Please cite as: EASO, '3.2. Article 15(b) QD' in *Country Guidance Nigeria*, October 2021.

3.2. Article 15(b) QD

COMMON ANALYSIS
Last update: February 2019
*Minor updates added October 2021

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(a) 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**': 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. Incidents of such violence include killing, rape, armed robbery, kidnapping, destruction of property, extortion, cattle rustling. It has been reported that the number of such incidents has been increasing, especially with regard to kidnappings. Nigeria Watch reported that crime was the major cause of violent deaths in Nigeria in 2020. Lawlessness and the lack of policing have been described as underlying factors for the increase in banditry or criminal violence. [Security situation 2021, 1.4.1.1.]

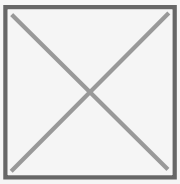
  Where there is no nexus to a reason for persecution, being subjected to such criminal acts may qualify under Article 15(b) QD. Additionally, the general security situation in some states of Nigeria (e.g. Niger) could also be relevant in relation to Article 15(b) QD.

- **Trafficking in human beings**: Human trafficking is widespread in Nigeria and it can affect women, men, and children. The majority of identified Nigerian victims of trafficking in EU countries were women exploited in the prostitution industry. These women originated predominantly from the south of Nigeria, particularly from the state of Edo, and belonged to the Bini ethnic group. However, sources identified an increase of female victims destined to sex trafficking towards Europe from the southern states Delta, Ekiti, and Ondo, but also the northern state of Kano. Most women and girls were illiterate or had only completed secondary education, originated from unstable or abusive family situations, daughters from one-parent, polygamous households, IDP camps from North-East region, and experienced economic hardship. It was further indicated that traffickers prey on girls or women who try to escape FGM and end up by themselves in large urban centres [Trafficking, 1.3.1]. For more information on victims of human trafficking, see profile Victims of human trafficking, including forced prostitution.

  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 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.

- **Healthcare 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 healthcare, education or other socio-economic elements (e.g. 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.[16]
  See also the profile Persons with disabilities or severe medical issues.



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 acts as defined in Article 17 QD. Therefore, although the criteria of Article 15(b) QD would be met, exclusion considerations should be examined (see the chapter on Exclusion).

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[16]CJEU, M'Bodj, paras.35-36, MP v Secretary of State for the Home Department, case C-353/16, judgment of 24 April 2018, paras.57, 59. [back to text]

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