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Violence in the South of Kyrgyzstan: Crimes Against Humanity?

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Fokus

ICC Statute, Article 7:

"1. For the purpose of this Statute, crime against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Murder; (...)

(g) Rape (...) or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender (...) or other grounds (...) in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court (...)."

On 11 June 2010, violence erupted in the southern Kyrgyz cities of Osh and Jalal-Abad. After five days of brutality, nearly 200 persons died, according to official figures. According to some estimates, real numbers of victims could reach 2.000. About 400.000 persons were displaced, and 80.000 persons – mostly ethnic Uzbeks – sought refuge in the neighbouring Uzbekistan. According to UN assessments, about one million persons have been affected by the violence. The United Nations (UN) announced a 71 million USD appeal, and the International Committee of the Red Cross (ICRC) requested ten million Swiss francs from donors, in order to assist the victims.

Some called the violence an "inter-ethnic" conflict between Kyrgyzs and Uzbeks – but this would be too simplistic an assessment. Undoubtedly, those who had planned and carried out the brutal attacks against the civilian population wished to capitalise on the inter-ethnic aspect of the confrontation; the genocidal slogans "Death to Uzbeks" written on the walls of Uzbek houses in Osh testify to this. However, some evidence suggests that the incitement towards inter-ethnic hatred and violence was not an end in itself but a means – to display the incapacity of Kyrgyzstan's interim government to control the situation and protect its citizens, to increase social instability in the densely populated Ferghana valley, and, according to a statement made by Uzbekistan's President Islam Karimov on 18 June 2010, "to involve Uzbekistan in this confrontation".

Irrespective of the legal qualification of the situation – whether the intensity of violence reached that of a non-international armed conflict or not – it may be argued that a large part of the population of southern Kyrgyzstan fell victim to "crimes against humanity", in the sense of current customary international law. Although Kyrgyzstan is not party to the Rome Statute of the International Criminal Court, its Article 7 – which defines and criminalises certain acts as crimes against humanity, if they are "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack" – may be used to recall the normative standard applicable under customary international law. At least, three counts of crimes against humanity seem to be valid in the given context: murder, rape, and "persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender (...) or other grounds (...) in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court (...)". In the light of the *Kupreškić* Judgment, the latter count should cover, in particular, attacks against the civilian property, as the attacks significantly affected the economic livelihood of a part of the population. The commandant of Osh Baktybek Alymbekov said at a press conference on 19 June 2010 that 20 persons suspected of involvement in the crimes had been detained, and 90 criminal cases had been instituted with regard to the "mass disorder". From this statement alone, one might infer that Kyrgyzstan's interim authorities would tend to recognise the "widespread" character of the attack. However, as the concept of crimes against humanity is still alien to Kyrgyzstan's national criminal law, the extent and efficiency of the law enforcement bodies' reaction to these "common crimes" remains to be seen.

Making possible an objective, impartial and comprehensive investigation of the crimes will be a true challenge to Kyrgyzstan's new authorities – both in terms of re-establishing the rule of law in the country and regaining the trust of Kyrgyzstan's Uzbek population whose members were deeply shocked by the scale and gravity of the attacks. Importantly, the tragic events in the south of the country already caused disquiet among Kyrgyzstan's other minorities – now, in the north of Kyrgyzstan – who feel insecure in the face of an "invisible threat", which may affect them unexpectedly and brutally. In a word, the new Kyrgyz authorities' willingness and ability to identify and prosecute the organisers and perpetrators of the crimes, which have been committed in the south of the country, are now yardsticks by which the level of their acceptance among a large part of the population will be measured.

In 2007, Kyrgyzstan's authorities put on hold the introduction of some fundamental concepts of international criminal law in the country's Criminal Code, in view of the ongoing "liberalisation" of the national criminal justice system. It seems that time has now come to revisit this approach – for the sake of a safer Kyrgyzstan, which is home to 90 ethnic groups.

Verantwortung

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