

Domestic War Crime Trials and Exhumations

The Human Right/ Rule of Law Department monitors local compliance with the Rules of the Road Procedures, monitors local war crime trials, and facilitates the Inter-Entity exhumation process.

Domestic War Crime Trials and the Rules of the Road:

Paragraph 5 in the *Rome Agreement* (18 February 1996) states:

“Persons, other than those already indicted by the International Tribunal, may be arrested and detained for serious violations of international humanitarian law only pursuant to a previously issued order, warrant, or indictment that has been reviewed and deemed consistent with international legal standards by the International Tribunal.”

The rationale behind the Rome agreement was to facilitate *freedom of movement*. This was particularly important in the immediate aftermath of the cessation of hostilities in order to promote participation by persons of each ethnicity in the Municipal Elections, the first of which were held in September 1996. It was subsequently also crucial to facilitating the implementation of these election results, as this required the return of some elected representatives to their municipalities.

The *Rome Agreement* requires review, by the International Criminal Tribunal for the Former Yugoslavia (ICTY) of specific cases, before authorities can arrest individuals suspected of having committed war crimes. To this end a set of “Procedures and Guidelines for Parties for the Submission of Cases to the International Criminal Tribunal for the Former Yugoslavia under the Agreed Measures of 18 February 1996” was developed. These procedures have become known as the *Rules of the Road Procedures*.

The *Rules of the Road* review serves two purposes: (1) to determine whether [Rule 7,a] “sufficient evidence has been produced to provide reasonable grounds for believing that a person who is the subject of the request has committed a serious violation of humanitarian law”, and (2) [Rule 7,b] “whether the Prosecutor intends to take steps under the Tribunal’s rules to secure the arrest or detention of the person who is subject of the request, or intends to request national courts to defer the competence of the International Tribunal.”

It is important to stress that the *Rules of the Road* is not designed to determine the guilt or innocence of individuals for specific crimes, a point which largely has been lost at the local press and unfortunately occasionally also on the authorities. Rather the focus of the Rules of the Road is to determine whether a sufficient threshold under international humanitarian law has been met in the pre-trial phase.

A review of over 50 domestic war crimes trials which the International Community have knowledge of and in many cases have monitored shows that the authorities, with some exceptions, have adhered to the procedures established under the Rome Agreement. It should be noted that although a few cases have been conducted in the Republika Srpska, and several cases are presently underway in Mostar, the vast majority of war crimes cases before domestic courts have been conducted in Bosniak majority areas. Finally it should also be mentioned that a large number of cases have been submitted for review where there have not yet been any arrests.

Inter-Entity Exhumations and Missing Persons:

Inter-Entity exhumations are based on the so-called *Banja Luka Agreement* (25 June 1996) and the subsequently developed *Operational Agreement on Exhumations* (4 September 1996). According to these two agreements the three parties are in principle free to carry out exhumations and collect unburied mortal remains in territory under the authority of a different majority ethnic group(s). The Operational Agreement establishes a notification procedure involving OHR as an intermediary – which the parties must observe. Inter-Entity exhumations have been carried out since fall 1996 without any security incidents.

In August 2000, the International Commission for Missing Persons (ICMP) founded the Missing Persons Institute (MPI) for BiH. The Institute represents an effort to integrate the BiH government into a national structure that represents all three majority ethnic/religious groups in the pursuit of a common goal: to resolve the fate of persons missing from the conflicts in Bosnia, regardless of their religion or ethnic origin. On January 1, 2001 the Joint

Exhumation Process was transferred from the Office of the High Representative (OHR) to the Missing Persons Institute (MPI). The MPI Supervisory Board convened for the first time in March 2001, chaired by Jakob Finci with 3 members from family associations and 3 representatives of the Federation and RS Commissions on Missing Persons (representing the 3 majority ethnicities).

By March 2001, the International Committee of the Red Cross received tracing requests from families relating to 20,560 persons. Of these, the fate of 2,275 has been clarified.

OHR Human Rights/ Rule of Law Department, September 2001