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Article 15(b) QD: torture or inhuman or degrading treatment or punishment

GUIDANCE NOTE
Last update: August 2023

In the cases of applicants for whom torture or inhuman or degrading treatment or punishment may be a real risk, there would often be a nexus to a reason for persecution under the definition of a refugee, 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:

Arbitrary arrests, illegal detention and prison conditions

Urban prisons in Somalia, especially following large security incidents, are at times overcrowded, with authorities often not separating pre-trial detainees from convicted prisoners, especially in the southern and central regions. In these areas, including areas under the control of Al-Shabaab, prison conditions are believed to be harsh and at times life-threatening due to poor sanitation and hygiene, inadequate food and water, and lack of medical care. Disease outbreaks and long pre-trial detention period have been reported. Reportedly, Garowe Prison in Puntland and Hargeisa Prison in Somaliland met international standards and were well-managed.

Where there is no nexus to a reason for persecution, the risk of being subjected to arrest, detention or imprisonment may, in some cases, qualify under Article 15(b) QD.



Exclusion considerations may be relevant.

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Criminality

Criminality is pervasive in Somalia. Reported crimes include killings, sexual violence, abductions, banditry, thefts, robberies, money extortion, piracy, (child) trafficking, human and/or arms smuggling. Against this backdrop, during the reference period, a rising issue in the Somali context was the drifting of many Somali youth towards organised criminal gangs, especially in the Somali cities, notably in Mogadishu.

Where there is no nexus to a reason for persecution, the risk of being subjected to criminal acts may qualify under Article 15(b) QD.

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Corporal punishments

Corporal punishments for the so-called hadd crimes may be imposed by Sharia or Al-Shabaab courts.

Where there is no nexus to a reason for persecution, the risk of being subjected to corporal punishments may qualify under Article 15(b) QD.



Exclusion considerations may be relevant.

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Forced evictions

Evictions from government buildings and by private landlords in Somalia represent a constant risk for vulnerable communities, among which IDPs living in collective settlements and other urban poor individuals in densely populated areas. Evictions had far-reaching impacts on already marginalised populations, including increased vulnerability to violence, loss of assets and social networks, sexual assault, destruction

of livelihoods and separation of families. Evictions also cause and exacerbate displacement within the country. Moreover, poverty and forced evictions were reported to be mutually dependent and reinforcing.

Where there is no nexus to a reason for persecution, (the risk of) being subjected to forced eviction may qualify under Article 15(b) QD, depending on the severity of its consequences in the individual case.

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Healthcare unavailability and socio-economic conditions

The humanitarian situation in Somalia remained precarious during the reference period, making the country one of the least developed countries in the world. People in Somalia face continuous socio-economic challenges due to high poverty and highly precarious conditions regarding employment, housing, food and water supplies. Besides violent conflicts, climatic shocks, among which droughts and floods, lead to displacements and contribute to vulnerabilities. Additionally, it has been reported that Al-Shabaab continued to hinder commercial activities in the areas it controlled and disrupted the delivery of humanitarian aid.

When such conditions are the result of an intentional conduct of an actor, they may qualify under Article 15(b) QD.

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