

Deportation appeals a Canadian "tragedy"

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QUEBEC • More than two years after the Supreme Court of Canada deemed Leon Mugesera a war criminal and ordered him out of the country, the exiled ethnic Hutu hardliner is still living in Quebec.

His case is not unique. Many war criminals have managed to stay in Canada for years despite Ottawa's ongoing efforts to expel them.

"It's one of the tragedies of Canada," said Sergio Karas, a Toronto-based immigration lawyer and co-chairman of the International Bar Association.

In the 1990s, the federal government decided to strip suspected war criminals of their citizenship and deport them, on the grounds they had lied about their past when they entered the country, making their status illegitimate.

But the appeals processes in these cases can go on for years.

"There is a systemic problem with the refugee process in Canada. Foreigners who have committed heinous crimes can keep on fighting for years on end, constantly escaping prosecution and deportation," Mr. Karas said. "What kind of message does it send to the rest of the world?"

Earlier this year, representatives of the Armenian National Committee of Canada, the Darfur Association of Canada, PAGE-Rwanda and the Roma Community Centre joined Jewish groups in demanding that Diane Finley, Minister of Citizenship and Immigration, deport six men accused of aiding the Nazis in the Holocaust.

In 2006, Canada deported 41 immigrants found involved in war crimes or crimes against humanity, according to a federal report. But it also mentioned that 59 removal orders could not be carried out because of such impediments as a lack of travel documents, while another 39 were awaiting a pre-removal risk assessment.

The report only names cases that have been the subject of public attention.

"Anyone that's subject to removal from Canada can request a pre-removal risk assessment and that is to determine whether there is a risk of persecution, torture or threat to life if they're deported," said a spokeswoman from Citizenship and Immigration Canada.

"If they are subject to those conditions, they are not removed. Then they would have a stay of removal until such time as those conditions change," Karen Shadd-Evelyn said.

The Mugesera case has received a lot of attention since he started fighting his deportation in 1995. His expulsion has been put on hold while the federal government determines whether his life could be in danger in Rwanda. The risk-assessment process has been going on since June, 2005. Ms. Shadd-Evelyn

could not comment on Mugesera's case, and could not say what was taking so long.

"There is no doubt about the determination of the Canadian authorities to get him out, but he [Mugesera] has various layers of appeal and he is slowly using them all up.

"So, the time will run out, but it does seem frustratingly long for people," said William Schabas, Canada's foremost expert on international criminal law.

Recently, Mugesera called on Robert Nicholson, the Minister of Justice, to try him under Canada's war crimes legislation. But Mr. Schabas says Mugesera is not entitled to a trial in Canada since the highest court ruled unanimously in 2005 that he was "inadmissible" to remain in the country under immigration law.

"Mugesera has no right to be tried in Canada. He can ask for it, but he has no legal remedy. This is just a political statement by him. And unless it resonates with the [Justice] Minister, it doesn't mean anything," said Mr. Schabas, who is director of the Irish Centre for Human Rights at the University of Ireland, in Galway.

"It's always better to have people stand trial where the crime was committed because there you have judges who understand the context and witnesses who are there," Mr. Schabas argued.

He went to Rwanda recently to assess the judiciary system and new prisons, and he believes Mugesera could receive a fair trial in Rwanda. But Amnesty International still expresses serious concern about the Rwandan government's ability to guarantee genocide suspects a fair trial.

A former university lecturer, Mugesera is accused of giving a speech in 1992 in which he called Rwandan Tutsis "cockroaches" and encouraged his fellow Hutus to kill them. The Supreme Court said the speech planted the seeds of Rwanda's bloody ethnic massacre. Between 500,000 and 800,000 members of the Tutsi minority and moderate members of the Hutu majority were slaughtered, most hacked to death with machetes.

Mr. Schabas recalls his trip to Rwanda shortly after Mugesera gave his speech. "I've always said I don't know what he said in the speech because I don't understand the language, but I know how people reacted to it, and there was no doubt about the meaning."

Mr. Karas, the immigration lawyer, pointed out that many other undesirable criminals have eluded deportation for much longer than Mugesera.

He cited the case of Mahmoud Mohammad Issa Mohammad, a convicted terrorist who hijacked a plane, who has been thwarting his expulsion since 1988.

"We need to impose limits to the number of appeals for those who have committed crimes and who want to stall forever," Mr. Karas said. "We have to do it especially for the victims, in the Rwandan community for instance, who must be angry to see those criminals walking down the streets."
