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3.3.2. Qualification of a person as a 'civilian'

COMMON ANALYSIS
Last update: October 2021

Being a civilian is a prerequisite in order to being able to benefit from protection under Article 15(c) QD. The purpose of the provision is to protect only those who are not taking part in the conflict. This includes the potential application of Article 15(c) QD to former combatants who have genuinely and permanently renounced armed activity.

The Qualification Directive itself does not provide a definition of the term 'civilian'. In light of the interpretative guidance given by CJEU in Diakité, the term should be read by reference to its usual meaning in everyday language, whilst taking into account the context in which it occurs and the purposes of the rules of which it is a part. Therefore, the term 'civilian' could be considered to refer to a person who is not a member of any of the parties in the conflict and is not taking part in the hostilities, including those who are no longer taking part in hostilities.

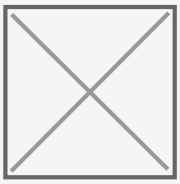
In the context of Nigeria, applications by persons falling under the following profiles should be examined carefully. Based on an individual assessment, such applicants may be found to not qualify as civilians under Article 15(c) QD. For example:

- Boko Haram members
- Members of armed groups of farmers or herders
- Militant groups in the Niger Delta
- Members of the CJTF
- National security forces, including the Nigerian Army, the Nigerian Navy, the Nigerian Air Force, and NPF
- Members of the ESN.

It should be noted that actively taking part in hostilities is not limited to openly carrying arms but could also include substantial logistical and/or administrative support to combatants.

It is important to underline that the assessment of protection needs is forward-looking. Therefore, the main issue at hand is whether the applicant will be a civilian or not upon return. The fact that the person took part in hostilities in the past would not necessarily mean that Article 15(c) QD would not be applicable to him or her. For example, the assessment should take into account whether the person had voluntarily taken part in the armed conflict; those who willingly joined the armed groups are unlikely to be considered civilians.

In case of doubt regarding the civilian status of a person, a protection-oriented approach should be taken, which is also in line with international humanitarian law, and the person should be considered a civilian.



Exclusion considerations may also apply (see the chapter on Exclusion).

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