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3.3.3. Indiscriminate violence

COMMON ANALYSIS
Last update: October 2021

‘Indiscriminate violence’ refers to the source of the specific type of serious harm defined in Article 15(c) QD. The CJEU in *Elgafaji* notes that the term ‘indiscriminate’ implies that the violence,

> […] may extend to people irrespective of their personal circumstances.
>
> **CJEU, *Elgafaji*, para.34**

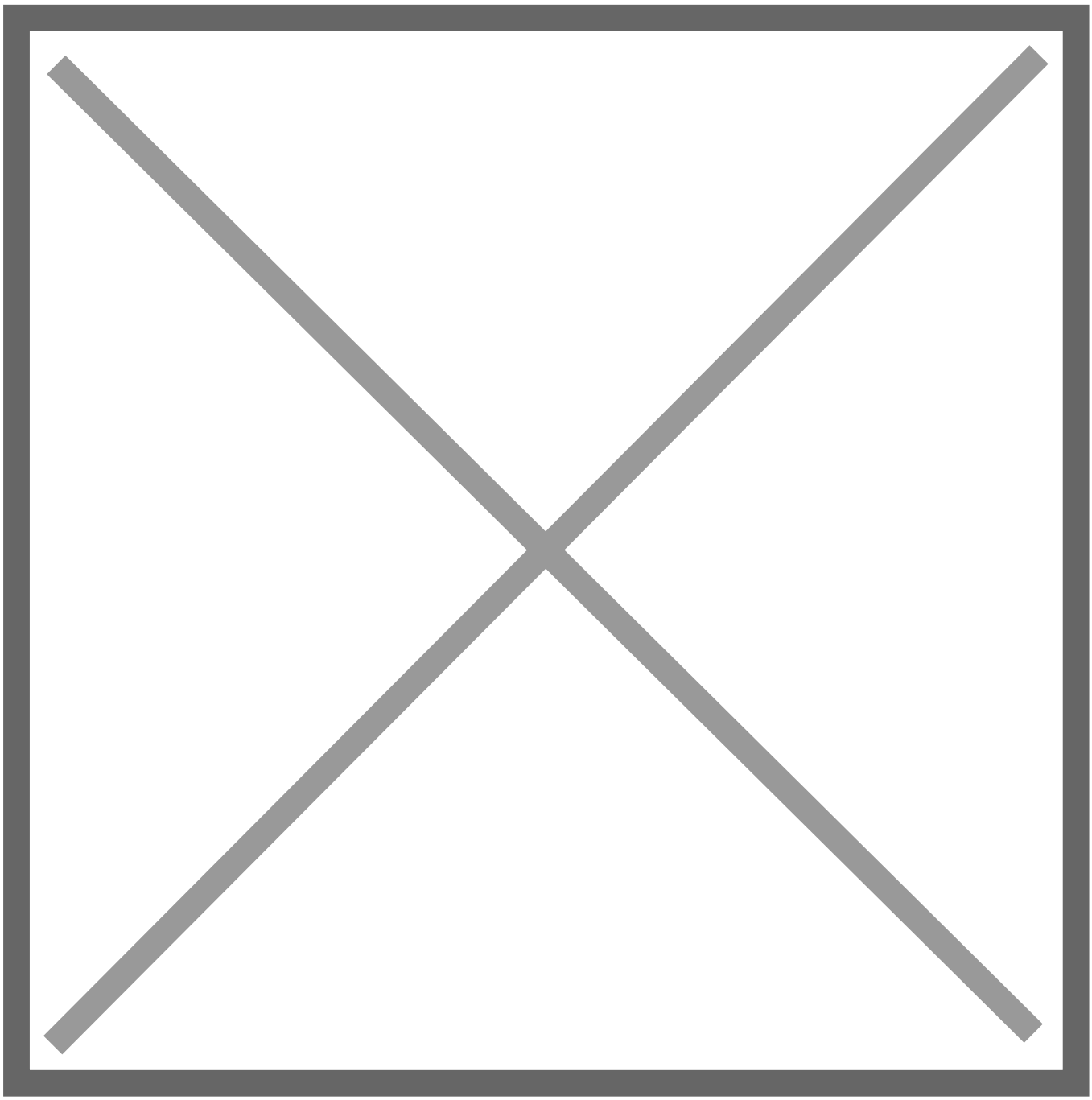
Some acts of violence may be indiscriminate by their nature, for example: (suicide) bombings, attacks and armed confrontations in areas that are inhabited or frequented by civilians (e.g. market places, public roads, healthcare facilities).

> In armed conflicts the targeting of civilians may have nexus to one of the reasons for persecution according to the refugee definition.

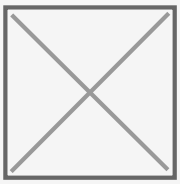
Therefore, refugee status may be granted as noted in the section above (see, for example, the profiles Individuals targeted by Boko Haram, Individuals involved in and affected by conflicts between herders and farmers). Such targeted violence, furthermore, would not be considered ‘indiscriminate’.

Based on *Elgafaji*, in situations where indiscriminate violence is taking place, the following differentiation can be made with regard to its level.

Figure 10. Levels of indiscriminate violence on the basis of CJEU, *Elgafaji*, para. 43.



With regard to the second category (text box on the right), *Elgafaji* provides guidance on how the serious and individual threat has to be assessed, an approach commonly referred to as the ‘sliding scale’.



> […] the more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection.
>
> **CJEU, *Elgafaji*, para.39**

The graph below illustrates the further differentiated standard scale applied with regard to the

different levels of indiscriminate violence and the respective degree of individual elements required in order to find that a real risk of serious harm under Article 15(c) QD is substantiated for the applicant:Risk-impacting elements related to the personal circumstances of the applicant should, therefore, be taken into account. See the subsection on Serious and individual threat.

Figure 11. Indiscriminate violence and individual elements in establishing real risk of serious harm under Article 15(c) QD.

Depending on the level of indiscriminate violence taking place, the territories in a country can be categorised as follows.

I. **Territories where 'mere presence' would be considered sufficient in order to establish a real risk of serious harm under Article 15(c) QD.**

Territories where the degree of indiscriminate violence reaches such an exceptionally high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, **solely on account of his or her presence** on the territory of that country or region, face a real risk of being subject to the serious threat referred to in Article 15(c) QD.

II. **Territories where real risk of serious harm under Article 15(c) QD may be established if the applicant is specifically affected by reason of factors particular to his or her personal circumstances following a 'sliding scale' approach.**

Territories where 'mere presence' in the area would not be sufficient to establish a real risk of serious harm under Article 15(c) QD, however, indiscriminate violence reaches a **high level**, and, accordingly, a **lower level of individual elements** is required to show substantial grounds for believing that a civilian, returned to the territory, would face a real risk of serious harm in the meaning of Article 15(c) QD.

Territories where indiscriminate violence is taking place, however **not at a high level** and, accordingly, a **higher level of individual elements** is required in order to show substantial grounds for believing that a civilian, returned to the territory, would face a real risk of serious harm in the meaning of Article 15(c) QD.

Lastly, there are territories with regard to which Article 15(c) QD would in general not be applicable, either because the criteria for an armed conflict within the meaning of this provision are not met or because the level of indiscriminate violence taking place is so low that in general there would be no real risk for a civilian to be affected by it.

Territories where, in general, there is **no real risk** for a civilian to be personally affected within the meaning of Article 15(c) QD

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