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Persecution in the Fog of War: The House of Lords' Decision in Adan

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Abstract

International law requires that a person have a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion, or membership of a particular social group in order to be recognized as a refugee. That is, under the Convention Relating to the Status of Refugees, there must be a nexus between the danger faced by the refugee and one of the five Convention-recognized reasons for persecution. However, in a 1998 decision of the House of Lords in the United Kingdom, the House of Lords concluded that a man fleeing clan warfare in Somalia could not meet the nexus test because the claimant, who indisputably faced danger for reasons of his clan membership, faced no greater danger than the dangers faced by members of other clans. This conclusion was incorrect, however, because differential impact is not required by the Refugee Convention.

In addition, the House of Lords improperly applied a different standard in the case of the claimant as a result of the state of civil war in Somalia, reasoning that the Refugee Convention does not apply to those caught up in civil war where law and order have broken down and every group seems to be fighting some other group. But review of the language of the Refugee Convention and its drafting history shows that the House of Lords was mistaken in concluding that fighting between clans engaged in civil war cannot constitute persecution for reasons of a Convention ground.

Fleeing from civil war is not enough by itself to satisfy the requirements of the Refugee Convention, but in some circumstances war-related danger can give rise to a valid claim to refugee status. And there is no requirement that an applicant for refugee status be more at risk than other persons or groups in his or her country of origin. The relevant question is whether the Convention ground is causally connected to the applicant's predicament.

Keywords: international law, refugee status, civil war, differential impact

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