elle est sur le point ou en train de commettre l'infraction;

c) l'infraction est liée à des activités relevant de son autorité et de son contrôle effectifs;

d) en conséquence, il ne prend pas, dès que possible, toutes les mesures nécessaires et raisonnables en son pouvoir pour :

(i) soit empêcher ou réprimer la perpétration de l'infraction ou empêcher la perpétration d'autres infractions visées aux articles 4 ou 6,

(ii) soit en référer aux autorités compétentes aux fins d'enquête et de poursuite.

(2.1) Est coupable d'un acte criminel quiconque complotte ou tente de commettre une des infractions visées aux paragraphes (1) ou (2), est complice après le fait à son égard ou

guilty of an indictable offence.

(3) Every person who commits an offence under subsection (1), (2) or (2.1) is liable to imprisonment for life.

(4) The definitions in this subsection apply in this section.

military commander includes a person effectively acting as a military commander and a person who commands police with a degree of authority and control comparable to a military commander. (chef militaire)  
superior means a person in authority, other than a military commander. (supérieur)

[...]

6 (1) Every person who, either before or after the coming into force of this section, commits outside Canada

(a) genocide,

(b) a crime against humanity, or

(c) a war crime,  
is guilty of an indictable offence and may be prosecuted for that offence in accordance with section 8.

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

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

(a) shall be sentenced to imprisonment for life, if an intentional killing forms the basis of the offence; and

conseille de la commettre.

(3) Quiconque commet une infraction visée aux paragraphes (1), (2) ou (2.1) est passible de l'emprisonnement à perpétuité.

(4) Les définitions qui suivent s'appliquent au présent article.

chef militaire S'entend notamment de toute personne faisant effectivement fonction de chef militaire et de toute personne commandant un corps de police avec un degré d'autorité et de contrôle similaire à un chef militaire. (military commander)  
supérieur Personne investie d'une autorité, autre qu'un chef militaire. (superior)

[...]

6 (1) Quiconque commet à l'étranger une des infractions ci-après, avant ou après l'entrée en vigueur du présent article, est coupable d'un acte criminel et peut être poursuivi pour cette infraction aux termes de l'article 8 :

a) génocide;

b) crime contre l'humanité;

c) crime de guerre.

(1.1) Est coupable d'un acte criminel quiconque complotte ou tente de commettre une des infractions visées au paragraphe (1), est complice après le fait à son égard ou conseille de la commettre.

(2) Quiconque commet une infraction visée aux paragraphes (1) ou (1.1) :

a) est condamné à l'emprisonnement à perpétuité, si le meurtre intentionnel est à l'origine de l'infraction;

(b) is liable to imprisonment for life, in any other case.

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

crime against humanity means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission. (crime contre l'humanité) genocide means an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that at the time and in the place of its commission, constitutes genocide according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission. (génocide) war crime means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission. (crime de guerre)

(4) For greater certainty, crimes described in articles 6 and 7 and paragraph 2 of article 8 of

b) est passible de l'emprisonnement à perpétuité, dans les autres cas.

(3) Les définitions qui suivent s'appliquent au présent article.

crime contre l'humanité Meurtre, extermination, réduction en esclavage, déportation, emprisonnement, torture, violence sexuelle, persécution ou autre fait — acte ou omission — inhumain, d'une part, commis contre une population civile ou un groupe identifiable de personnes et, d'autre part, qui constitue, au moment et au lieu de la perpétration, un crime contre l'humanité selon le droit international coutumier ou le droit international conventionnel ou en raison de son caractère criminel d'après les principes généraux de droit reconnus par l'ensemble des nations, qu'il constitue ou non une transgression du droit en vigueur à ce moment et dans ce lieu. (crime against humanity) crime de guerre Fait — acte ou omission — commis au cours d'un conflit armé et constituant, au moment et au lieu de la perpétration, un crime de guerre selon le droit international coutumier ou le droit international conventionnel applicables à ces conflits, qu'il constitue ou non une transgression du droit en vigueur à ce moment et dans ce lieu. (war crime) génocide Fait — acte ou omission — commis dans l'intention de détruire, en tout ou en partie, un groupe identifiable de personnes et constituant, au moment et au lieu de la perpétration, un génocide selon le droit international coutumier ou le droit international conventionnel, ou en raison de son caractère criminel d'après les principes généraux de droit reconnus par l'ensemble des nations, qu'il constitue ou non une transgression du droit en vigueur à ce moment et dans ce lieu. (genocide)

(4) Il est entendu que, pour l'application du présent article, les crimes visés aux articles 6 et 7 et au paragraphe 2 de l'article 8 du Statut de

the Rome Statute are, as of July 17, 1998, crimes according to customary international law, and may be crimes according to customary international law before that date. This does not limit or prejudice in any way the application of existing or developing rules of international law.

(5) For greater certainty, the offence of crime against humanity was part of customary international law or was criminal according to the general principles of law recognized by the community of nations before the coming into force of either of the following:

(a) the Agreement for the prosecution and punishment of the major war criminals of the European Axis, signed at London on August 8, 1945; and

(b) the Proclamation by the Supreme Commander for the Allied Powers, dated January 19, 1946.

[...]

7 (1) A military commander commits an indictable offence if

(a) the military commander, outside Canada,

(i) fails to exercise control properly over a person under their effective command and control or effective authority and control, and as a result the person commits an offence under section 4, or

(ii) fails, before or after the coming into force of this section, to exercise control properly over a person under their effective command and control or effective authority and control, and as a result the person commits an offence under section 6;

Rome sont, au 17 juillet 1998, des crimes selon le droit international coutumier, et qu'ils peuvent l'être avant cette date, sans que soit limitée ou entravée de quelque manière que ce soit l'application des règles de droit international existantes ou en formation.

(5) Il est entendu qu'un crime contre l'humanité transgressait le droit international coutumier ou avait un caractère criminel d'après les principes généraux de droit reconnus par l'ensemble des nations avant l'entrée en vigueur des documents suivants :

a) l'Accord concernant la poursuite et le châtement des grands criminels de guerre des Puissances européennes de l'Axe, signé à Londres le 8 août 1945;

b) la Proclamation du Commandant suprême des Forces alliées datée du 19 janvier 1946.

[...]

7 (1) Tout chef militaire est coupable d'un acte criminel si les conditions suivantes sont réunies :

a) selon le cas, à l'étranger :

(i) il n'exerce pas le contrôle qui convient sur une personne placée sous son commandement et son contrôle effectifs ou sous son autorité et son contrôle effectifs et, en conséquence, la personne commet l'infraction visée à l'article 4,

(ii) il n'exerce pas, avant ou après l'entrée en vigueur du présent article, le contrôle qui convient sur une personne placée sous son commandement et son contrôle effectifs ou son autorité et son contrôle effectifs et, en conséquence, la personne commet l'infraction visée à l'article 6;

(b) the military commander knows, or is criminally negligent in failing to know, that the person is about to commit or is committing such an offence; and

b) il sait que la personne est sur le point ou en train de commettre l'infraction ou il se rend coupable de négligence criminelle du fait qu'il ignore qu'elle est sur le point ou en train de commettre l'infraction;

(c) the military commander subsequently

c) en conséquence, il ne prend pas, dès que possible, toutes les mesures nécessaires et raisonnables en son pouvoir pour :

(i) fails to take, as soon as practicable, all necessary and reasonable measures within their power to prevent or repress the commission of the offence, or the further commission of offences under section 4 or 6, or

(i) soit empêcher ou réprimer la perpétration de l'infraction ou empêcher la perpétration d'autres infractions visées aux articles 4 ou 6,

(ii) fails to take, as soon as practicable, all necessary and reasonable measures within their power to submit the matter to the competent authorities for investigation and prosecution.

(ii) soit en référer aux autorités compétentes aux fins d'enquête et de poursuite.

(2) A superior commits an indictable offence if

(2) Tout supérieur est coupable d'un acte criminel si les conditions suivantes sont réunies :

(a) the superior, outside Canada,

a) selon le cas, à l'étranger :

(i) fails to exercise control properly over a person under their effective authority and control, and as a result the person commits an offence under section 4, or

(i) il n'exerce pas le contrôle qui convient sur une personne placée sous son autorité et son contrôle effectifs et, en conséquence, la personne commet l'infraction visée à l'article 4,

(ii) fails, before or after the coming into force of this section, to exercise control properly over a person under their effective authority and control, and as a result the person commits an offence under section 6;

(ii) il n'exerce pas, avant ou après l'entrée en vigueur du présent article, le contrôle qui convient sur une personne placée sous son autorité et son contrôle effectifs et, en conséquence, la personne commet l'infraction visée à l'article 6;

(b) the superior knows that the person is about to commit or is committing such an offence, or consciously disregards information that clearly indicates that such an offence is about to be committed or is being committed by the person;

b) il sait que la personne est sur le point ou en train de commettre l'infraction ou il néglige délibérément de tenir compte de renseignements qui indiquent clairement qu'elle est sur le point ou en train de commettre l'infraction;

(c) the offence relates to activities for which the superior has effective authority and control; and

(d) the superior subsequently

(i) fails to take, as soon as practicable, all necessary and reasonable measures within their power to prevent or repress the commission of the offence, or the further commission of offences under section 4 or 6, or

(ii) fails to take, as soon as practicable, all necessary and reasonable measures within their power to submit the matter to the competent authorities for investigation and prosecution.

(2.1) Every person who conspires or attempts to commit, is an accessory after the fact in relation to, or counsels in relation to, an offence referred to in subsection (1) or (2) is guilty of an indictable offence.

(3) A person who is alleged to have committed an offence under subsection (1), (2) or (2.1) may be prosecuted for that offence in accordance with section 8.

(4) Every person who commits an offence under subsection (1), (2) or (2.1) is liable to imprisonment for life.

(5) Where an act or omission constituting an offence under this section occurred before the coming into force of this section, subparagraphs (1)(a)(ii) and (2)(a)(ii) apply to the extent that, at the time and in the place of the act or omission, the act or omission constituted a contravention of customary international law or conventional international law or was criminal according to the general principles of law recognized by the community of nations, whether or not it constituted a contravention of the law in force at the time and in the place of its commission.

c) l'infraction est liée à des activités relevant de son autorité et de son contrôle effectifs;

d) en conséquence, il ne prend pas, dès que possible, toutes les mesures nécessaires et raisonnables en son pouvoir pour :

(i) soit empêcher ou réprimer la perpétration de l'infraction ou empêcher la perpétration d'autres infractions visées aux articles 4 ou 6,

(ii) soit en référer aux autorités compétentes aux fins d'enquête et de poursuite.

(2.1) Est coupable d'un acte criminel quiconque complotte ou tente de commettre une des infractions visées aux paragraphes (1) ou (2), est complice après le fait à son égard ou conseille de la commettre.

(3) La personne accusée d'avoir commis une infraction visée aux paragraphes (1), (2) ou (2.1) peut être poursuivie pour cette infraction aux termes de l'article 8.

(4) Quiconque commet une infraction visée aux paragraphes (1), (2) ou (2.1) est passible de l'emprisonnement à perpétuité.

(5) Lorsqu'un fait — acte ou omission — constituant une infraction visée au présent article est commis avant l'entrée en vigueur de celui-ci, les sous-alinéas (1)a)(ii) et (2)a)(ii) s'appliquent dans la mesure où, au moment et au lieu de la perpétration, l'acte ou l'omission constituait une transgression du droit international coutumier ou du droit international conventionnel, ou avait un caractère criminel d'après les principes généraux de droit reconnus par l'ensemble des nations, qu'il ait ou non constitué une transgression du droit en vigueur à ce moment

(6) The definitions in this subsection apply in this section.

military commander includes a person effectively acting as a military commander and a person who commands police with a degree of authority and control comparable to a military commander. (chef militaire)  
superior means a person in authority, other than a military commander. (supérieur)

et dans ce lieu.

(6) Les définitions qui suivent s'appliquent au présent article.

chef militaire S'entend notamment de toute personne faisant effectivement fonction de chef militaire et de toute personne commandant un corps de police avec un degré d'autorité et de contrôle similaire à un chef militaire. (military commander)  
supérieur Personne en position d'autorité, autre qu'un chef militaire. (superior)