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3.2. Article 15(b) QD

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COMMON ANALYSIS
Last updated: February 2019

As noted in the chapter on Refugee status, some profiles of applicants from Nigeria may be at risk of torture or inhuman or degrading treatment or punishment. In such cases, there would often be a nexus to a Convention ground, and those individuals would qualify for refugee status. However, with reference to cases where there is no nexus to a Convention ground, the need for subsidiary protection under Article 15(b) QD should be examined.

Under Article 15(b) QD, serious harm consists of torture or inhuman or degrading treatment or punishment of an applicant in the country of origin.

Article 15(b) QD corresponds in general to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The jurisprudence of the European Court of Human Rights (ECtHR), therefore, provides relevant guidance in order to assess whether a treatment may qualify under Article 15(b) QD.

Torture is an aggravated and deliberate form of cruel, inhuman or degrading treatment to which a special stigma is attached.

According to relevant international instruments, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), torture is understood as:

- ✓ an intentional act
- ✓ that inflicts severe pain or suffering, whether physical or mental
- ✓ for such purposes as obtaining from the person subjected to torture or from a third person information or a confession, punishing the former for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him

or her or a third person, or for any reason based on discrimination of any kind.

The distinction between torture and inhuman or degrading treatment or punishment is more a difference of degree than of nature. These terms cover a wide range of ill-treatment that reach a certain level of severity.

- Inhuman: Inhuman: refers to treatment or punishment which deliberately causes intense mental or physical suffering (which does not reach the threshold of torture).
- Degrading: refers to treatment or punishment which arouses in the victim feelings of fear, anguish and inferiority capable of humiliating or debasing them

The assessment whether a treatment or punishment is inhuman or degrading further implies a subjective consideration by the person who suffers such treatment or punishment. No specific purpose on the part of the perpetrator (e.g. obtaining information or a confession, punishing, intimidating) is required in this regard.

When examining the need for protection under Article 15(b) QD, the following considerations should be taken into account:

- **Cult and gang violence:** Cult and gang violence is usually motivated by financial gain and power struggle. Where there is no nexus to a reason for persecution, being subjected to criminal acts, such as killing, armed robbery, kidnapping, destruction of property, extortion, cattle rustling (e.g. in Zamfara), etc. may qualify under Article 15(b) QD.

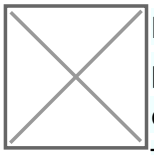
- **Healthcare unavailability and socio-economic conditions**: It is important to note that serious harm must take the form of conduct on the part of a third party (Article 6 QD). In themselves, the general unavailability of health care, education or other socio-economic elements (e.g. situation of IDPs, difficulties in finding livelihood opportunities, housing) are not considered to fall within the scope of inhuman or degrading treatment under Article 15(b) QD, unless there is intentional conduct on the part of a third party; for example, the intentional deprivation of the applicant of appropriate health care.[23] , [24]

See also the profiles of Persons with disabilities or severe medical issues

- **Arbitrary arrests, illegal detention and prison conditions**: Special attention should be paid to the phenomena of arbitrary arrests and illegal detention, as well as to prison conditions. It can be assessed that in cases where the prosecution or punishment is grossly unfair or disproportionate, or where a person is subjected to prison conditions which are not compatible with respect for human dignity, a situation of serious harm under Article 15(b) QD can occur. When assessing the conditions of detention, the following elements can, for example, be taken into consideration (cumulatively): number of detained persons in a limited space, adequacy of sanitation facilities, heating, lighting, sleeping arrangements, food, recreation or contact with the outside world.

  Reports mention overcrowding in prisons and poor prison conditions, long pre-trial detention periods, and cases of use of lethal and excessive force, as well as obtaining confessions through torture by Nigerian security forces. Therefore, some cases may qualify under Article 15(b) QD.

See also the profile Individuals accused of crimes in Nigeria.



In some cases, those at risk of torture or inhuman or degrading treatment or punishment (for example, because of mistreatment in prisons) may also have committed or contributed to excludable ac in Article 17 QD. Therefore, although the Article 15(b) QD would be met, exclusion considerations should be examined (see the chapter on Exclusion).

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[23] CJEU, *M'Bodj*, paras.35-36. [back to text]

[24] Recent jurisprudence of the CJEU, furthermore, addresses the case of an applicant who has been tortured by the authorities of his country of origin and who no longer faces a risk of being tortured if returned to that country, but whose physical and psychological health could, if so returned, seriously deteriorate, leading to a serious risk of him committing suicide on account of the trauma resulting from the torture. In this case, the CJEU considers that Article 15(b) QD is applicable if there is a real risk of the applicant being intentionally deprived, in his or her country of origin, of appropriate care for the physical and mental after-effects of that torture (CJEU, *MP v Secretary of State for the Home Department*, case C-353/16, judgment of 24 April 2018, para.59). [back to text]

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