

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 73468

AT AUCKLAND

Before: L Tremewan (Chairperson)
A Molloy (Member)

Counsel for Appellant: D Ryken and A Joseph

Appearing for NZIS: No Appearance

Date of Hearing: 27 February 2003 and 1 May 2003

Date of Decision: 12 September 2003

DECISION

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) declining the grant of refugee status to the appellant, a national of Colombia.

INTRODUCTION

[2] The appellant is a married man aged in his late 30s, who arrived in New Zealand on 20 September 1999. He applied for refugee status on 29 September 1999. A refugee status officer interviewed him on 15 November 2000. Eventually, a decision dated 10 January 2002, was published, declining his application. It is from that decision that he has appealed to this Authority.

[3] It is noted that the appellant's wife and two young sons arrived in New Zealand in June 2002. Separate applications for refugee status were made by them (which, at the time of the Authority's hearing, were yet to be determined by the RSB). The appellant's wife also gave evidence at the Authority hearing.

[4] We record that the appellant was very ably represented by his counsel Mr Ryken, and co-counsel Mr Joseph, in this appeal.

THE APPELLANT'S CASE

[5] What follows is a summary of the appellant's case as presented to the Authority. This is followed by the Authority's credibility assessment of that account.

[6] The appellant was born and raised in the city of M. He was one of seven children, the others of whom remain living in Colombia, as does the appellant's father, a widower. The appellant remains in contact with his father, by telephone.

[7] The appellant's upbringing was uneventful. He attended local schools from the age of approximately seven to 16 years. On leaving school, he worked for his father, a hydraulic maintenance engineer. When in his mid-20s, he also did some casual auto-mechanical repair work in addition to his main job.

[8] In 1990, in his late 20s, the appellant married. Over the following years, he and his wife lived in different rental apartments until, in the mid-1990s they purchased a house in a large complex at M, under a government housing scheme.

[9] By this time, the appellant was in his early 30s. He started working for himself on a full-time basis. The business went well and he was able to make savings.

Purchase of bus, leading to contact with FARC

[10] The appellant then decided to buy a bus, as an investment. He planned to hire a driver to drive it, and to maintain the bus himself, while still doing his other mechanical work. He was also licensed to drive a bus (having earlier obtained the licences to drive a range of vehicles, so as he could test them as part of his mechanical work).

[11] In January 1999, the appellant found a suitable bus to buy. He purchased it from a widow (whose late husband had owned it). He paid a deposit and was to repay the balance in monthly instalments. The purchase price included the bus's route, which was in the urban area of C V.

[12] A considerable amount of 'red tape' was involved in the bus purchase. Apart from the purchase documents, the appellant also had to complete documentation for, and receive authorisation from, the bus company to which the bus was affiliated. These documents required him to provide his personal details.

[13] After taking possession of the bus, the appellant did some repairs and, several days later, prior to employing a driver, commenced driving the route

himself. This was to familiarise himself with the route and gain knowledge of his likely income.

[14] At this point, a serious problem arose. At the bus terminal, the other drivers and operators told the appellant that he had to pay money to the Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia) (FARC) guerrillas, to be allowed to run his bus. This was “no secret” – indeed, there were standing instructions from the FARC that the drivers were to tell any new operators about their obligations.

Appellant’s knowledge of the FARC

[15] The appellant knew of the FARC, although he had never had any previous dealings with it. He understood that it had been in existence for many years and was a powerful guerrilla group. It aimed to control Colombia, using brutal terrorist tactics. It operated under its “own laws” and was fighting for political power, wanting to govern the country.

[16] The appellant had also had neighbourhood friends who had had a dispute with the FARC, and whose child they had murdered, in 1998, as a result.

[17] The appellant had also seen members of the FARC on television (wearing their easily identifiable clothing). He also recalled a privately owned regional television channel showing the FARC guerrillas, although these programmes did not report all of their atrocities. In particular, he recalled seeing the FARC’s leader Manuel Marulanda Velez (known as “Sure Shot”) in the company of the country’s then President, Andres Pastrana, in Velez’s mountain hideaway. He also recalled seeing Velez’s “right hand man”, known as “El Mono Jojoy”, talking about the FARC’s policies on television.

[18] The appellant had heard El Mono Jojoy promising to help the poor people with their harvests, and to set up a people’s bank. The FARC also talked about building sewers, roads, and setting up schools. However, in the appellant’s view, the FARC had not done these things and had never lived up to its claimed political ideals (that they “don’t agree with rich people” and “aim for equality”).

[19] The FARC would also take over the mines and exploit them. The appellant recalled the group taking over a rich gold mining town of Segovia. They “promised to create jobs, houses, roads and sewers [there] but nothing has been done”.

[20] In the appellant’s view, the FARC “make themselves rich on the backs of ordinary Colombians and kidnap and kill people and work with the Mafia”. They

take money from business owners which “in no way benefits the Colombian people. All they are doing is making life very hard for Colombians...”.

[21] The Authority asked the appellant whether, from his knowledge, the FARC was essentially another group of “urban militias”. He said that he saw such groups differently; “urban militias” were “bands of young people concentrating on robbing supermarkets, assaulting people, banks...operating in urban areas as part of the guerrilla movement”. They also carry out extortion. The FARC, however, was “a much bigger outfit” operating according to laws of their own making. They charge tolls on highways and collect taxes at shopping centres to pay for their political fight to run the country.

Problems begin with the FARC

[22] Shortly after the bus purchase, one morning in late January 1999, four FARC members (wearing their identifiable uniforms and arm bands) approached the appellant at the bus terminal, and invited him to sit down. They clearly already knew his personal details and even showed him a piece of paper with information such as his residential address written on it.

[23] The men told the appellant that, as a bus owner, he had to pay the required number of pesos fortnightly to be allowed to run the bus (the details of which he outlined to the Authority). He responded that he had insufficient money. They replied that this was “not their problem” and that he would need to find the money if he wanted to work. He was also told that he had to “step in line”, and threatened that if the bus went out without his having paid, it would be burnt and he would be killed.

[24] The other drivers had already advised the appellant that when the FARC guerrillas approached, other FARC members would also be in the general vicinity (and that 40 to 50 personnel could be present altogether). It was also apparent that the dispatcher and some of the drivers were in direct communication with the FARC.

[25] After the FARC rebels had gone, the appellant asked the dispatcher how it was that they had had all of his personal details. He was told that he should know that one “cannot hide from these people” and that “if we don’t tell them [these details] they’ll kill us”.

[26] The appellant was frightened and wanted nothing to do with the FARC. Their politics did not represent his interests and he opposed them as a group.

Moreover, he could not afford to pay their “tax”, since the sum they wanted represented virtually all of his likely income from the bus.

[27] The appellant decided to try to sell the bus. In order to ‘buy some time’, he agreed to pay the first of the required payments. He asked for some days to get the money. They said that they would be back later that week (this being in early to mid February) to collect the money.

[28] The appellant then hired a driver and dedicated himself to selling the bus. He put his family into hiding.

[29] In the meantime, the bus owners at the depot received notices that their fortnightly payments to the FARC had increased. The appellant was under pressure to pay his next instalment, of which he was reminded through his hired driver (who had been approached).

[30] By March, the appellant had not yet been able to sell the bus and so pulled it off the road altogether, under the pretext of its needing repairs. In fact, he did do some work to it, to make it more saleable.

[31] By this time the appellant was receiving telephone calls from the FARC at home, demanding payment. He tried to put them off by saying that the bus needed repairs before it could go back on the road.

[32] After receiving the calls, the appellant went to the ‘DJIN’ (special police unit) to “denounce FARC” and seek protection. The police instructed him not to pay any further monies and stated they would investigate.

[33] The appellant later learnt that a police enquiry had indeed been made at the bus terminal but the bus owners and drivers there would not provide any details, simply saying that everything was “fine and normal”. It became apparent that the news of this investigation was communicated to the FARC, who had made an ‘educated guess’ that the appellant had been responsible for involving the authorities. The appellant then began receiving more calls from the FARC referring to him as “a squealer” who would now “pay double”.

[34] Finally, in May, the appellant managed to sell the bus, but at a much lower price than it was worth, suffering a significant loss.

[35] The appellant learnt that the new bus owner was approached by the FARC. The relevance of this was that FARC clearly knew that he had sold the bus and would now be in a position to make full payment.

[36] At this time, the appellant then received a visit at home from about 15 members of the FARC. He was told that now he had sold the bus he had to pay

3,500,000 pesos and that this was a “final demand”. He was also told that they also knew where his family was hiding.

[37] The appellant did not consider that by paying the money demanded of him that this would however, satisfy the guerrillas. If he paid up, then there would be no reason to keep him alive, especially as he had been obstructive. Also, he was now regarded as “a squealer”.

[38] The appellant went into hiding, staying at various addresses. He relocated his family to another place of hiding. He was particularly worried about them because while the FARC might choose to allow him to ‘stay around’ (at least until he paid them) in order that they would in fact receive their money, his family was both immediately expendable and a good target for the FARC to use as a display of strength. He understood that harming relatives was a common tactic used by the FARC.

[39] After moving out, the appellant rented his house out, however the tenants soon moved as the FARC visited the premises. It was impossible for the appellant to sell the apartment because it had been purchased under a special government-housing scheme, which effectively precluded this option. His apartment remained empty and has since been repossessed by the bank.

[40] Once more the appellant went to the police special unit, urgently seeking protection saying that his life was now “really on the line”. He was told that in order for them to do anything he needed to provide them with details (of the guerrillas involved), including photographs. He raised with them the fact that this would be so dangerous that it would be utterly impossible and was advised that he should perhaps consider leaving the country.

[41] The appellant unsuccessfully attempted to obtain a visa for the United States through the US Embassy. He was, however, through the services of a travel agent, able to obtain a visa to enter New Zealand.

[42] The appellant did not consider that he was able to get any effective protection from the Colombian authorities and nor did he consider that moving to another part of Colombia would be of any assistance. He could be tracked down by the FARC sooner or later; he understood that they have people all over the country, a strong information network system and all of his and his family’s details. His children were young and school aged – it was unrealistic for the family to, for example, change names and relocate in safety. He felt the only effective way to get out of his situation was to try to leave the country altogether.

[43] The appellant considered that he had a window of opportunity to flee while the FARC understood that he was in the process of bringing them the money demanded. He managed to depart Colombia, in September 1999. He was unable (for financial and other reasons) to bring his wife and sons until mid 2002.

[44] Since his departure, there has been news of some enquiries having been made about the appellant. Unknown persons have asked two of his siblings about his whereabouts. Indeed, both of these siblings had previously lived in the same complex that he had, but moved out because of concerns about their own safety.

[45] The appellant's wife also gave evidence that she was aware that after the appellant's departure, a FARC guerrilla had approached one of his brothers, making a remark, which was both an insult and a threat against the appellant's life.

[46] Prior to the appellant's wife's departure (in mid-2002), she remained in hiding. When her eldest son became school-aged, she kept him out of school, fearing what would happen if she enrolled him (which ended up being for the considerable period of about three years). She also felt unable to explain to the children where their father had gone, and why he had left, for fear that they would say something and endanger the family.

[47] The appellant fears that on a return to Colombia he and his family members would be at risk of being killed at the hands of the FARC guerrillas.

THE ISSUES

[48] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:-

"... owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[49] In terms of *Refugee Appeal No. 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

[50] In order to establish the facts, it is first necessary to make conclusions in regards to the appellant's credibility.

[51] The Authority has no reason to disbelieve the appellant's account. The evidence was detailed, spontaneous and consistent with country information. The appellant's evidence was also materially consistent with his wife's evidence.

[52] We do record, however, that there were what initially appeared to be some occasional differences between the appellant's oral evidence and the evidence he had earlier provided, however these were fully explained and the material put into its correct context during the lengthy hearing.

[53] We had also initially had some reservations about the claim that such a brutal organisation as the FARC would seemingly have given the appellant so many "extra chances" to meet their demands when presumably, they could have easily killed him. Moreover, they correctly guessed that he had informed the authorities about their activities at the bus terminal. Ultimately however, we accepted this evidence, noting that it was arguably in the guerrillas' interests to have the appellant pay over the (ever-increasing sum of) money they demanded and in any event, even on payment this did not mean that his problems with the FARC were over.

[54] The appellant's account is accepted.

Is there a well founded fear of persecution?

[55] Next the Authority must consider whether, objectively, on the facts as found, there is a real chance of the appellant being persecuted on a return to Colombia. Before turning to country information, the factual matters which have relevance in the assessment of the appellant's case include:

- The appellant was required to make payments to the FARC, only one of which he ever paid. Although given extra time to meet their increasing demands, he failed to do so and ultimately fled;
- The appellant complained to the Colombian special police about his predicament. They conducted an investigation, which did not advance matters, due to the lack co-operation they received at the bus terminal. However as a result of that investigation, the FARC became aware of the complaint and, as it happens, rightly assumed that the appellant was

responsible for having made it. This became apparent when they subsequently referred to him as “a squealer”;

- The appellant was telephoned and visited at home by the FARC guerrillas who demanded monies “owing”. Deaths threats were made against him and also, by implication, his family;
- After his departure from the family home, tenants were visited by the FARC (who moved out as a result). Family members were later approached by unknown persons asking about the appellant, and in one case, a member of the FARC made a death threat against him, communicated to one of his brothers;
- The FARC are familiar with the appellant and his family’s personal details;
- The family now have no home (it having been repossessed by the bank) or possessions to which to return in Colombia. They lived in hiding prior to their respective departures. In the case of the appellant’s wife and sons (who were unable to leave Colombia until 2002) this meant that the older boy (of school age) could not attend school due to the risks.

Country Information

[56] A useful introduction describing the FARC (which is also referred to in some sources as FARC-EP) and its place in Colombia is found in the *Historical Dictionary of Terrorism* (Anderson S & Sloan S (2nd Ed, 2002) 427 – 430). It is referred to as “a nonstate guerrilla group dedicated to creating a Marxist-Leninist revolution in Colombia”. It is also described as being “the best equipped, best trained, and most effective guerrilla group in South America” (p.427).

[57] In 1999, the Authority dealt with its first Colombian appellant, whose case also related to a claim of being persecuted by the FARC (see *Refugee Appeal No. 71564/99* (14 October 1999)). In allowing the appeal, the Authority detailed relevant country information. It is helpful to refer to some of the relevant portions of that decision. (It is noted that the Authority has inserted full citations, where relevant, into the quoted passages below rather than the short form citations as appeared in the actual decision).

“1. Civil War Background

The Government in Colombia continues to face a serious challenge to its control over the national territory, as longstanding and widespread internal armed conflict and rampant violence persist. The principal participants in the civil war since the

late 1950's have been government security forces, paramilitary groups, guerrillas, and narcotic traffickers. Paramilitary groups and guerrillas attacked unarmed civilians suspected of loyalty to an opposing party in the conflict (United States Department of State *Country Reports on Human Rights Practices: Colombia 1998* (March 1999) 545).

The two major guerrilla groups, the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN), consist of an estimated 11 000 to 17 000 full-time combatants organised into more than 100 semiautonomous groups. The FARC and the ELN, along with other smaller groups, exercised a significant degree of influence and initiated armed action in nearly 700 of the country's 1 073 municipalities during 1997 and 1998 (ibid). The major guerrilla organisation received a significant part of their revenues from fees levied on narcotics production and trafficking. Guerrillas supplanted absent state institutions in many sparsely populated areas of the national territory (ibid)...

...The civilian judiciary is inefficient, severely overburdened by a large case backlog and undermined by intimidation and the prevailing climate of impunity. Less than three percent of all crimes committed nationwide are prosecuted successfully. This situation remains at the core of the country's human rights problems (ibid p 546). Violence against women and children is a serious problem (ibid).

The cycle of violence resulted in the deaths of 2 000 to 3 000 persons in 1998. Violence and instability in rural areas displaced 300 000 civilians from their homes during the year, with the total number of internally displaced citizens during 1995-1998 probably exceeding 750 000. Forced displacement in 1998 occurred in several regions: the northern departments of Antioquia, Bolívar, Cesar and Norte de Santander; the Middle Magdalena region and the region known as Uraba, bordering Panama and including northern Chocó department. Forced displacement spread to new areas formerly at the margins of conflict, including the departments of Chocó and Putumayo (Human Rights Watch *World Report 1998* (December 1998) 111). Internally displaced citizens are forced to seek haven in already overburdened urban areas where unemployment is high, education for children is not possible and housing conditions are unsanitary ("Colombia's quiet catastrophe" *The Christian Science Monitor* (23 June 1999) p1).

2.1 FARC

The FARC, established as a rural-based, pro-Soviet guerrilla army in 1964, is the largest, best-trained and best-equipped insurgent organisation in Colombia. The group is comprised of about 8,000 – 12,000 armed combatants and an unknown number of supporters mostly in rural areas (United States Department of State *Patterns of Global Terrorism* (April 1999) 19).

2.2 Activities

The group carries out armed attacks against Colombian political, economic, military, and police targets. Many members pursue criminal activities, and carry out hundreds of kidnappings for profit annually. The group has well-documented ties to narcotics traffickers, principally through the provision of armed protection for coca and poppy cultivation and narcotics production facilities, as well as through attacks on government narcotics eradication efforts (ibid). In 1998 they also began bombings of Colombia's oil pipelines.

According to recent reports (DOS Report 1998, p 547) the FARC and the ELN regularly attacked civilian populations in 1998, committed massacres, and held more than 1 000 kidnapped civilians with ransom payments serving as an important source of revenue. In some places, guerrillas collected "war taxes", pressed the citizenry into their ranks, forced small farmers to sow illicit crops, and

regulated travel, commerce and other activities. FARC earns 40% of its estimated \$1 billion annual income from such taxes ("The Backyard Balkans" *Time* (18 January 1999) 31).

According to CINEP (an NGO) guerrillas committed 160 homicides outside of combat during the first nine months of the year. Local elected officials or candidates for public office, teachers, civic leaders, business owners and peasants opposed to their political or military activities were common targets. Communities controlled by guerrillas also experienced killings described as cleansing of criminal antisocial elements (DOS Report 1998, p 552).

Kidnapping was an unambiguous, standing policy and major source of revenue for both the FARC and ELN (DOS Report 1998, p 554; Human Rights Watch p 112). Of the 2216 kidnappings reported during 1998, 667 were attributed to the FARC. Reports indicate serious human rights abuses carried out by FARC including torture of detained prisoners (DOS Report 1998, p 554; Human Rights Watch p 112). Guerrillas have also been reported to forcibly recruit children to serve as soldiers (DOS Report, p 558).

On December 28 and 29 1998, the FARC's 18th front launched a major attack against the personal headquarters of the leader of the AUC paramilitary umbrella group in Cordoba. The guerrillas tortured and decapitated noncombatant civilians, and attempted to justify these killings with allegations that the civilians were paramilitary supporters (DOS Report, p 558).

It appears that FARC officials believe they could govern their own nation. Along the Caguan River, in southern Caqueta province FARC have created their own public services, including agricultural banks, and set up toll booths along the roads for improvements. FARC recently held a local election under quasi-Marxist rules. A FARC leader was reported as declaring "We have every intention of governing as much of this country as we can" (*Time* p 31)...

3. Recent Developments

3.1 Peace Talks

President Pastrana, during his campaign and upon assuming office, placed a high priority upon achieving a lasting eternal peace. On July 9 1998 he initiated peace talks by meeting with FARC leader Manuel Marulanda Velez. In a pre-negotiation concession to the FARC, the Government committed to withdraw its military forces from five southern municipalities from November 7 for a 90-day period, effectively turning the area over to FARC control ("Colombia's trembling peace" *The Economist* (12 June 1999) 41; DOS Report p 561; *Time* p 31; *Patterns of Global Terrorism* p 19). President Pastrana travelled to the demilitarised area on 7 January this year to inaugurate peace talks but Marulanda did not attend, and this has led analysts to doubt the FARC's interest in a peace deal. It has turned the demilitarised zone into its own mini State, and a haven for kidnapping and drug-trafficking operations and forced recruitment (*The Economist*, p 41)...

...On 12 July 1999 the Colombia Government declared a dusk-to-dawn curfew across more than 30% of the country, including the outskirts of Bogota in an effort to contain a nationwide Marxist rebel offensive. 35,000 people had been killed by FARC in the last 10 years. FARC and the smaller National Liberation Army (ELN) have a combined fighting force of some 20,000 combatants and control up to half the country, mostly rural areas. ("Colombia rebel force government to impose curfew" *Reuters, New Zealand Herald* (12 July 1999) B3).

[58] It is apparent that the situation in Colombia (concerning the FARC) has not improved over the intervening four year period since Authority's decision in

Refugee Appeal No. 71564/99 (ibid). Arguably it has worsened. The Authority notes, for example, the following extracts from the latest United States Department of State *Country Reports on Human Rights Practices for 2002: Colombia* (31 March 2003) [internet] <http://www.state.gov>:

"...A major internal armed conflict between the Government and leftist guerrillas, particularly the FARC and the terrorist organization National Liberation Army (ELN)--as well as right-wing paramilitaries, particularly the terrorist organization United Self-Defense Forces of Colombia (AUC), caused the deaths of between 5,000 and 6,000 civilians during the year, including combat casualties, political killings, and forced disappearances. Serious violations of human rights were commonplace. The civilian judiciary was largely independent of government influence; however, the suborning or intimidation of judges, witnesses, and prosecutors was common...

...Guerrillas, particularly the FARC, were responsible for a large percentage of civilian deaths attributable to the internal armed conflict. The rate of guerrilla abuses increased during the year, particularly as the FARC attempted to undermine the national elections and complicate the peaceful transfer of power between administrations. They engaged in a concerted campaign to destabilize municipal governments by killing 9 mayors and threatening to execute others, forcing nearly 400 mayors to submit their resignations. In addition to politicians, guerrillas killed journalists, labor union members, and numerous religious leaders. The FARC also continued to kidnap, torture, and kill off-duty members of the public security forces. Guerrillas, particularly the FARC and the ELN, kidnaped thousands of civilians to help finance subversion and put political pressure on the Government. Victims were held in deplorable conditions and often tortured both physically and psychologically. Guerrillas, particularly the FARC, caused mass displacements both intentionally and as byproducts of military offensives, and caused thousands of civilian deaths and injuries through indiscriminate attacks on small towns and random terrorist bombings throughout the country. Guerrillas, particularly the FARC, engaged in widespread recruitment of minors and used female conscripts as sex slaves...

...During the year, guerrillas, particularly the FARC, appeared to have committed a higher percentage of the nation's unlawful killings than they did the previous year, often targeting noncombatants. The MOD attributed 70 percent of civilian deaths, or 916 killings, to guerrillas between January and November. The MOD had attributed 51 percent of civilian deaths in 2001 to guerrillas...Guerrilla offensives often caused significant casualties and prompted significant displacements...The FARC committed more large-scale massacres than it did in 2001.

... Violence and instability in rural areas displaced over 400,000 civilians from their homes. The total number of internally displaced persons (IDPs) may have exceeded 2.5 million...

...The Government operated a protection program for threatened human rights workers, union leaders, journalists, mayors, and several other groups. The program provided a range of protection options, ranging from vehicles and armoring of offices to relocation and economic assistance...

...The civilian-led Ministry of Defense (MOD) is responsible for internal and external security and oversees both the National Police and the Armed Forces, including the army, air force, and navy, which includes the coast guard and the marines. In addition to the armed forces and the National Police, the public security forces include armed state law enforcement and investigative authorities such as the Administrative Department of Security (DAS), which has broad

intelligence gathering, law enforcement, and immigration control functions, and the Prosecutor General's Corps of Technical Investigators (CTI). The National Police are responsible for maintaining internal order and security in urban areas, although persistent guerrilla assaults on isolated detachments have compelled the thinly-staffed Police to leave 157 municipalities without a Police presence. The Armed Forces are responsible for order and security in rural areas and support the National Police in urban areas when called upon...

...The FARC also attempted to assassinate candidate and current President Alvaro Uribe at least 12 times...

...The civilian judiciary was inefficient, severely overburdened by a large case backlog, and undermined by corruption and intimidation..."

[59] The Authority notes that it has referred to a number of other sources of country information which reflect similarly on the serious situation in Colombia, including:

- UNHCHR *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia* (24 February 2003) [internet] <http://www.unhchr.ch/huridocda/huridoca.nsf/Documents?OpenFrameset>;
- *UN Economic and Social Council Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia* E/CN.4/2003/13 (24 February 2003);
- UNHCR "*International Protection Considerations Regarding Asylum Seeker and Refugees*" (18 September 2002) [internet] www.unhcr.ch;
- Human Rights Watch *World Report 2002 Colombia* (January 2003) [internet] www.unhcr.ch;
- Human Rights Watch *World Report 2003 Colombia* (January 2003) [internet] www.unhcr.ch;
- Amnesty International "*UN Commission on Human Rights: Statement on Colombia: oral statement by Amnesty International*" (4 April 2003) [internet] <http://web.amnesty.org/library/pritn/ENGAMR230282003>;
- Human Rights Watch "*State of War: Political Violence and Counterinsurgency in Colombia*" (December 1993) [internet] <http://www.hrw.org/reports/1993/colombia/statetoc.htm>;
- Human Rights Watch "*Colombia : Beyond Negotiation International Humanitarian Law and its Application to the Conduct of the FARC-EP*", August 2001, Vol. 13, No. 3B;
- "Bombings bring war to Colombian elite" *Guardian Weekly* (13 February 2003);

- “The fight for the cities” *The Economist* (26 October 2002);
- “Safety of a sort” *The Economist* (19 April 2003);
- “Hundreds pay homage to Colombia blast victims” *CNN.com* (9 February 2003) [internet] <http://www.cnn.com/2003/WORLD/americas/02/09/colombia>;
- “Colombia’s most powerful rebels” *BBC News* (7 January 2002) [internet] <http://news.bbc.co.uk/2/hi/americas/1746777.stm>;
- “Colombia rebels reject UN mediation” *BBC News* (22 August 2002) [internet] <http://news.bbc.co.uk/2/hi/americas/2210687.stm>;
- “Car bomb kills four in Colombia” *BBC News* (9 January 2003) [internet] <http://news.bbc.co.uk/2/hi/americas/2643207.stm>;
- “Bombing brings war to Colombian elite: Blame pinned on Marxist rebels as at least 33 die in club” *Guardian Weekly* (13 February 2003);
- “City Region Public Transport, overwhelmed with fear and vaccines” *El Colombiano* (8 July 2001) [internet] <http://www.elcolombiano.terra.com.co/domingo/nat001.htm> [It should be noted that, this extract was provided to the Authority with a certified translation from the original Spanish].

[60] After assessing the present facts (as summarised in paragraph [55]) against the background of relevant country information, the Authority is satisfied that the appellant faces a real chance of persecution on a return to Colombia.

Convention ground

[61] One view of this case (and in the Authority’s analysis, the incorrect view) would be to say that the appellant simply faces a risk of serious harm for his refusal to pay money, which the agent of persecution attempted to extort from him. Essentially, the argument would be that the acts of the agent of persecution are merely criminal acts unrelated to any of the five Convention grounds.

[62] Following on from this, it could be argued that while the FARC has claimed to have political agendas, it has effectively abandoned any ideology it may have had in favour of simply becoming a brutal and successful terrorist group with no political imperative. There is some evidence that would lend support to this position (relating, for example, the effective collapse in the 1980s, of the FARC’s then political arm, the Patriotic Union, and the death in 1990 of the FARC’s chief Marxist ideologue, Jacobo Arenas).

[63] However, the Authority ultimately considers that such an assessment (that the case is merely an extortion case) is misconceived.

[64] The Authority has looked closely at the relevant country information concerning the FARC and its role in Colombia. Before referring to some of this material, it is to be noted that a Convention ground need not be the sole or dominant reason for the persecution feared, providing it is a *contributing factor*. (see: *Refugee Appeal No. 72635/01* (6 September 2002) at [162] to [177]).

[65] It is also to be noted that this issue was recently addressed, also in the context of the Colombian situation, in *Refugee Appeal Nos. 73361/02 and 73362/02* (19 June 2003). The agent of persecution in those appeals was not the FARC, but another significant (though less powerful) guerrilla group, the Army of National Liberation (ELN). A reading of country information makes it clear that while there are clear differences between these two groups, there are also marked similarities between them. It is helpful to refer to some of the reasoning in the Authority's decision in that case:

"[52] In this case, the Authority has reached the conclusion that there is a relatively clear nexus between the harm feared and the Convention ground of political opinion. It is no coincidence, in the Authority's view, that the appellant's family was singled out by the ELN guerrillas, and not just for its relative wealth. The Colombian civil war has its roots in a class struggle between landowner and peasant. Although the ELN, like other guerrilla groups, now engages in criminal activities – in particular financing itself from such activities such as drug trafficking and kidnapping – it remains a political organisation. It is therefore quite different from, for example, the mafia – a criminal organisation which has no political ideology or basis but which uses the political systems of some countries to further its criminal ends.

[53] It is accepted that there is now a merging of political and criminal motives and activities within the ELN, causing at least one commentator to conclude that it is in the process of transforming itself into a "profit orientated criminal-economic enterprise" (ICG Report, pg. 20). However, we do not find that any such transformation has so altered the purpose of the ELN that we could conclude it has no significant political aims or purpose at present.

[54] The ELN's opposition to the landowner or 'ruling classes' includes, not unusually, its opposition to the exploitation of the country's natural resources by multinationals, and has focused intensely on the oil industry:

"The ELN's early ideology ... emphasised nationalism and "popular democracy", underpinned by strong opposition to foreign investment. The declared aim of the armed struggle was to take power and establish a "democratic and popular government" capable of liberating Colombia "from the international monopolies and the *criollo* oligarchy", while "guaranteeing full equality among [Colombians]" ...

Although buried in this rhetoric, intense focus on Colombia's energy section, particularly oil production, has always been a central element of the ELN political and military goals. ...The focus on energy resources provided the ELN with a useful way of distinguish itself from other insurgent groups emerging at the time ...

By 1995, more than 50% of the ELN's armed activities, mostly directed against infrastructure such a pipelines and pylons, was concentrated in the oil producing regions of Arauca, Boyaca, Norte de Santander and Santander."
 ("Colombia: Prospects for Peace with the ELN" International Crisis Group, 4 October 2002, (ICG report) at pages 6 and 7).

[55] By way of example, the ELN's activities in 1998 demonstrate both its political motives and its capabilities:

"In the first seven months of 1998 alone, the UC-ELN reportedly bombed the 770 kilometres long pipeline linking Colombia's eastern oil fields with the Caribbean port of Covenas 43 times. The UC-ELN targets the pipeline, not to contribute directly to military action or to gain a specific military advantage in the circumstances ruling at the time ... but to make a political point about its opposition to the way Colombia deals with the multinational corporations. In other words, these attacks "sabotage ... those who support the [neoliberal] opening and the financing of paramilitary groups".
(Human Rights Watch: Colombia and International Humanitarian Law: Guerrilla Violations of International Humanitarian Law (1998) at page 18.)

[56] Since 1986, the ELN and FARC guerrilla groups have bombed the oil companies pipelines in excess of 1000 times and kidnapped hundreds of oil executives and employees. This targeting the petroleum industry and those associated with it shows little signs of abating. On the contrary, the violence has escalated since July 2000 when the then United States President Clinton signed Plan Colombia – a significant aid package. (See further *US: Drugs, War and Oil Protection* 2 April 2001, Thad Dunning and Lesley Wirtsa, p4 (published on Humans Rights Watch website.)"

[66] The Authority now turns to evidence supportive of the position that the FARC has not merely abandoned its political ideologies and continues to see itself as having clear political objectives.

[67] The FARC website maintains an online "magazine" *Resistencia* [internet] <http://resistencianacional.org>. When accessed by the Authority in May 2003, this magazine had articles (in Spanish) about political policy, economics, the conflict in Colombia and human rights, among other topics. In the section entitled 'política' (meaning both politics and policy), there were articles discussing *inter alia*, elections, democracy and social justice. The articles are very clearly of a political nature, not only criticising the policies of their opponents but referring to their own policies and political (Marxist-Leninist) ideologies.

[68] Moreover, the FARC has established a new political movement the 'el Movimiento Bolivariano por la Nueva Colombia Bolivarian' (Movement for a New Colombia, also known as the Bolivarian Movement)). This group is reportedly inspired by the teachings of Simon Bolivar (the late Latin American independence leader (1783-1830) who fought for, and gained the independence of Bolivia, Panama, Ecuador, Peru and Venezuela). The FARC website (*ibid*) contains a link to a specific website for the Bolivarian Movement, with 'left wing' political references.

[69] An article from the FARC website, accessed on 5 May 2003, entitled "Political Framework, the Third Round" states:

"The FARC-People's Army, meanwhile, is holding high its arms, banners and proposals. With the policy of combining all forms of revolutionary struggle until political power is won, we insist on the search for solutions other than war to build paths to peace with social justice, reconstruction and reconciliation. We

are organizing the Bolivarian Movement for the New Colombia, a political project that in the coming years will be able to vie for the favour of the popular masses with its own candidates”.

(see: Resistencia No. 30 Editorial [internet]
http://www.farcep.org/pagina_ingles/Resistencia30/Web/tercera.htm).

[70] A letter on the above websites, from the leader of the FARC since its inception, Manuel Marulanda Velez entitled “Greeting from Manuel Marulanda Velez Bolivarian Movement for the New Colombia”, dated 29 April 2000, again refers to these political agendas [internet]
http://www.farcep.org/pagina_ingles/mbnc/greeting.html; see also,
<http://www.frso.org/campaign/colombia/bolivarian.html>.

[71] The Bolivarian Movement has been said to represent the FARC’s “new political effort” with its roots in the FARC’s former political movement, the Patriotic Union. An account of the launch of the Bolivarian Movement referred to the busing of 20,000 people to a farm in the rebel-controlled zone for an inaugural celebration. (see: “Rebels Launch Political Effort in Colombia” *Washington Post* (30 April 2000) (NEXIS)).

[72] In a detailed interview between journalists and the FARC Commander, Alfonso Cano, after the 2000 launching of the Bolivarian Movement, Cano denied that the FARC had shifted from Marxist-Leninist ideals to Bolivarian thought and stated, *inter alia*:

“We have revolutionary principles: We believe in socialism and the class struggle. We believe that capitalism is not the solution to the problems of humankind. We have deep-rooted convictions and have, from the Marxist-Leninist point of view, a methodology to analyze reality and be able to interpret what is happening in the world. This is in the heart and mind of each one of us”

(see “FARC leader says US aid to Colombia ‘war and intervention plan” *BBC Worldwide Monitoring* (6 July 2000) (NEXIS)).

[73] It is also noted that despite its significant past difficulties, the Patriotic Union Party (the “political party” which emerged as a specifically political wing of the FARC in the 1980s) does still exist, albeit in a clearly limited manner. In a reported search of its headquarters in May 2002, all that was reportedly found was “Marxist literature and other types of literature of a social nature” (see for example, “Police Search Headquarters of Patriotic Union Party” *BBC monitoring international reports* (19 May 2002) (NEXIS)).

[74] The Authority also notes that even after the virtual defeat of the Patriotic Union in the 1980s, and prior to the launching of the Bolivarian Movement in 2000, FARC has been referred to in terms of having a political profile. For example, the Colombian President Ernesto Samper (in office 1994-1998) “publicly recognised

the political character of the conflict [with the FARC] by denying that the guerrillas were simply a band of drug traffickers” (see: NACLA report on the Americas “*The Evolution of FARC: Revolutionary Armed Forces of Colombia*”, 1 September 2000 (NEXIS)).

[75] There is also, notably, some country information published by the UNHCR, specifically suggesting that those who refuse to “pay taxes” to fund the “political-military activities” of the FARC are perceived by the group as having an opposing political position. (See: UNHCR “*International Protection Considerations Regarding Asylum Seeker and Refugees*” (18 September 2002) [internet] www.unhcr.ch at paragraphs 44 to 47).

[76] The Authority also notes that the appellant was not, in its view, randomly targeted in the sense that he was just any civilian. He was targeted as a bus owner and therefore considered to be in a position to pay the “taxes” charged. In other words, he fitted a profile of person from whom the FARC expected to receive support, to fund their operations.

[77] The Authority concludes that one of the contributing factors leading to the risk of the appellant’s being persecuted is the political opinion which would be attributed to him by the FARC for his failure to comply with their demands and also, in his case, for having “denounced them” to the authorities.

[78] The Authority also adopts the reasoning relating to Convention ground as set out in paragraphs [48] to [57] of *Refugee Appeal Nos. 73361/02 and 73362/02* (19 June 2003). It also observes that its finding in regard to the Convention ground is consistent with the finding reached by the Authority (differently constituted) in *Refugee Appeal No. 71564/99* (14 October 1999), which appeal also related to the FARC as the agent of persecution.

No Internal Protection Alternative

[79] The Authority has not deemed it necessary to address in this appeal the indicia relating to the Internal Protection Alternative (IPA) (as articulated in *Refugee Appeal No. 71684/99* (29 October 1999)).

[80] While the appellant fears a non-state agent of persecution, country information makes it clear that the FARC is Colombia’s oldest, largest and most active guerrilla organisation, able to project its military capacity almost country wide, in both rural and urban areas. The group is financially self-sufficient. Its present strength comprises an estimated 17,000 fighters, organised in seven

regional *bloques* (blocks) and consisting of over 60 *frentes* (fronts) (see for example, UNHCR “*International Protection Considerations Regarding Asylum Seeker and Refugees*” (18 September 2002) [internet] www.unhcr.ch).

[81] As an indication of the wide sphere of control held by the FARC, a passage in the *Historical Dictionary of Terrorism* stated:

‘FARC’s deadliest offensive in over 10 years started on 30 August 1996 and by 31 December 1999 it was in effective control of over 50 percent of Colombia...and carried its operations into neighbouring countries such as Panama, Venezuela, and Ecuador. The increase in FARC’s activity and the inability of the Colombian government to contain it led President Andre Pastrana to invite FARC to renewed peace talks in 1998. FARC only agreed on the condition that the government surrender control to it over five central departments roughly the size of Switzerland. Although the government met this demand FARC leaders failed to meet with President Pastrana for the scheduled peace talks within this autonomous zone on 7 January 1999’...

(*Historical Dictionary of Terrorism ibid*, at 429)

[82] In June 2002 (during a time when it escalated its attacks on civilians, hundreds of mayors and other local officials), the FARC announced its stated objective of preventing all representatives of the state from functioning in every part of Colombia. (See for example, Human Rights Watch *World Report 2003: Americas: Colombia*).

[83] A recent UN report covering the 2002 year, referred to FARC as “pursuing their policy of attacking State institutions at all levels” and as having “stepped up their attacks” and “adopted new war strategies” (see: UN Economic and Social Council *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia*, E/CN.4/2003/13 (24 February 2003) 13);

[84] There is a lack of Government presence in several areas of the country and the Government itself has admitted that the effectiveness of its preventive measures “has been limited” (see: *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia (ibid)* p.19);.

[85] It is apparent that the FARC not only has strength of numbers, but sophisticated means of intelligence gathering and methods of communication.

[86] It is also apparent that the group already has the appellant’s and his family’s details.

[87] In this case, the appellant twice previously turned to the state for protection. Both times the state expressed a willingness, but an inability to protect him. The first time an investigation was attempted by the special police, but this was futile, due to a lack of co-operation from the other bus operators and drivers. Indeed, the

appellant's predicament worsened because it was then assumed that he had made the complaint and was now regarded as "a squealer".

[88] The second time the appellant complained, in desperation, the authorities somewhat unrealistically asked him to provide photographs and details of those threatening to harm him. When he indicated that this was practically impossible, the authorities frankly advised him that there was in fact nothing that they could do to protect him and his family and that he should think about leaving the country.

[89] The Authority does not consider that the state would be any better placed to protect the appellant now than in the past.

[90] The Authority observes that in one of its sources of country information, the office of the UNHCR was quoted in reference to the appellant's city (which the Authority has not identified in this decision, and thus it will not cite the exact reference). The spokesperson stated that in this particular city "prosecutors and investigators working on human rights cases were extremely vulnerable...suffering under crushing case loads, insufficient resources, poor equipment, no travel funds and constant tension related to the investigations themselves, which often targeted Colombia's most ruthless and dangerous people".

[91] It might be argued that the appellant may be seen as 'small fry' as far as the FARC is concerned, and someone who they might not go to great lengths to pursue. On the other hand, it is apparent that the notable ability of the FARC to fund itself would rely on its ensuring that persons such as the appellant, who are obstructive towards them, are ultimately not able to evade them. It stands to reason that the group would consider it necessary to pursue such persons, to send a clear message to the community at large.

[92] The appellant and his family lived in hiding prior to leaving Colombia. The oldest son, when school-aged, was kept at home, for safety. If they returned to Colombia and attempted to live in some other part of the country, they would be quite unable to lead normal lives for fear of serious harm. It would be realistically impossible for the family to resettle elsewhere and live anonymously.

[93] The family's situation in this regard would further be restricted by the geography of the country with its rugged mountainous areas which make much of it realistically uninhabitable. In addition, they would be affected by the humanitarian crisis in Colombia, with its estimated two million internally displaced people and severe economic recession. (See for example: UN Economic and Social Council *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia*, E/CN.4/2002/17 (28 February 2002);

and UNHCR Emergency and Security Service *Colombia: Internally Displaced Persons and the Conditions for Socio-economic Reintegration* (October 2002); "Safety of a Sort" *The Economist* 19 April 2003).

CONCLUSION

[94] For the above reasons, the Authority finds the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

.....
L Tremewan
Chairperson