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6.2.2. Serious (non-political) crime

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COMMON ANALYSIS
Last updated: February 2019

The commission of a serious (non-political) crime is a ground that could apply to applicants from all countries of origin, regardless of the general situation.

In order to determine whether the crime qualifies as serious, the following factors may be taken into account: the nature of the act, the actual harm inflicted, the form of procedure used to prosecute such a crime, the nature of the envisaged penalty, and whether most jurisdictions would consider it serious.

There is no requirement that the offence constitutes a crime (or a serious crime) in both, the country of origin and the country of application. Therefore, certain acts that are criminalised in Nigeria, but would not be considered serious crimes according to international standards (e.g. adultery and 'sodomy' criminalised by the Sharia), fall outside the scope of this provision. At the same time, acts that may not be considered serious crimes in Nigeria could be relevant exclusion grounds (e.g. FGM/C).

In order for an act to qualify as a non-political crime, it should be considered to have a predominantly non-political motivation or be disproportionate to a claimed political objective. Particularly cruel actions may be considered serious non-political crimes, due to being disproportionate to an alleged political objective. Terrorist acts, which are characterised by their violence towards civilian populations, even if committed with a purportedly political objective, fall to be regarded as serious non-political crimes within the meaning of point (b).[55]

It should also be noted that state agents could be responsible for serious (non-political) crimes (e.g. in relation to death penalty and executions, torture).

The exclusion ground for refugee status further stipulates that the act must have been committed outside the country of refuge prior to the person's admission as a refugee. This

requirement does not apply to exclusion from subsidiary protection.

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

Criminal violence constitutes a serious security and public safety concern in Nigeria, especially in relation to crimes committed by organised groups, such as cults, traffickers in human beings, bandits engaged in cattle rustling, etc. Generally, an increasing level of violence and firearms proliferation is noted across the country, particularly manifesting in ransom kidnapping along highways, armed robbery and other forms of violent crime committed by gangs. Mob violence is also reported [*Targeting,* 3.9.2.1, 3.12.2].

Several profiles must be carefully evaluated, taking into account the applicant's activities, role, responsibilities, etc.

Members of student cults engage in several criminal activities such as killings, rape, armed robbery, kidnapping, human trafficking, prostitution of others, drugs trafficking, extortions, etc. [*Targeting,* 2.3].

Nigerian networks active in human trafficking are involved in prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, removal of organs, etc. In the case of trafficking for sexual exploitation, a central role is played by women. Madams (or 'mamans') often lead the trafficking organisations and monitor the trafficking process closely, from recruitment to exploitation, sometimes with the support of men in low-ranking tasks (e.g. drivers, wardens) [*Targeting,* 2.4].

Some of the crimes committed by militant groups in the Niger Delta (e.g. kidnapping, car bombing) would be considered serious non-political crimes. With regard to other crimes (e.g. oil bunkering), the examination should take into account whether they are considered serious crimes according to international standards and whether they are non-political, taking into account the alleged political motive of these crimes [Targeting 2.2.2.3, 2.2.3.3].

A particular situation is reported in the Zamfara state (occasionally spilling over to neighbouring Sokoto and Katsina states), where increasingly deadly clashes take place between cattle rustlers and other bandits on the one hand, and communities, vigilantes and government forces on the other. Crimes include attacking remote villages and killing villagers, stealing cattle, kidnapping villagers for ransom, etc. [*Security situation,* 3.4.5].

The personnel of some Nigerian authorities may also be found responsible for serious (non-political) crimes. NPF, generally considered the most violent State institution, has been reportedly involved in acts of extortion, beatings, illegal detention, sexual harassment and abuses committed against LGBT persons. SARS, in particular, has been accused of widespread torture and other cruel, inhuman or degrading treatment or punishment of detainees in their custody. The *hisbah*, operating in the Sharia-implementing states, is reported to arrest and torture LGBT persons, and to sporadically target women accused of immorality [*Targeting,* 2.5.2.1, 2.5.3.1, 2.5.3.2].

Violence against women and children (for example, in relation to domestic violence or in the context of forced and child marriage, etc.) is widespread in Nigeria and could also potentially

amount to a serious (non-political) crime [*Targeting*, 3.13.1].

Performing FGM may be considered as a serious (non-political) crime because it amounts to an inhuman treatment of the child and a violation of the dignity of the woman. However, a careful examination of the relevant circumstances should take place, taking into account the intent and knowledge requirement for individual responsibility. The persons who perform the practice are in large majority traditional circumcisers. Medical staff, such as nurses, midwives or birth attendants may also be involved [*Targeting*, 3.13.3].

In relation to exclusion from refugee status, a crime could fall under the exclusion ground in Article 12(2)(b) QD if committed in Nigeria or any third country (e.g. in Libya or other countries of transit). In relation to exclusion from subsidiary protection based on Article 17(1)(b) QD, serious crimes committed by Nigerian applicants in the host country, would also give rise to exclusion considerations.

In some cases, the serious (non-political) crimes could be linked to an armed conflict or could be committed as a part of a systematic or widespread attack against a civilian population (e.g. kidnapping of recruits, robbery to finance the activities of armed groups) and they could also be examined under Article 12(2)(a)/Article 17(1)(a) QD.

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[55] See, for example, CJEU, *Bundesrepublik Deutschland v. B and D*, C-57/09 and C-101/09, 9 November 2010, para.81. [back to text]

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