6.1.2. Serious (non-political) crime

COMMON ANALYSIS
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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.[37]

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).[38]

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.

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[37] See CJEU, *Shajin Ahmed v Bevándorlási és Menekültügyi Hivatal*, judgment of 13 September 2018, C-369/17, where the Court clarified that article 17(1)(b) QD must be interpreted as precluding MS legislation pursuant to which the applicant for subsidiary protection is deemed to have 'committed a serious crime' within the meaning of that provision, which may exclude him from that protection, on the basis of the sole criterion of the penalty provided for a specific crime under the law of that MS. [back to text]

[38] 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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