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3.3.1. Preliminary remarks

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COMMON ANALYSIS
Last updated: February 2019

Reference period

The following assessment is based on the EASO COI report on the security situation in Nigeria [*Security situation*]. The general reference period for this chapter is **1 October 2017 – 30 September 2018** and events taking place after September 2018 are not taken into account in the common analysis. Certain information used within this chapter may refer to a different reference period; this is clarified within the text.

This guidance should be considered valid as long as current events and developments fall within the trends and patterns of violence observed within the reference period of the mentioned COI report. New events and developments that cause substantial changes, new trends or geographical shifts in the violence, may lead to a different assessment. The security situation of a given territory should always be assessed in light of the most up-to-date COI available.

Legal framework

Article 15(c) QD defines the third type of harm that constitutes a ground for qualification for subsidiary protection. It covers a more general risk of harm and the protection needs which may arise from armed conflict situations.

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*Under Article 15(c) QD, serious harm consists of **serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict**.*

In addition to the applicable EU legal instruments, this guidance builds on the most relevant European case law. Two judgments of the CJEU and one judgment of the ECtHR have been taken into account in particular:

► CJEU, *Diakité* judgment:[25] The judgment is of particular importance for the interpretation of relevant concepts, and in particular of 'internal armed conflict'.

► CJEU, *Elgafaji* judgment:[26] The judgment is of importance with regard to the appreciation of the degree of indiscriminate violence and in particular with regard to the application of the 'sliding scale'. In this judgment, the CJEU further discusses the 'serious harm' under the provision of Article 15(c) QD in comparison to the other grounds for granting subsidiary protection and considers the relation between Article 15(c) QD and the ECHR, in particular Article 3 ECHR.

► ECtHR, *Sufi and Elmi* judgment:[27] It should be noted that ECtHR jurisprudence on Article 3 ECHR is not of direct applicability when discussing the scope and elements of Article 15(c) QD. However, the elements outlined in *Sufi and Elmi* with regard to the assessment of the security situation in a country and the degree of generalised violence have been consulted in order to design the indicators of indiscriminate violence for the purposes of this common analysis.

The elements to examine under Article 15(c) QD are:

All of these elements have to be fulfilled in order to grant subsidiary protection under Article 15(c) QD.

Figure 9. Elements of the legal provision of Article 15(c) QD.

Common analysis and assessment of the factual preconditions for the possible application of Article 15(c) QD with regard to the situation in Afghanistan is provided in the following sub-sections.

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[25] CJEU, *Aboubacar Diakité v. Commissaire général aux réfugiés et aux apatrides*, C-285/12, Judgment of the Court (Fourth Chamber) of 30 January 2014. [back to text]

[26] CJEU, *Elgafaji v. Staatssecretaris van Justitie*, C-465/07, Judgment of the Court (Grand Chamber) of 17 February 2009. [back to text]

[27] ECtHR, *Sufi and Elmi v. United Kingdom*, Applications nos. 8319/07 and 11449/07, Judgment of 28 June 2011. [back to text]

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