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2.14. LGBTIQ persons

COMMON ANALYSIS
Last update: February 2019

This profile refers to persons who are perceived as not conforming to social norms because of their actual or perceived sexual orientation and/or gender identity, including the treatment of lesbian, gay, bi-sexual or trans-gender, intersex and queer individuals. However, it should be noted that specific information on some of those communities was not available in the COI reports used for the purpose of this guidance.

COI summary

[Targeting, 3.12]

State legislation, the Nigerian Criminal Code of 1916 and the Same Sex Marriage (Prohibition) Act (SSMPA) of 2014, criminalise same-sex unions and acts. These are punishable with a maximum of 14 years of imprisonment. In addition, anyone who supports the LGBTIQ community or 'registers, operates or participates in gay clubs, societies and organisations' may face prosecution, with a maximum of 10 years of imprisonment.

It is reported that the police make use of the SSMPA as a tool to humiliate and extort alleged LGBTIQ persons, by arbitrary (mass) arrests, torture, and 'parading' the arrested persons, often stripped naked, to the public and the media.

Northern Nigerian states have adopted the Sharia, which criminalises sexual activities between persons of the same sex. The maximum penalty for such acts between men ('sodomy') is death penalty, while the maximum penalty for such acts between women is a whipping and/or imprisonment.

The heated debate in society linked to the SSMPA and the increased media attention have made sexual orientation more visible and LGBTIQ persons more vulnerable.

The main religions in Nigeria, Christianity and Islam, are both opposed to same-sex relations and activities. In particular, the growing evangelical Christian movements are spreading hatred and intolerance towards LGBTIQ persons.

There is a considerable increase of violence and extortions by police and society, with numerous reports of mob attacks, torture and rape (including under custody or in prison), battery and assault, theft, defamation, threat to life, humiliation and ill-treatment, including by the NPF and the *hisbah* in the North. Homophobic violence is occurring without fear of consequences.

Risk analysis

Individuals under this profile could be exposed to acts which are of such severe nature that they would amount to persecution (e.g. death penalty in the Sharia-implementing states, imprisonment, mob violence, (attempted) murder, torture, rape, battery).

LGBTIQ individuals would in general have a well-founded fear of persecution.

It has to be noted that an applicant cannot be expected to conceal their sexual orientation or gender identity.[13]

Nexus to a reason for persecution

Available information indicates that the persecution of this profile is highly likely to be for reasons of membership of a particular social group, based on a shared characteristic that is so fundamental to the identity of the applicant, that he or she should not be forced to renounce it; and based on their distinct identity in Nigeria, because they are perceived as being different by the surrounding society.[14]

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[13] CJEU, *Minister voor Immigratie en Asiel v X and Y and Z v Minister voor Immigratie en Asiel*, joined cases C-199/12 to C-201/12 judgment of 7 November 2013, paras. 70-76. [back to text]

[14] *X, Y and Z*, paras. 45-49 [back to text]

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