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Article 15(b) QD

GUIDANCE NOTE
Last update: October 2021

Torture or inhuman or degrading treatment or punishment

In the cases of applicants for which torture or inhuman or degrading treatment or punishment may be a real risk, there may often be a nexus to a Convention ground and such individuals would, therefore, qualify for refugee status. However, with reference to cases where there is no nexus to a Convention ground and the applicant would not qualify for refugee status, the need for subsidiary protection under Article 15(b) QD should be examined.

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

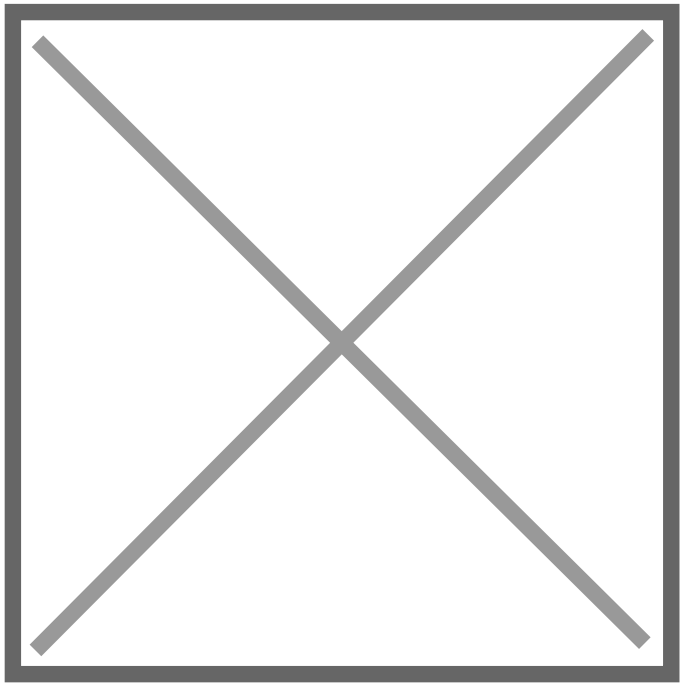
- **Cult and gang violence:** cult and gang violence are usually motivated by financial gain and power struggle. Where there is no nexus to a reason for persecution, being subjected to criminal acts such as killing, armed robbery, kidnapping, destruction of property, extortion, cattle rustling, etc.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

- **Trafficking in human beings:** human trafficking is widespread in Nigeria. Where there is no nexus to a reason for persecution, individuals at real risk of being subjected to trafficking would qualify for subsidiary protection under Article 15(b) QD.

- **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 would be subject to prison conditions which are not compatible with respect of 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 the Nigerian security forces. Therefore, some cases may qualify under Article 15(b) QD.

- **Health care unavailability and socio-economic conditions**: it is important to note that serious harm must take the form of conduct of an actor (Article 6 QD). In itself, the general unavailability of health care, education or other socio-economic elements (e.g. the situation of IDPs, difficulties in finding livelihood opportunities, housing) is not considered to fall within the scope of inhuman or degrading treatment under Article 15(b) QD, unless there is intentional conduct of an actor, for example, the intentional deprivation of the applicant of appropriate health care.

Please note that exclusion considerations could be relevant.



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