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6.3.Guidance with regard to Nigeria

COMMON ANALYSIS
Last update: February 2019
*Minor updates added October 2021

6.3.1 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.

In December 2020 the Office of the Prosecutor of the International Criminal Court concluded that there is reasonable basis to believe that war crimes and crimes against humanity had been committed by Boko Haram since July 2009 and by the Nigerian military since the beginning of the non-international armed conflict with Boko Haram since June 2011.The Prosecutor of the ICC has also examined alleged crimes falling outside of the context of this conflict. [45]

Crimes committed also in the context of herders and farmers and/or communal conflict, could also give rise to considerations under Article 12(2)(a) QD/Article 17(1)(a) QD as ‘crimes against humanity’.

6.3.2 Article 12(2)(b) and Article 17(1)(b) QD

Criminal activity in Nigeria is widely reported, including kidnappings, assassinations, drug trafficking, piracy, human trafficking, and robberies. Such serious (non-political) crimes would trigger the application of Article 12(2)(b) QD/Article 17(1)(b) QD.

The personnel of some Nigerian authorities may also be found responsible for serious (non-political) crimes (e.g. sexual abuse, torture).

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.

Violence against women and children (for example, in relation to domestic violence or in the context of forced and child marriage) could also potentially amount to a serious (non-political) crime.

Performing FGM is a serious (non-political) crime. However, a careful examination of the relevant circumstances should take place, taking into account the intent and knowledge requirement for

individual responsibility.

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), in which case they should instead be examined under Article 12(2)(a)/Article 17(1)(a) QD.

6.3.3 Article 12(2)(c) and Article 17(1)(c) QD

Although the Nigerian government has proclaimed many organisations as terrorist, the assessment should take into account the objective situation and the acts of the group and of the individual applicant.

(Former) membership in armed groups such as Boko Haram could trigger relevant considerations and require an examination of the applicant's activities under Article 12(2)(c)/ Article 17(1)(c) QD, in addition to the considerations under Article 12(2)(b)/Article 17(1)(b) QD.

The application of exclusion should be based on an individual assessment of the specific facts in the context of the applicant's activities within that organisation. The position of the applicant within the organisation would constitute a relevant consideration and a high-ranking position could justify a (rebuttable) presumption of individual responsibility. Nevertheless, it remains necessary to examine all relevant circumstances before an exclusion decision can be made.

Where the available information indicates possible involvement in crimes against peace, war crimes or crimes against humanity, the assessment would need to be made in light of the exclusion grounds under Article 12(2)(a)/Article 17(1)(a) QD.

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[45] Statement of the Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the situation in Nigeria, 11 December 2020, https://www.icc-cpi.int/nigeria, Preliminary examination: Nigeria https://www.icc-cpi.int/Pages/item.aspx?name=201211-prosecutor-statement, https://www.icc-cpi.int/nigeria

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