Please cite as: EUAA, '6.2.1. Crime against peace, war crime, or crime against humanity' in *Country Guidance Afghanistan*, Ιανουάριος 2022.

6.2.1. Crime against peace, war crime, or crime against humanity

COMMON ANALYSIS
Last updated: February 2019

Article 12(2)(a) QD and Article 17(1)(a) QD refer to specific serious violations of international law, as defined in the relevant international instruments.

► **'Crime against peace'** is related to the planning, preparation, initiation, waging or participation in a common plan or conspiracy related to a war of aggression. It is considered applicable only in the context of international armed conflict and would usually be committed by individuals in a high position of authority, representing a State or a State-like entity.

► **'War crimes'** are serious violations of international humanitarian law, committed against a protected person or object (civilians, combatants placed out of combat, such as in detention or being wounded, or those who have put down their arms, or civilian and cultural objects) or through the use of unlawful weapons or means of warfare.

They can be committed by combatants/fighters, as well as civilians, as long as there is a sufficient link to the armed conflict. This means that the act needs to have been 'closely' related to the armed conflict.[49]

The nature of the armed conflict (international or non-international) is decisive in order to define the elements of the particular war crime.

It should be underlined that combatants that lawfully take part in hostilities are not committing war crimes, as long as they follow the rules provided for by international humanitarian law.

► '**Crimes against humanity**' are fundamentally inhumane acts, committed as part of a systematic or widespread attack against any civilian population.[50] Inhumane acts which could reach this threshold when committed pursuant to or in furtherance of a State or organisational policy, include: murder, extermination, enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognised as

impermissible under international law; enforced disappearance of persons; apartheid; other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Crimes against humanity can be committed in peace time as well as during an armed conflict. Even a single act could fall under this exclusion ground provided it forms part of a widespread or systematic attack against a civilian population and the act is committed by someone who had knowledge of the attack and the link of the act to the attack.

In order to establish whether a war crime or a crime against humanity has been committed, the case officer should consult the relevant international instruments.[51]

Analysis on the applicability of Article 12(2)(a) and Article 17(1)(a) QD:

It can be noted that the ground 'crime against peace' is not found to be of particular relevance in the cases of applicants from Nigeria.

Serious breaches of international humanitarian law and international human rights law are reported in relation to the armed conflict involving the NAF, MNJTF, CJTF, and Boko Haram and aligned factions in the North East [*Targeting,* 2.1.3, 2.5.1].

NAF has been accused of extrajudicial executions, mass deaths in custody, torture, sexual abuse and violence against IDP women, fumigation, unlawful detention and arrest, and starvation of over 8 000 people caused by the closure of roads [*Targeting,* 2.5.1].

Several sources indicate that the CJTF has also committed crimes, such as extrajudicial killings, arbitrary arrests, acts of torture, and severe abuses of IDP women, including physical and sexual violence, recruitment of children [Targeting, 2.5.4.2, 2.5.4.5, 3.13.4].

According to OHCHR, the human rights violations committed by Boko Haram amount to breaches of international humanitarian law and international human rights law, including:

- 'massacres;
- the burning down of entire villages
- attacks on protected sites such as places of worship and schools, and the slaughter of people taking refuge in such sites;
- torture;
- cruel and degrading treatment following sentences in so-called "courts";
- abduction on a massive scale, including of children;
- forced displacement;
- child recruitment; and
- extremely severe and widespread violations of the rights of women and girls, including sexual slavery, sexual violence, forced so-called "marriages", and forced pregnancy' [Targeting, 2.1.1]

The Office of the Prosecutor of ICC is currently investigating violations committed in the conflict between Boko Haram and the Nigerian security forces as potential 'war crimes'.[52] Furthermore, some crimes committed in particular by Boko Haram, could be found excludable

under Article 12(2)(a)/Article 17(1)(a) QD as ‘crimes against humanity’; or under Article 12(2)(b)/ Article 17(1)(b) QD in relation to serious (non-political) crimes.

In the Middle Belt and in the East of Nigeria the violent clashes between herders and farmers have escalated in recent years, resulting in increasing numbers of deaths on both sides and serious human rights violations, including rape, abduction and attacks leading to the destruction of entire villages. The conflict has also had a considerable humanitarian impact, including the destruction of cattle, crops, and farmland [Targeting, 3.7.1, 3.7.2]. Taking into account the evolution of the conflict, crimes committed in this context could be assessed under Article 12(2)(a)/Article 17(1)(a) QD as ‘crimes against humanity’; and/or under Article 12(2)(b)/ Article 17(1)(b) QD in relation to serious (non-political) crimes.

The actions of the Nigerian security forces against IMN, including reports of mass killings and burials, should also be taken into account [Targeting, 2.5.1]. These are currently under investigation by the Office of the Prosecutor of ICC.[53]

Operations of the Nigerian security forces against pro-Biafra protesters in the course of 2017 [*Targeting,* 3.3.4] are also currently under investigation by the Office of the Prosecutor of ICC. [54]

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[49] ‘The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed’, ICTY (Appeals Chamber), judgment of 12 June 2002, *Prosecutor v Kunarac et al*., IT-96-23 and IT-96-23/1-A, para. 58. **[back to text]**

[50] On ‘widespread’ and ‘systematic’, see for example, ICTY, *Prosecutor v. Dusko Tadic aka "Dule" (Opinion and Judgment)*, IT-94-1-T, 7 May 1997, para. 648; ICTR, *The Prosecutor v. Jean-Paul Akayesu (Trial Judgment)*, ICTR-96-4-T, 2 September 1998, para. 580; ICTY, *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic (Appeal Judgment)*, IT-96-23 & IT-96-23/1-A, 12 June 2002, para.94; on ‘civilian population’ see ICTY, *Prosecutor v. Dusko Tadic aka "Dule" (Opinion and Judgment)*, IT-94-1-T, 7 May 1997, para. 648; ICTR, *The Prosecutor v. Jean-Paul Akayesu (Trial Judgment)*, ICTR-96-4-T, 2 September 1998, para. 644. **[back to text]**

[51] Note that the assessment under Article 12(2)(a) QD and Article 17(1)(a) QD refers to the relevant international instruments defining the terms. Therefore, the assessment of whether or not an armed conflict takes place, as well as its nature, is based on international humanitarian law and may differ from the assessment in the context of Article 15(c) QD as defined in the *Diakité* judgment of the CJEU. **[back to text]**

[52] See https://www.icc-cpi.int/nigeria. **[back to text]**

[53] *ibid.* **[back to text]**

[54] *ibid.* **[back to text]**

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