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3.1. Article 15(a) QD

COMMON ANALYSIS
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As noted in the chapter above, some profiles of applicants from Nigeria may be at risk of death penalty or execution. For a list of the crimes punishable by the death penalty according to the Criminal and Penal Code of Nigeria and the Sharia, see Individuals accused of crimes in Nigeria.

In such cases (for example, LGBT, members of IPOB and MASSOB, those accused of adultery in states where Sharia applies), there could be a nexus to a Convention ground, and those individuals would qualify for refugee status.

In cases where there is no nexus to a Convention ground (for example, in some cases of individuals accused of ordinary crimes), the need for subsidiary protection under Article 15(a) QD should be examined.

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*Under Article 15(a) QD, serious harm consists of **the death penalty or execution.***

The death penalty is as such, and under any circumstances, considered as a serious harm under Article 15(a) QD. The sentence does not need to have already been imposed. A real risk that on return a death penalty may be imposed on an applicant could be considered sufficient to substantiate the need of subsidiary protection.

As the addition of the term ‘execution’ suggests, Article 15(a) QD also encompasses the intentional killing of a person by non-State actors exercising some kind of authority. It may also include extrajudicial killings, but an element of intentional and formalised punishment needs to be present.

Death penalty is envisaged under both, the Nigerian penal law and the Sharia in the North. The latest available data is for 2016, when the Nigerian authorities executed three persons by hanging in Benin Prison in Edo state, and 527 death sentences were registered, bringing the total number of people sentenced to death in the country to 1 979. Death penalty is also applied by military courts [*Targeting*, 2.6].

There is no information in the consulted sources about execution conducted in a formalised way by non-State actors. However, it can be noted that some killings by Boko Haram may be considered as ‘punishment’, such as for refusal to join the group or for defying the ‘Sharia police’ [*Targeting*, 2.1.5.1, 2.1.6, 3.1.3].

If there is a reasonable degree of likelihood of death penalty or execution, subsidiary protection under Article 15(a) QD shall be granted, unless the applicant is to be excluded in accordance with Article 17 QD.

In some cases, the death penalty would have been imposed for a serious crime committed by the applicant, or for other acts falling within the exclusion grounds (Article 17 QD). Therefore, although the criteria of Article 15(a) QD would be met, exclusion considerations should be examined (see the chapter on Exclusion).

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