

Reality Demands

**Documenting Violations
of International Humanitarian Law
in Kosovo 1999**



CONTRIBUTORS

This report is a result of the work of numerous individuals, who cannot, unfortunately, each be named individually here, but all of whom are sincerely thanked. The following persons worked on the Humanitarian Law Documentation Project and contributed directly to the drafting and editing of the report:

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II. METHODOLOGY

A. Outline of the Project

The Project from which the present report is derived operated officially from 28 May until 28 December 1999. As stated in the introduction, through the efforts of 46 international staff and 123 local staff, it provided to the ICTY a database containing over 4,700 statements from witnesses to and victims of acts in Kosovo potentially constituting serious violations of international humanitarian law. This report draws upon an analysis of those statements and other information gathered by international legal staff through interviews with local and international sources.

The Project, as conceived, aimed to support the work of the ICTY by providing it with electronically organised information concerning the commission of serious violations of international humanitarian law in Kosovo. This was intended to facilitate the identification of individual witnesses to be interviewed by ICTY investigators and assist in the reconstruction of events in Kosovo, including the patterns of violations of international law within the jurisdiction of the ICTY. The Project had three essential components: (1) the gathering of information from victims and witnesses; (2) the standardisation of all information gathered in a central uniform database; and (3) the provision of such assistance as was possible to local non-governmental organisations (NGOs) and individuals.

An initial assessment mission was undertaken to Tirana, Albania in late April 1999, and meetings held with among others representatives of the ICTY, Organisation for Security and Co-operation in Europe (OSCE), Council of Europe, local Albanian Human Rights organisations and with the Prosecutor General of Albania. A funding application was made to ECHO by the International Crisis Group.

The Project had three distinct periods of operation: (a) its initiation and functioning in Albania, from 28 May 1999 to the first steps towards creating a second office in Kosovo itself, in mid July; (b) the establishment of the Kosovo office in Gjakova/Djakovica and initial conduct of field trips, from 16 July until 20 September; and (c) the closing of the Albania office and consolidation of all operations within Kosovo on 20 September, until the end of the Project on 28 December. These three Project phases are here discussed in turn.

B. 28 May to 16 July 1999

On 28 May 1999, the Project directors arrived in Tirana, to take steps towards the initiation of the Project. An office was opened on 11 June, following confirmation of ECHO funding, and international staff were hired to begin operations. From the outset, Project staff worked closely with the Tirana office of the ICTY to guarantee that the Project met the needs of the Tribunal. Pursuant to this co-operation, the staff instituted procedures to ensure that, in the conduct of Project operations, witnesses and potential witnesses would be fully aware of the non-formal nature of the Tribunal's relationship with the Project and those Albanian and Kosovar organisations working with it. Also at this time, relationships with the Prosecutor General of Albania and several Albanian NGOs, including the Albanian Human Rights Group, the Albanian Helsinki Committee, the Monitoring Unit for the Violations of Human Rights in Kosovo and the Centre for Peace through Justice, were quickly established. These organisations, and others, were already active in relation to the Kosovo crisis and had begun gathering information on violations of international humanitarian law from Kosovar refugees arriving in Albania since the end of March 1999, each employing their own methodologies and reflecting their own organisational priorities. The work of these organisations was crucial in ensuring that as much information as possible reached the ICTY in a timely fashion.

The Project sought to provide as much assistance as possible to such Albanian NGOs, within its funded mandate, and to make their work more useful to the ICTY. Specifically, the motivation behind seeking out

Albanian organisations was that, while international staff could assist local interviewers with interviewing techniques and provide expertise on issues of international humanitarian law, particularly those pertaining to the ICTY, local interviewers could break through language and trust barriers. Interviews conducted by Albanians and Kosovars could, therefore, potentially yield more and better quality information. Project support involved providing international legal experts to accompany the NGO representatives into the field and assist them in gaining access to the refugee camps and centres, as well as being available for advice on interview techniques and the requirements of the ICTY. The Project also assisted the local groups with logistics, including transport and field communications.

To make the material gathered more accessible to the Tribunal, the Project created a uniform electronic database. A network of computers was installed in the office in Tirana, which could be utilised to aid the translation and standardisation of information and contain all data derived from the NGO interviews. Due to the fact that each NGO sought slightly different information from the refugees, and they used interview forms reflecting these differences, the Project employed a standard database compatible with the needs of the ICTY. To facilitate the data-entry process, an interface was designed that required the data-entry operator to provide specific information, often offering predetermined options. Each record prompted the input of information regarding, for example, the personal details and contact information for a witness, the existence of any corroborating witnesses to events described, the fate of personal documentation and the pattern of internal displacement within, or route of departure from, Kosovo. In addition, staff would divide statements being entered into discrete incidents, which recorded their dates and locations, a list of alleged crimes and a brief narrative of events, including the type(s) of perpetrators involved. The interface, together with an extensive three-tier checking process undertaken by local and international staff, assured quality control and consistency in the organisation of information.

Local staff received specialised training and carried out statement translation and information standardisation under the supervision of international legal staff. In addition, virtually all of the local interviewers

received some form of database training, which had the benefit of familiarising them with the requirements of the database and thereby enhancing their ability during future interviews to ask the questions most important and relevant for the ICTY. In fact, the Project sought where possible to ensure that NGO interviewers who took witness statements entered the information directly into the database. This practice provided an opportunity for training and skill development for local NGO personnel.

Throughout June, members of the Project accompanied local NGO partners on field trips to refugee camps in Albania. Staff requirements grew considerably during this time, with more international staff needed to conduct field trips and work on the database, and further local staff needed for database and logistical work.

Following the passing of Security Council Resolution 1244, on 10 June 1999, and the subsequent deployment of international forces in and withdrawal of FRY/Serbian military and security forces from Kosovo, most of the refugees in Albania and Macedonia sought to return to their homes. The speed at which these refugees made their way back to Kosovo had not been anticipated by the international community, and the refugee camps and centres were virtually empty by the beginning of July. The Project carried out its last field trip on 8 July to Vlore, where international staff were informed that only fifteen refugees remained. Thus, field trips in Albania then ceased, while work on the database continued.

C. 16 July to 20 September 1999

Due to the rapid refugee return and the (previously unavailable) opportunity to enter Kosovo, in mid-July the Project carried out a mission to assess the possibility of establishing an office within the province. The assessment team met with Kosovar individuals and organisations, including the Council for the Defence of Human Rights and Freedoms (CDHRF), a prominent Kosovo-based human rights organisation, and spoke to representatives of international organisations such as the United Nations and NATO. It also examined the security situation and logistical issues surrounding the set-up of a new office

Based on this assessment, an office was opened in the town of Gjakove/Djakovica, in western Kosovo, on 16 July. Following the team's recommendations, the Tirana office obtained additional equipment, including VHF radios, additional IT equipment and satellite phones. This new equipment facilitated the data entry process, while securing greater ease of communications between the Kosovo and Tirana bases. Project field personnel were able to maintain constant contact with one of the bases, thereby fulfilling a key security element. The Project also arranged the provision of mine awareness and related emergency medical training to staff in Tirana.⁹

The Project's choice of base in the town of Gjakove/Djakovica was made for a variety of reasons, largely of a practical nature. The western region of Kosovo was an area that was particularly targeted during both the 1998 and the 1999 campaigns of the FRY/Serbian forces and already there were many accounts of horrific events throughout the area. It was decided that a base away from Prishtina/Pristina, the provincial capital, was essential in order to establish the necessary local relationships in the west and ensure the most effective conduct of operations. Gjakove/Djakovica is a relatively large town where there was a considerable pool of local staff with the relevant language skills and a relatively stable source of water and electricity (at least until October). Moreover, the assessment team located a suitable building for the establishment of a Project office with relative ease in Gjakove/Djakovica. In addition, being situated in the middle of the western region, roughly equidistant from Peje/Pec and Prizren/Prizren, a base in Gjakove/Djakovica allowed relatively easy access to much of the west.

The method of operation in Gjakove/Djakovica followed the basic principles established in Albania, with the Project relying upon local resources and organisations and assisting Kosovar NGOs involved in the information gathering process. When combined with the presence of a significant number of international staff, this mode of operation demonstrated an international interest in events in Kosovo during the conflict, as well as in the local population as they sought to rebuild their homes and lives. Working in partnership with local organisations also ensured that interviews were conducted between Kosovars in Albanian and

⁹ Such training was also provided to staff on further occasions in Kosovo.

were as comfortable and beneficial for the witnesses themselves as possible in the circumstances. International legal staff were on hand to answer questions regarding the Project and monitor that the interviews were conducted pursuant to Project principles and processes and were compatible with the requirements of the electronic database.

However, the circumstances in which the Project operated in Gjakove/Djakovica differed significantly from those prevailing in Albania and, therefore, flexibility and creativity were required to ensure its continued effectiveness. In Albania, the Project was able to gather information from refugees concentrated in camps and other centralised areas and field trips thus meant ready access to hundreds of potential witnesses. In Kosovo, information and witnesses were dispersed, necessitating continued travel to different areas and villages. In addition, many potential witnesses were unable or unwilling to travel to a central Project base to give statements.¹⁰ As a result, it was decided that the best way to reach the widest possible audience was to send out mobile teams consisting of international legal officers, local NGO representatives and translators.

In addition, it quickly became clear that the requirements of the Kosovar organisations who were the primary gatherers of witness information differed to a large extent from those in Albania. Practically all of the organisations the Project developed working relationships with had suffered greatly during the conflict, as well as in the years previous to it. Many had been targeted for harassment, property damage and killings by the FRY/Serbian forces and had been unable to meet or communicate for many months. The Project had to adapt its operational policy to take account of the particular needs of these organisations. As a result, a much closer working relationship with them was established than had been necessary in Albania.

The international legal staff were divided into groups of two or three in order to foster relations with local groups based in the municipalities of western Kosovo. They provided a range of advice on legal issues and interview techniques, including the most effective interview format (i.e. a narrative statement from the witness, rather than a rigid question and

¹⁰ This was often influenced by cultural and societal factors, particularly in relation to female witnesses.

response approach), the imperative need for accuracy and confidentiality, what information to focus on in interviews and when not to take interviews.¹¹ The Project employed many of the members of the local organisations conducting interviews, including individuals belonging to the Sub-Committees of the CDHRE. It also selected and hired additional local staff to conduct interviews in areas where there was no local human rights group presence, or to address particular minority groups, and also to supplement the work of the existing Kosovar NGOs. There was indeed, an extremely ready supply of well-qualified individuals who wished to assist in the goals of the Project and who required employment at a time when the local economy remained decimated.

It was anticipated that the presence of the Project in Gjakove/Djakovica might provoke a significant response from local residents interested in recounting incidents occurring during the conflict. As a result, in addition to field trips, the Project opened its office to interviews in August. Further staff were hired and procedures instituted to handle the expected influx of witnesses. In order to reach those individuals reluctant to come to the office, rotating teams of local interviewers also conducted interviews in virtually every neighbourhood of Gjakove/Djakovica town.

At the same time, statements continued to be processed in the Tirana office, which maintained and, indeed, expanded its statement translation and data entry staff. International personnel were rotated between Kosovo and Tirana approximately every two weeks during this period. This allowed all legal staff to remain well acquainted with database requirements and procedures, gave them the opportunity to be involved in the totality of the statement gathering and processing system, and also provided regular breaks from the intensity of the post-conflict environment itself.

The first field trips in Kosovo were conducted in regions closest to the office, primarily in the Gjakova/Djakovica municipality, and north and east into Decane/Decani and Rahovec/Orahovac. As the Project expanded, it became apparent that a more formalised structure was needed. The western region was thus divided into a number of “areas of

¹¹ For example, when the witness had previously provided a statement to another organisation.

responsibility” (AORs). The AORs corresponded largely with the existing municipalities of Kosovo and the divisions between various Sub-Committees of the CDHRE. Typically, two members of the international legal staff were assigned to a particular AOR to work closely with the local NGO partners. The benefit of having staff members permanently assigned to an AOR lay in consistency of approach, relationship building with local partners and communities, and the development of a body of knowledge by international staff members about the situation in a particular municipality, both during and after the conflict. Project staff members, including international and local staff, accompanied local NGOs into the field to assist with and attend interviews. Regular debriefing sessions regarding the interviews conducted in an AOR assisted both the interviewers, who drew upon the knowledge of international legal staff, and the international staff themselves, who could build a picture of the possible violations of humanitarian law that had been committed in Kosovo. This proved to be of tremendous help as the Project reconstructed events that happened in western Kosovo during the conflict and developed the outline for the present report.

Initially, AORs were established in Decane/Decani and Gjakova/Djakovica. AORs followed in Rahovec/Orahovac, Malisheve/Malisevo, Prizren/Prizren, Istog/Istok and Suhareke/Suva Reka.¹² In addition, due to the need for specialised interviewers and the sensitive nature of many issues concerning Kosovo Serbs, Roma, Catholic Kosovo Albanians, Slavic Muslims and other minorities, a separate team was developed to deal exclusively with minority populations in all of the municipalities covered by the Project. Given that the vast majority of the population in Kosovo were Kosovo Albanian and that many members of minority groups had left the province during and following the conflict, it was recognised that the Project would obtain only a limited number of minority statements. Nevertheless, staff felt that the gathering of information from non-Kosovo Albanian witnesses was essential in order to arrive at a more complete picture of events in Kosovo prior to the withdrawal of the FRY/Serbian forces. In addition, most of the incidents recounted by witnesses from minority groups occurred after the cessation of the NATO bombing

¹² Interviews were also conducted in Peje/Pec municipality and entered into the Project database. However, due to the particular circumstances in Peje/Pec, this municipality was never fully developed as a distinct AOR.

campaign, thus raising the complex legal question of when the conflict in fact ended and how this affects the application of international humanitarian law and the jurisdiction of the ICTY. Rather than become preoccupied with such issues, it was considered more useful to allow organisations focusing on violations of human rights in Kosovo, primarily the United Nations High Commissioner for Refugees (UNHCR) and OSCE, to take the lead on minority issues. Therefore, whenever witnesses from minority groups were interviewed by the Project, staff sought their consent to pass on this information to the OSCE, UNHCR and the ICTY.

Operations in Kosovo required further changes in the database procedures. In consultation with local staff and NGO partners, international staff developed standard interview forms as guides for interviewers, based on the information required by the ICTY. The forms were designed to reflect the database interface as much as possible. All contained preliminary questions in order to obtain the consent from the witness to turn the statement over to the ICTY (and, in the case of minorities, to OSCE and UNHCR) and discover whether the witness had previously provided a statement to another relevant organisation.¹³ The latter question sought to ensure that a witness' statement was not repeatedly memorialised, thus potentially introducing factual discrepancies that might contribute to challenges to that witness, should he or she ever be called to give evidence in legal proceedings. More importantly, to require a witness to recount their experiences on several occasions may have the effect of exacerbating existing trauma. The development of such forms was a small yet essential part of ensuring consistency and completeness of information gathered.

During field trips in Albania, the main questions refugees had asked Project staff concerned their return to Kosovo and the whereabouts of their families. Once back in Kosovo, the needs and concerns of the local population naturally changed and turned more to questions of shelter, the fate of loved ones and general survival needs, particularly as the cold weather approached. The relative isolation of some villages meant that some groups were often receiving little international humanitarian and

¹³ Such as the OSCE, whose monitors had been gathering statements in the refugee camps of Albania and Macedonia since their withdrawal from Kosovo on 20 March and the subsequent sudden influx of refugees to these countries.

development aid. As a consequence of the conflict and the activities of the FRY/Serbian police and paramilitaries, there were fewer young male Kosovars to carry out vital reconstruction work and a greater number of vulnerable individuals, including members of newly created single-parent families and unsupported elderly persons. Project staff often operated in rural areas where communities suffered from a high level of destruction, a significant number of people killed or missing and where there were many persons suffering from a variety of forms of trauma. Consequently, in keeping with the staff's belief that the needs of victims and witnesses (and potential witnesses) were paramount, the Project undertook an additional function of facilitating humanitarian and mental health support.

Project staff often brought neglected or remote areas to the attention of other international NGOs and assisted in distributing humanitarian items such as shoes, clothes, hygiene packs, blankets and coffins. Staff members and their local partners were well situated to identify people who were particularly vulnerable because they had lost family support and proper shelter. This position enabled them to refer people in need to organisations which specialised in the provision of different types of humanitarian and other assistance.

In the course of the interviewing process, it was also noted that a number of those interviewed were possibly suffering from Post-Traumatic Stress (PTS) and other related disorders. There was additional concern for the mental health of the local staff themselves, who were performing functions that placed them under an unusual degree of emotional and psychological stress on a daily basis, in addition to their need to recover from their own personal losses as a result of the conflict. In recognition of this, the Project requested mental health support services from another NGO operating in the Gjakove/Djakovica area, Medecins du Monde Sweden (MDM Sweden).

The Project and MDM Sweden entered into an agreement for the latter to provide PTS awareness training and counselling services for local staff by setting up a War Crimes Trauma Unit. This led to the establishing of a unique referral service through which those witnesses identified by Project staff as possibly suffering from PTS disorder were offered the

services of MDM social workers and psychologists. The Project further cooperated with the War Crimes Trauma Unit by hosting a series of open lectures for its staff and mental health professionals working in the Gjakove/Djakovica area. Guest speakers from the World Health Organisation, the University of Prishtina/Pristina and the Centre for the Protection of Women and Children gave talks on a variety of subjects, including rational psycho-social drug use, relaxation techniques, preventing psychological distress from becoming a psychiatric disorder and psycho-social issues relating to rape. The object of this training, counselling and seminar provision was to limit the amount of mental stress faced by all Project staff, improve their interview techniques and bring information and open discussion of these issues to a wider audience, as well as provide those in need with more effective therapies.

International staff assumed other incidental responsibilities when working in the field. They were sometimes requested to address reports of the discovery of bodies (in wells, yards and fields), mass graves, mines, unexploded ordnance and booby traps. Always equipped with Global Positioning Systems (GPSs) and digital cameras, international staff documented such reports and passed such information to the appropriate authorities, typically ICTY investigators or the Kosovo Protection Force (KFOR).¹⁴ Staff members were also invited to attend reburials and exhumations. Given the investigative and forensic nature of these events, the Project deferred to the ICTY (and OSCE) in this regard. However, when these other organisations were unable to be present, international staff attended in their official capacity. This provided an international presence at exhumations and reburials that was much desired by the local people and which contributed to relationship building within an AOR.¹⁵

Throughout operations in Albania and Kosovo, and in accordance with the Project's primary purpose, staff worked with the ICTY to assist in fulfilling its mandate to prosecute all persons responsible for serious violations of international humanitarian law committed in Kosovo. This

¹⁴ Following the passing of the United Nations Security Council resolution 1244 on 10 June 1999, the Kosovo Protection Force was deployed into Kosovo as the international security presence required by the resolution.

¹⁵ Information about grave sites, including GPS co-ordinates and photographs, was also handed over to the ICTY.

primarily consisted of regularly transferring the database as it was updated on to a CD-ROM and sending it to the ICTY in Prishtina/Pristina and The Hague. The Project also provided the ICTY with various referrals - such as reports of sexual assault and mass killings and GPS co-ordinates of various incidents - in order to highlight witnesses with information on areas of particular concern. This enabled the ICTY to locate places and witnesses in need of urgent attention, which was particularly crucial with the approach of winter and the consequent likely destruction of much of the remaining physical evidence.

D. 20 September to the end of the Project

By late August, operations in the field and in the office in Kosovo were fully underway. The next major development entailed the closing of the Tirana office and the transfer of all data processing operations to the Kosovo office.¹⁶ Local and international staff in Albania worked tirelessly to process a backlog of statements and prepare the office for the move. This considerable logistical and personnel feat was scheduled for and achieved by 20 September.

Consolidation required significant personnel changes for the Kosovo office. New data-entry personnel were hired and, with the initial assistance of local staff from the Tirana office, trained in the requirements of the database. A comprehensive training programme for local staff was put in place, focusing on developing database skills, translation and interpretation techniques and familiarisation with the ICTY's requirements. Such comprehensive training allowed staff to become familiar with all aspects of the office, and permitted a rotation of staff to provide a break from the stresses of fieldwork.

October and November saw the expansion of the Project's statement gathering operations. Successful relationships were developed with international NGO partners in temporary evacuation sites in Europe, in particular in Italy with the Centro Italiano per i Rifugiati and the

¹⁶ In August, an extension of the Project was sought from ECHO, from the original four-month period to seven months. Such an extension required consolidating Project operations in one location.

Consorzio Italiano di Solidariet , who conducted interviews with refugees and asylum seekers from Kosovo. These statements were then passed on to the Project for database entry. New AORs were opened in Istog/Istok and Suhareke/Suva Reka at this time. However, certain events disrupted or otherwise impacted Project operations. In October there began chronic and often prolonged power outages, which became more pronounced in November. These power failures were extremely problematic for an operation so dependent upon an electronic infrastructure. Project staff responded with adjusted office hours to take advantage of daylight, and the purchase of a number of generators to power the computer network. Weather and the change of seasons posed additional challenges for the Project. As winter drew near and loss of heat and power became a daily occurrence, some potential witnesses became less inclined to provide statements, preferring to focus their attention on issues of shelter and winterisation. Also, the loss of daylight meant that, for security reasons, field trips would be shortened. Despite these difficulties, all AOR and office operations continued.

In accordance with the regulations of the Project's funding agreement with ECHO, Project staff were requested to identify needs within their respective AORs, so as to transfer all equipment to appropriate local NGOs. They solicited proposals from local Kosovar and Albanian NGOs and educational institutions regarding the distribution of Project electronic equipment, such as laptop computers, printers, scanners, digital cameras, GPSs and CD-ROM writers. This equipment distribution fitted well into the Project's capacity-building work. Throughout the Project, measures had been taken to assist Albanian and Kosovar NGOs, by providing material support and capacity-building, through, among other things, logistical support, advice on funding applications, and assistance with institution building. Prior to distribution, the Project provided a basic introduction to the equipment and related software to members of the CDHRF Sub-Committees. Upon review of the many proposals received, the Project distributed equipment to 24 organisations, including a school in Gjakov /Djakovica, Prishtina/Pristina University and several psycho-social/medical NGOs and human rights NGOs (including the CDHRF Sub-Committees). The Project ensured that capacity-building efforts begun before the equipment distribution would continue beyond the Project's end, and it arranged for continuing

computer training and technical support for all NGO equipment recipients in partnership with the Kosovar Foundation for an Open Society.

As the Project drew to an end, the staff closed down AOR operations in advance of the completion of data translation and entry. This permitted their concentration on processing the remaining statements. Shortly after the cessation of data translation and checking operations, electronic equipment was distributed to the recipient organisations. During this period, local staff not previously involved in database operations received introductory computer training and assistance in securing other employment. The last Project personnel departed Kosovo on 29 December 1999. Following the closing of the office, the final referral forms and updated database were provided to the ICTY,¹⁷ and databases containing minorities statements were handed to the Prishtina/Pristina offices of OSCE and UNHCR.

The present report does not and cannot reflect the huge range of tasks performed by all of the staff during the course of the Project. Instead, the focus here is on an analysis of the information gathered and the application of the relevant international law. It was decided early on in the Project that the provision of such an analysis was an extremely important element of it and the intention is to be both clear and comprehensive, in so far as possible. The following chapters should thus be read sequentially, to assure a full understanding of the events that occurred in Kosovo at the close of the century, and the law that applies to them. It is hoped that this will serve to emphasise the importance of the latter in relation to the former, if such horrific events as are here described are to be prevented in the future.

¹⁷The entire database underwent a substantial final review process in order to verify the consistency and accuracy of all its information.