

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76429

AT AUCKLAND

<u>Before:</u>	B L Burson (Member)
<u>Counsel for the Appellant:</u>	J McBride
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	7 & 8 April 2010
<u>Date of Decision:</u>	28 April 2010

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL) declining the grant of refugee status to the appellant, a national of Algeria.

INTRODUCTION

[2] The appellant arrived in New Zealand on 24 May 2009 and made a claim for refugee status on arrival. He was remanded in custody in Mount Eden Prison. On 21 July 2009, while still in prison, he was interviewed by a refugee status officer in respect of his claim for refugee status. By decision dated 8 October 2009 the appellant's claim was declined. The appellant duly lodged an appeal.

[3] He claims to be at risk from agents of the Algerian state for using his position as an *imam* in his local mosque to speak out against official corruption and to call for changes in the way Algeria is governed. The central issue to be determined in this appeal is the well-foundedness of the appellant's claim.

[4] What follows is a summary of the evidence presented on behalf of the appellant. An assessment follows thereafter.

THE APPELLANT'S CASE

The appellant's evidence

[5] The appellant was born in the early 1980s in Z, a small town in the Y province of Algeria. His family were wealthy landowners in the area and having descended from a long line of religious teachers and were a well-respected family. The appellant's paternal grandfather and great-grandfather were teachers of the Koran at local schools. His grandfather had been an employee of the Directorate of Religious Affairs (DRA). In addition, his grandfather was a *mujahedeen* because he had fought against the French colonial powers in the war of independence. As a result he was a highly respected *sheikh* (tribal elder) and was often called upon to mediate between parties in dispute in the area. One of the appellant's paternal uncles was also an *imam* at another mosque in Z.

[6] The appellant was brought up in a strongly religious environment where Islamic values and principles were instilled in him from a young age. When aged approximately 12 or 13, the appellant became increasingly interested in politics. He found himself drawn to television programming which featured the president of Algeria and members of parliament and began wondering about how a person could occupy these positions. His family, however, did not discuss politics generally with him and did not encourage this in any overt way.

[7] In approximately 2002, while still at secondary school in Z, the appellant began attending a library facility provided by the *Front de Libération Nationale* (FLN). The library contained books of general interest as well as material about the FLN. He developed a friendship with the library manager who was also the local head of the FLN in Z, and discussions they had fuelled the appellant's burgeoning interest in politics.

[8] With the encouragement of the library manager, the appellant formally joined the FLN in Z in early 2002. Thereafter, he began attending meetings of the FLN in Z. At the time, the FLN was the largest and strongest party in Algeria. The appellant, aspiring to become a member of parliament in the future so as to serve the Algerian people, thought that this would be an ideal vehicle to achieve his goal.

[9] In 2002, the appellant completed his secondary schooling and, in late 2003, enrolled in a university in Y. While at university in Y, the appellant lived in hostel accommodation. The appellant was elected as the hostel representative for the National League for Algerian Students (LNEA) which he had joined in 2004.

[10] In late 2003, the appellant also sat for and passed his exam to allow him to practise as an *imam* in a mosque. The appellant became an *imam* for two reasons. First, it allowed him to serve the spiritual needs of his local community. As a deeply religious person, this had inherent value. However, he understood that having the position of *imam* had an instrumental value in terms of furthering his political career. Becoming an *imam* would allow him to have close contact with people who he hoped would become his potential constituents in the future. By gaining their trust and respect as an *imam*, they would be more inclined to vote for him in any future elections.

[11] After a two-month training period, the appellant was assigned to the same mosque he had trained in and commenced his duties as an *imam*. He was employed by the DRA who paid his salary. He remained enrolled in university and divided his time between his studies and work as an *imam* where he conducted lessons and the *khodba* (Friday speech) at the mosque.

[12] In early 2004, the election campaign for the 2004 presidential election began. The appellant supported Ali Benflis who was the formal FLN candidate and someone who he believed understood the massive problems facing the country. By comparison, the incumbent president, Bouteflika, was someone who had been imposed on the Algerian people by the army and powerful groups in Algerian society. The appellant considered the president to be corrupt and no more than a puppet of these powerful groups who were only interested in lining their own pockets and not curing the many problems, both social and economic, Algeria faced. At the time, a split had developed within the FLN. Although Benflis was the official FLN candidate, a group of senior people within the FLN also persuaded the incumbent president to stand. Therefore, a new political party was formed with the objective of returning Bouteflika to power.

[13] The appellant became fully immersed in Benflis's election campaign. He did this in three main ways. First, he used his formal position as hostel representative to actively campaign for Benflis. He put up pro-Benflis election posters around the hostel and university campus. On one occasion he organised a large meeting under the auspices of the LNEA which actively encouraged students in the hostel to vote for Benflis and pointed out the weaknesses in the candidature of Bouteflika.

[14] Second, the appellant was appointed to be the campaign manager for the sub-office in his hometown of Z by the Benflis campaign office in Y. He obtained

one month's leave from his university studies to perform his duties which required him to co-ordinate the activity of other workers in the office ensuring that campaign literature and material was made available. In his role as local campaign manager, the appellant organised and was the main speaker at two rallies organised in the football stadium at Z in support of Benflis. On each occasion over 1,000 people were present. The appellant generally spoke of Benflis' programme for the future. He discussed the failure of the existing government to solve youth crime. He also touched on issues of corruption and unemployment generally.

[15] The third and final outlet for the appellant's activity was in the mosque. While the DRA had made it clear on his appointment that the appellant should keep his lectures and sermons relating only to matters of religious orientation and avoid all political concerns, the appellant became increasingly aware that the government itself was not playing by its own rules. Senior officials within the DRA were publicly and openly campaigning for the incumbent president. Also, the appellant became aware of things which convinced him that, as before, the old guard of the FLN aligned to Bouteflika and the generals in control of the military and security apparatus were using the power of the state to secure victory for Bouteflika in the 2004 elections. For example, he had friends from school who were in the armed forces who told him that forces personnel were being compelled to vote en masse for Bouteflika. He became aware that during the election campaign in his area, municipalities were opening halls and providing free food for those who attended campaign meetings held in support of Bouteflika and not those involved in supporting Benflis or other opposition parties. On a national level he noticed that Bouteflika was promising to give away huge sums of money, ostensibly for development, but in reality to shore up his election campaign.

[16] Seeing these things encouraged him to use not only his offices at the political level but also his role as an *imam* to support the candidacy of Benflis and seek change in Algeria. Over the remaining two months of the election campaign, the appellant used lectures and sermons in the mosque to deliver a message of the need for political change. In general, he began his lectures strictly in religious space referring to passages from the Koran or to stories of historical Arab and Islamic figures and then used these stories and passages to invite the worshippers and audience to vote for Benflis. His lectures often touched upon the proper role for rulers in Islamic society and how they should be concerned with the needs of the people. The appellant recalled a particular lecture he gave regarding the Islamic requirement for charity which he used as a springboard for discussing the social responsibilities of the state. The appellant explained to the worshippers that

while responsibility for the poor was everybody's responsibility, the state nevertheless had a particular responsibility to care for the poor. On another occasion the appellant spoke directly about corruption and that ministers reached their position only through accepting bribes.

[17] Although the appellant was careful to avoid doing so, from time to time he did mention Bouteflika by name. He recalls that on one occasion he spoke openly about Bouteflika being 'a toy' in the hands of the generals. He mentioned to his worshippers that the president was bound by certain rules that he must follow which limited his presidential authority. In particular, he stated that Bouteflika's powers could not be exercised without making decisions which were being cleared by the generals. He told his worshippers that the president should be able to use all his authority to resolve the problems in Algeria.

[18] He also insisted to the worshippers that words were not enough. For the appellant, words must be followed up by deeds and actions. It was not enough for him, as an *imam*, to preach responsibility to the poor without taking active steps to assist the poor in his area. Thus he instituted along with other *imams* in Z, a scheme whereby poor couples could share the costs associated with getting married with others. At the end of the Eid Festival, the appellant collected money from the worshippers and distributed this to the needy in his region.

[19] In much the same way, he believed that political parties should be about more than just words. The FLN was meant to be a politically democratic party and one of its main morals was "from the people to the people". Thus, democracy should be the main objective of the FLN in not just words but also deeds yet to his mind the ruling political elite were interested in it only as a word.

[20] A number of weeks before the election, the appellant received a summons at the family home to attend the local *gendarmerie* office. He went, as instructed, and was interrogated by three officers who accused him of spreading illegal and anti-state political ideology. They told him he was agitating people against the government and carrying on a political campaign in support of Benflis inside the mosque. The appellant did not admit or deny the allegations. One of the officers pressed his hand against the appellant's face and another pushed him. They told him that he would be taken before a court and warned him that what he was doing was "very dangerous". He was then allowed to leave.

[21] The appellant told his family what had happened and they warned him to be careful. While they had not encouraged or discouraged him from his political

activity, they now became concerned for his safety and told him that he should stop. While respecting their advice, the appellant was committed to pursuing his own political career and activities and continued with his lectures and speeches as before.

[22] On election day the appellant was an official election observer on behalf of the FLN in Z. However, when the time came for the votes to be counted, the appellant and the other election observers not aligned to Bouteflika's party were ejected by *gendarmes* from the polling booth.

[23] When the election result was announced, Bouteflika was declared the winner in their locality, despite Benflis being the overwhelmingly popular candidate in their area. The appellant noticed there were massive irregularities in his area. In particular, the total number of votes purportedly cast for Bouteflika in Z exceeded what he knew to be the total population. Also, upon closer examination people who he knew to be dead had somehow been registered to vote.

[24] In a Friday sermon shortly after the election, the appellant spoke openly against the fraudulent practices evident in the election in Z. When he arrived home that evening, he was informed by his father that the *gendarmes* wished to see both the appellant and his father at the station. The appellant and his father attended. When they arrived at the station the appellant and his father were briefly placed in different rooms during which time the appellant was verbally abused. When brought together in the same room, the appellant was admonished by the *gendarmes* for not listening to what they had said during his previous meeting with them and that he did not respect them. They informed his father to advise his son (the appellant) not to talk about the regime, the army or politics, either inside or outside the mosque. They told him he was too young to discuss such things. He and his father were then allowed to leave.

[25] The appellant now came under heavy pressure from his father, mother and paternal uncle who was also an *imam* in Z to stop. They told him bluntly that his activities were not only causing harm to himself, but also to the family's standing in the area. While the family were deeply religious they made sure that they did not stray over the religion/politics boundary. While respecting their opinion, the appellant remained undeterred.

[26] Following the second visit from the *gendarmes*, the appellant reduced his activity for the FLN. Soon after Bouteflika won the election there was a coup inside the FLN against Benflis and his supporters. A pro-Bouteflika person

became the general secretary of the FLN and ministers aligned to Benflis were removed from their cabinet positions. The appellant ceased attending any further meetings for the FLN although he retained personal friendships with the library manager and other pro-Benflis leaders in his locality who remained members of the FLN. The appellant decided not to terminate his membership of the FLN because he believed that, in due course, the reform-minded people inside the FLN, while at that time disempowered, would see a rise in their fortunes. At the end of the day, in the appellant's eyes, the FLN remained the strongest political party inside Algeria and remained the most appropriate vehicle for him to pursue a career in politics in the long term.

[27] The appellant continued in his role with the LNEA and involved himself in organising strikes and demonstrations by the students in relation to matters related to government educational policy. Also, at the end of 2004 the appellant changed his degree course. He realised that the degree he had been enrolled in would not assist him greatly in his political career and at that time he therefore switched to a degree which would better enhance his credentials among the population.

[28] The appellant also decided that his knowledge and information of blatant electoral fraud in the 2004 presidential election should not go to waste. He therefore began writing notes about what he had witnessed and heard in the run-up to the election. Over the course of time he came up with the idea of writing books. Using material taken from his speeches as an *imam*, the appellant conceived of writing two books. One was about Bouteflika and his role in relation to the regime which controlled Algeria and, in particular, the old school FLN leaders and the heads of the armed and security forces. Another book was about democracy in Algeria.

[29] While cutting back on his FLN activity, throughout the remainder of 2004 and 2005, the appellant remained an *imam*. He continued to touch upon matters of government policy and government inaction, albeit he did so with less frequency than he did in the run-up to the 2004 election. For example, the appellant spoke on corrupt practices within the banking system and also referred on one occasion to the importing of expired medicine into Algeria by the son of a general. From time to time the appellant's mosque was visited by an inspector from the DRA. However, these visits were of a more administrative nature whereby the inspector would collect donated money and the like. The inspector also sat in on the speeches and prayers but the appellant did not say anything controversial on these occasions.

[30] In early 2006, the appellant gave a particular speech about poverty and the obligation of rulers. He stated that Algeria's rulers were "sleeping" and "can't offer anything for the people". He referred to the vast amount of foreign reserve holdings held by the Algerian state and that, on an international scale, it was significantly wealthy in terms of its oil and gas deposits and iron ore reserves. He said that all of these factors showed that Algeria did not need very much to be a developed country, just "honest rulers". Approximately one to one and a half hours after the sermon finished, the appellant was visited by four men in uniform who manhandled him and pushed him outside the building. They yelled at him saying that he was discussing dangerous issues inside the mosque and that he was poisoning people's minds.

[31] Three days later, he received a letter from the DRA cancelling his contract with them to be the *imam* at the mosque. He telephoned the head of the mosque committee and informed him of this development. The appellant had an open relationship with the mosque committee. The mosque committee were members of the congregation and well aware of the matters he was discussing in the mosque. Because he was not just talking but implementing actions to improve the lives of people coming to the mosque, the mosque committee did not rebuke or interfere with the more political tone of his speeches.

[32] The head of the mosque committee visited him and informed him that they would not accept this. Two or three days later, they sent a delegation to the DRA to formally plead for the appellant to remain the *imam*. At this initial meeting, the DRA made clear the appellant's contract with them would not be renewed. For the next two months the appellant could not give any lectures or sermons in the mosque. Throughout this time the mosque committee went to the DRA to plead the appellant's case. After two months a compromise was reached. The DRA refused to reinstate the appellant as an employee assigned to his mosque. However they agreed that, if the mosque committee so wished, they could voluntarily hire the appellant's services themselves but, if they chose to do so, they would not receive any funding from the department to cover his costs and expenses. Furthermore, if they did wish to pay for the appellant privately, he could not make any reference to political matters in any of his speeches. The appellant agreed to this and resumed his work in the mosque.

[33] Throughout 2006/2007, the appellant stuck largely to religious topics. From time to time he made oblique references to social problems inside Algeria but refrained from mentioning the president by name or naming any other individual in

power or in any other position of authority connected to these issues. He did not name institutions or openly criticise the regime in any way.

[34] During this period, the appellant also began reading books by people who had written about the civil war in the 1990s and about Bouteflika to get information for his books. To this end, he also began speaking to friends and acquaintances. Over the course of a two or three year period between 2005 and 2008 he collected first-hand accounts relating to the issue of democracy in Algeria. His interviews touched upon corruption within the army, details of which he obtained from school friends who had become officers in the various branches of the armed forces. He had conversations with relatives who were involved in local municipalities in administrative capacities. He also conducted interviews with worshippers at his mosque who were supporters of the FIS (*Front Islamique du Salut* – an Islamic political party which won power in the 1991 elections which triggered an army-backed coup and the onset of the civil war) about their experiences of detention and mistreatment. He told them he wanted to record the information but did not expressly mention that he was wishing to publish a book. Through them he met a number of other FIS supporters who had been detained and tortured during the civil war who were in the Z area and collected their accounts as well.

[35] In 2008, the appellant decided that he could not sit by and maintain a silence in his role as an *imam*. In 2007, the government had announced that it would be seeking to amend the constitution to allow Bouteflika to stand for a third term as president. The constitutional arrangements at that time limited him to two terms in office. Moreover, he saw that youth crime was getting progressively worse and that corruption also was getting worse.

[36] Over the first five or six months in 2008 he spoke openly about various issues. He again referred to a loan taken out by a general to build the industrial complex that he had mentioned in 2004. He also referred to the fact that the sons of army generals were importing goods to the detriment of the Algerian economy and that if Algeria was to develop it needed to foster domestic industry. He told his congregation that there was a good chance that Bouteflika would be re-elected for a third term in office. One of the speeches the appellant gave during 2008 railed against the FLN leadership. He told the worshippers that all they were hearing was “revolution, revolution, revolution” when what they needed to hear about was “democracy”. He told them directly that it was time for a change in leadership.

[37] By 2008, the appellant had finished his university degree. He now believed that he should pursue higher education. A masters or doctoral degree combined with his FLN membership and contacts, his contact with the people as an *imam* should be augmented by publishing books which could bring him greater recognition.

[38] Sensing that his resumption of open political discussion in the mosque may mean the DRA would revoke his licence to work voluntarily at the mosque he decided to apply to become a teacher. He therefore sat the requisite exam. Upon checking the notification of his results, he saw that he had passed the exam as his name was included on a list of those passing. A few days later the appellant returned to the office at the education ministry to get further information about the time frame for commencing work as a teacher. While waiting, he checked the notice board but discovered that a new list had been prepared which omitted his name from the list of candidates who had passed. The appellant spoke to a number of minor officials who informed him that the notice had been posted by the manager of the office. The appellant tried to speak to the manager but the manager refused to see him and had a message passed to him that the appellant had simply failed the exam. The appellant, although unsure, suspects that the removal of his name was politically motivated because the authorities may have become aware of the anti-regime nature of some of his sermons in the mosque.

[39] In early September 2008, the appellant was given a letter addressed to him as the *imam* of the mosque by the mosque's caretaker. After completing his sermon and prayer the appellant opened the letter and was shocked to discover that it was, in fact, a death threat from a well known terrorist group called the Salafist Group for Preaching and Combat (now going under the name of the Al-Qaeda Organisation in the Islamic Mahgreb).

[40] The letter was brief but accused him of being a traitor and an enemy to God and state and abusing his position in the mosque. It accused him of sowing hatred between people and stated that this group was required to "shed his blood". The letter told him to stay inside his home and to be far away from mosques and to abandon his role as *imam* and all involvement in politics. If he did not, the group would action the verdict of death which had been passed on him for his past activities.

[41] In a state of shock, the appellant took the letter to the local *gendarmerie* office and informed them that he had received the letter from the caretaker.

Immediately the *gendarmes* summonsed the caretaker of the mosque and questioned him about how and when he had received the letter. The *gendarmes* told the appellant that they would investigate the matter and get back to him. After leaving the *gendarme* office the appellant returned to his home. That same evening he removed all of the notes and documents he had gathered and prepared in support of his books and took them to another location.

[42] He ceased attending the mosque and stayed inside the house. After he failed to attend the mosque as usual, the head of the mosque committee came to the house. He enquired as to whether there was any problem. The appellant told him that something had happened which meant he could no longer continue to act as the *imam*. The appellant did not divulge to the mosque committee that he had received the death threat because he thought that making this information known may complicate matters and compromise his safety further.

[43] In the days following receipt of the letter, the appellant had discussed what had happened with his family who were very concerned about his safety. In discussions with his family and reflecting further upon the matter himself, he began to increasingly suspect that the originators of the letter were the *Sécurité Militaire* – the Algerian intelligence services. They had long been suspected of infiltrating and controlling Islamic groups in Algeria as a means to justify their own powerful positions in Algeria. Coming to this realisation made the appellant and his family even more worried. The *Sécurité Militaire* was extremely powerful and could easily kill him no matter where he was in Algeria.

[44] His father therefore advised him that it would be safer to leave the country. The appellant had by this time obtained a genuine Algerian passport and arrangements were made for him to travel to Malaysia. The appellant had accumulated some savings through his employment. Using this money and obtaining money from his father the appellant purchased tickets for Malaysia and departed Algeria approximately two months after receiving the letter. Upon arriving in Malaysia, the appellant obtained a three-month visitor's permit. He extended his tourist visa on a further two occasions but on the last occasion was given a final extension requiring him to leave Malaysia in mid-2009.

[45] A few weeks prior to the expiry of his permission to stay in Malaysia, the appellant met a person who informed him about the United Nations High Commission for Refugees (UNHCR) office in Kuala Lumpur. The appellant went to the UNHCR office on three occasions trying to register as a refugee but each

time the protection officer was not there. Shortly before the expiry of his passport, the appellant obtained a false Kuwaiti passport. He had by now overstayed his visa in Malaysia by approximately three weeks. It was suggested to him that he should seek refugee status in New Zealand and, he therefore travelled to New Zealand using the passport. He claimed refugee status on arrival.

[46] The appellant has no doubt that if he had remained in Algeria and carried on with his activities both inside the mosque and outside, he would be killed by the security services. He firmly believes in the need for fundamental change in Algeria. Algeria has been controlled by a small group of citizens who were either early members of the military and political wings of the FLN or the upper echelons in the military security apparatus. Between them they control the president and use their positions of power to enrich themselves and their families at the expense of the well being of the Algerian public. The appellant is committed to achieving political change inside Algeria using the FLN as a conduit but augmenting his position via contact with the people directly as an *imam*, and publishing books. He could not continue to do so inside Algeria without exposing himself to death at the hands of agents of these powerful groups linked to the Algerian state.

Documents and submissions

[47] On 31 March 2010, the Authority received from counsel detailed opening submissions in support of the appellant's case. Attached to the memorandum was a fresh 30 page statement comprising some 112 paragraphs from the appellant expanding on the evidence he had given before the RSB. Counsel also provided:

- (a) a chronology;
- (b) maps showing Z's location;
- (c) a copy of a brief statement from the caretaker of the mosque confirming that he had received a letter which he handed to the appellant in respect of which he was later summonsed for questioning by the *gendarmes*;
- (d) a copy of two administrative documents from the mosque where the appellant was acting as *imam* confirming the appellant was the *imam* at the mosque and the identity of the provider of the statement as the caretaker of the mosque; and

- (e) a bundle of country information relating to the human rights situation in Algeria.

[48] On the morning of 7 April 2010, the Authority received a further bundle of documents from the appellant comprising:

- (a) a letter from the DRA confirming the appellant's appointment as *imam* at the mosque;
- (b) various documents relating to the land holdings of the appellant's father;
- (c) identify cards and other certificates belonging to the appellant's uncle issued by the DRA confirming his appointment as a *imam*;
- (d) documents pertaining to the appellant's paternal grandfather relating to his membership of the FLN and his *haj* passport;
- (e) copy of identity cards belonging to the appellant's father and brothers;
- (f) Student identity cards belonging to the appellant in relation to his first university course; and
- (g) documents relating to the appellant's brother's business.

[49] The Authority also received an item of country information, sourced by the appellant, relating to a senior figure within the Salafist Group for Preaching and Combat who originated from the appellant's district.

[50] At the opening and closing of the hearing, counsel made extensive oral submissions. Counsel submitted that the appellant, as a young, fervent, democratically-minded person from a well known and respected religious family in the locality posed, and would continue to pose, a significant irritant to the vested power interests which control Algeria. The chronology of problems faced by the appellant, he submits, is entirely logical and consistent with a state apparatus seeking to apply increasing pressure on the appellant to be quiet. Whereas, the authorities were first content that minor harassment from the *gendarmes* and hoping that pressure from his family would cause the appellant to refrain from getting involved in issues such as corruption, the appellant had proven himself to be not so pliable. His persistence then led to the authorities "upping the ante"

which led to his dismissal but the insistence of the mosque committee that he continue as *imam* meant that this was only partially successful. When the appellant, after a period of two years, reneged on his agreement with the authorities and again began to engage in discussion about politics in his lectures and *khodba*, the authorities issued a death threat to pressure him into silence. Counsel submits that against this background the risk to the appellant is demonstrable and all too real.

THE ISSUES

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

"... owing to 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."

[52] 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

Credibility

[53] The Authority heard extensively from the appellant over the course of two full days of hearing. His evidence was spontaneous, detailed and overwhelmingly consistent with what he had said previously. He was able to speak at length and in great detail about the various episodes that caused him to flee Algeria as well as speaking credibly about his underlying political beliefs and convictions. He impressed as a young man with highly developed and nuanced political views with a clear sense of what was needed to improve the lives of ordinary Algerians.

[54] His demeanour and interactions with the Authority were forthright, strident and entirely consistent with his claim to be a person who was not afraid to question persons in positions of authority. Finally, credible documentary evidence corroborated key aspects of the appellant's account.

[55] As a result of the above, the Authority unhesitatingly accepts the appellant as a credible witness. His account is accepted in its entirety.

Country information

The general nature of government in Algeria

[56] The paper by Hugh Roberts "Demilitarizing Algeria" *Carnegie Papers No 86*, Carnegie Endowment for International Peace (May 2007), helpfully provided by counsel, contains a useful summary of the wider political and social backcloth by which the appellant's claim for refugee status is to be considered. While Roberts notes, at p2, that since becoming the Algerian President in April 1999, Bouteflika has achieved substantial success in several key areas where his predecessors had failed:

In terms of internal reform, however, the balance sheet is, at best, ambiguous and controversial. The system of formal political pluralism introduced in 1989 was preserved by the military-dominated regime throughout the 1990s, and remains in being today. Formally contested elections have been held at regular intervals, in 1995, 1999, and 2004 for the presidency of the republic and in 1997 and 2002 for the national, regional and municipal assemblies....Widely perceived as authoritarian in his personal outlook, Bouteflika has chosen to live with this pluralist system while working around it. A variety of parties, some of them Islamist, remain legal and are represented in parliament, but their capacity to offer an alternative to the regime has been reduced to zero. At the same time, Bouteflika's determination to restore the authority of the presidency has entailed the curbing of press freedom – a number of outspoken journalists have been jailed as a lesson to others – and of other freedoms (notably of trade unions), while the state of emergency introduced in February 1992 has been routinely renewed and is still in force.

It would be one-sided, however, to consider these developments as a simple regression. Bouteflika's principal purpose has been to restore coherence to the executive branch of the state by reestablishing the presidency – in place of the army high command – as the supreme arbiter of policy debates and conflicts of interest. In doing this he has been taking on the vested interests of the coterie of senior generals who became a law unto themselves during the 1990s, and he has been steadily maneuvering them off the political stage.

[57] In conclusion, at p19, Roberts argues that:

In the longer term, the necessary condition for democratization is that the Algerian legislature acquire important decision-making powers. Only if this happens will the legislature be able to hold the executive to account (and thereby curb corruption) and, by so doing, guarantee the independence of the judiciary. Only if the national parliament becomes a real locus of decision making, in which the major interests in society need to be effectively represented, can social pressure ensure that elections are wholly free and fair and political parties – the kind necessary to a democratic system of alternating governments – develop. And only if the elected representatives of the people become the source of government mandates can the demilitarization of the Algerian political system be definitive.

For the moment, none of this is in prospect. The high oil price and resulting buoyant revenue has given the “distributive state” in Algeria a new lease on life. As a result, the regime's capacity to co-opt opposition and buy social peace is high and the effective pressure for fundamental institutional reform is low. The most that can be expected in the short term is that Bouteflika's provisional success in restoring order is preserved and that the Algerian political class and intelligentsia are able to use the continued breathing space this offers them to reflect on and draw the right lessons from the dramatic experience of the period since 1988.

(emphasis added)

The role of the security services (DRS)

[58] Roberts also observes (at pp10-11) that, while throughout his first five-year presidential term Bouteflika was able to bring the army high command under presidential control, there is reason to doubt that the presidential (that is, civilian) authority over defence establishment is fully secured because, such control as does exist, does not extend in practice to the intelligence services. Roberts refers to:

The enormous power of the intelligence services has long been the open secret of Algerian political life. ...Already a pervasive presence in Algerian political life under Presidents Boumediène and Chadli Bendjedid, the intelligence services acquired even greater influence during the 1990s. The exigencies of the counter-insurgency campaign led, in particular, to the expansion of the activities and personnel of the *Direction du Contre-Espionnage et de la Sécurité Interne* (DCE) within the DRS.

...

What is certain, however, is that the political power of the services since the onset of the violence in 1992 has been greater than at any previous point in the history of independent Algeria. Since 1990, Algeria has had five heads of state (Chadli, Boudiaf, Kafi, Zeroual, and Bouteflika), eleven heads of government and four defense ministers, but throughout this entire period the DRS has been commanded by General Mohamed Mediène and the DCE has been commanded by General

Smaïl Lamari. During the protracted “dual power” impasse of 1993-1998, when the Zeroual Presidency was engaged in a continuous trial of strength with the General Staff, it was Mediène who was the effective arbiter of the conflict. That the DRS eventually arbitrated in favour of Bouteflika against Chief of Staff Mohamed Lamari in 2004 is clear. But it is by no means certain that the provisional taming of the General Staff signified a reduction in General Mediène’s influence to the presidency’s benefit or that any real progress has been made towards holding the intelligence services accountable to anyone other than their own commanders.

[59] As to the short-term future, Roberts argues that, with the recovery of the state’s financial position based on hydrocarbon revenue, the regime has been able to resume to some extent its old developmental role in upgrading the national infrastructure which has contributed to a partial recovery of popular legitimacy. He cautions however, at p16 that:

The restoration of the power of the presidency has been premised on a new balance between the military and civilian wings of the Algerian oligarchy. The excessive power of the regular army commanders has been curbed; the influence of the interior ministry has increased; the role and size of the police force has grown; and the president’s personal authority over the government has been reasserted.

[60] Commenting, at pp17-18, on the significance of the resurgence in activity of the Salafist Group for Preaching and Conversion (aka Al-Qaeda Organisation in the Islamic Maghreb) Roberts voices concern that this resurgence could “furnish a pretext for army commanders to try and asserts their general hegemony over the Algerian state in the name of the global war on terrorism at the expense of presidential authority”. He notes in relation to the intelligence services:

The extraordinary importance and power they have acquired over the last fifteen years has been in large part a function of their role in combating the Islamist insurgency. A clear implication of the definitive ending of the violence is the reduction of their influence to its previous, moe limited, proportions. Equally clearly, the resurgence of terrorism, if it continues, will have the effect of sustaining and buttressing the political power of the intelligence services indefinitely. That can only work to postpone or subvert the possibility of real political reform in the medium and longer term, insofar as it hinges for the time being on the restoration of the presidency.

[61] As regards the appellant’s claim that the likely source of the death treat was elements within the Algerian intelligence apparatus which have a history of infiltrating Islamic groups, country information also supports this contention. Thus Roberts, observes

The conduct of the DCE in combating the Islamist insurgency has long been a matter of the greatest controversy. That it actively infiltrated the Islamic armed movements is common knowledge and not, in itself, surprising. What has been at issue in the controversy is whether this infiltration has sought to bring the insurgency to an end or, rather, on the contrary, manipulate it for unavowed and unavowable ends.

[62] Similarly, in *Refugee Appeal No 74540* (1 August 2003), the Authority examined in detail the relationship between the military and security apparatus and civilian governance structures in Algeria. An expert report was commissioned from Professor Joffé and the decision quoted extensively from this report. Commenting on the activities of the DRS and, in particular, its infiltration of jihadist groups, Professor Joffé stated, as recorded at para [57] (references omitted):

The situation is complicated by the fact that there is considerable evidence that the original GIA was infiltrated by the Algerian army's military security service, under the command of General Mohamed "Tawfig" Mediène. This is the most occult part of the army structure and the least accountable and has, virtually since its creation by Abdelhafidh Ben Tobbal during the war of independence between 1954 and 1962, exercised a dominant and sinister influence over the political process in Algeria. The result has been that, since the mid-1990s, many of the GIA's activities have been indirectly controlled by the security services and have been used to discredit the movement overall. There has also been evidence of direct exploitation of these Islamist groups, often for personal advantage. This was particularly evident after 1994, when land privatisation proposals, required by the IMF economic restructuring programme, resulted in violent land clearances especially on the edges of major towns where land values increased because of potential building demand. There is also growing evidence that the army was engaged in counter-intelligence operations that involved the killing of civilians, camouflaged as killings by Islamist groups, as well as punishment killings of large numbers of civilians. The worst massacres occurred in 1997 and 1998 in the outer suburbs of Algiers – Beni Messous and Bentahla being perhaps the best-known – and around and within the town of Blida.

Many foreign governments, including the British government are aware of these unsavoury links and, as was revealed during the *Regina versus Sofiane Kebilene, Farid Boukemiche and Sofiane Souidi* case in February 2000, the army has been massively implicated in human rights abuses against the civilian population. Evidence of its activities has now been published in France, in a book written by a former Algerian army officer, Habib Souaidia, entitled *La Sale Guerre* and which was published in February 2001 by Editions La Découverte in Paris. This study confirms the arguments of the many independent witnesses, including the author of *Qui a tué à Bentahla?*, Nesroulah Yous in 2000 also published by Editions La Découverte, and the contributors to *An inquiry into the Algerian massacres*, published by Hoggar Press in Geneva in 1999, who have made similar claims over the years, as well as evidence provided by a group of former army officers based in Madrid who have repeatedly warned of the army's culpability for such actions over the past five years, the *Mouvement Algérien des Officiers Libres* (MAOL). Further information has emerged from a new book by Hisham Aboud, a former *Securité Militaire* officer – *La mafia des généraux*, published by Editions J.C. Lattès in Paris in February 2002.

Human rights abuses and impunity

[63] In *Refugee Appeal No 74540* the Authority also observed how a climate of impunity exists for those involved in perpetrating human rights abuses during the civil war. The Authority noted (references omitted):

[59] The actual number of deaths as a result of the conflict since January 1992 is not able to be stated with certainty. In 1999 President Bouteflika acknowledged an official death toll of some 100,000 persons, although this figure is thought by

some to be a considerable under-estimate. In subsequent years the rate of killing has subsided though continues around 1-200 per month.²⁴

[60] Amnesty International maintains a dossier on 4,000 persons who have disappeared after being taken into custody. It acknowledges that the true figure may be substantially higher. Concerning estimates of the number of disappeared, Human Rights Watch in its February 2003 report states:

A human rights commissioner appointed by President Bouteflika in late 2001, Moustapha Farouk Ksentini, has been speaking with disarming candor on state responsibility for the "disappeared." "My conviction is that the majority of the 'disappeared' had nothing to do with armed groups," he told *El-Watan*, rejecting one of the claims often made by officials to deflect security force responsibility. "I think there are 7,000 to 10,000 cases total, maybe as many as 12,000," Ksentini told Human Rights Watch in November 2002. He made clear he was referring to cases for which the security forces and their allies were responsible. To date, said Ksentini, the government had elucidated no cases of "disappearances" and the justice system "had not done its job" in a single case.

[61] Arbitrary detention and summary executions of those suspected of being linked to armed groups has been widespread, while torture and ill-treatment of detainees by the security forces remains endemic. Such abuses continue to this day, albeit on a reduced scale, in what appears to be a climate of almost total impunity. According to Amnesty International:

Despite the urgent need, no independent and impartial investigations have taken place into the thousands of killings, massacres, "disappearances", abductions, instances of torture, extra-judicial executions and deliberate and arbitrary killings of civilians which have occurred in recent years – and which, though on a lesser scale, continue to occur.

[62] Amnesty reports that the regime's record of blocking scrutiny of the crisis from outside (including imposing serious restrictions on access for independent international observers) remains unchanged as does its use of the "counter terrorism" argument to justify massive human rights violations.

[64] The lengthy Amnesty International report, *A Legacy of Impunity: A Threat to Algeria's Future* (30 March 2009) MDE 28/001/2009 also documents the substantial and significant history of abuse during the civil war in the 1990s and beyond and makes clear that the issue of impunity for these acts remains an unresolved issue. Commenting on the human rights legacy of the civil war the report comments, at pp6-7:

As Algeria is preparing for its third multi-party presidential elections since the end of the worst of the violence that ravaged the country in the 1990s, the failure to adequately address the legacy of grave human rights violations and abuses in its context continues to undermine any prospects for genuine national reconciliation and lasting peace. Nearly 10 years have passed since the Algerian authorities began to introduce amnesty measures with the stated intention to "turn the page" on the "national tragedy" that took up to 200,000 lives according to official estimates.

...

The security forces and, later, state-armed militia (referred to by the authorities as "legitimate defence groups", "self-defence groups" or "patriots") committed massive human rights violations, including extrajudicial executions and other unlawful killings, enforced disappearances, secret and arbitrary detentions and torture and other ill-treatment of thousands of real or suspected members or supporters of armed groups. Most of the crimes were never investigated and the perpetrators were never held to account.

Far from providing the hundreds of thousands of victims, survivors and their families with truth, justice and reparations, amnesty measures introduced from

1999 onwards further entrenched a climate of blanket impunity to the perpetrators of serious crimes under international human rights and humanitarian law. Little has been done to ensure non-repetition of grave human rights violations and to introduce needed judicial and institutional reforms. This failure to combat impunity and address the structural framework that allowed for such grave violations of human rights to occur not only leaves a society unable to move on and heal from the legacy of a decade of widespread violence, but also fails to prevent further human rights violations from taking place.

Application to the appellant's case

[65] By reason of his actions both inside and outside the mosque, the appellant has openly challenged the corrupt practices in Algeria which have benefited the ruling political elite. He believes that, to take full advantage of its natural resources for the betterment of the Algerian people, there needs to a radical overhaul in the way Algeria is governed and aspires to this by way of a political career in the Algerian legislature. In addition, he has begun conducting interviews with a wide number of people in his locality as regards Bouteflika as a suitable president and the concept of democracy in Algeria. In so doing he had touched upon sensitive topics such as corruption in the army, and the arbitrary detention and torture of persons believed by the security forces to be supporters of the FIS during the civil war. While unsure as to whether or not his book writing is known to the authorities, the collection of this material from a wide variety of sources was not something that he generally kept secret.

[66] Country information establishes that the likely authors of the letter containing the death threat are elements within the Algerian state security apparatus opposed to the appellant's activities. These elements are, as counsel submits, likely to take an exceedingly dim view of any continued activity of a political nature by the appellant.

[67] The Authority is satisfied that, having tried unsuccessfully to warn him off his task by means of family pressure, verbal threats and interference with his employment as a public official, should the appellant continue with his activity there is a real chance that he will be arbitrarily killed. This easily amounts to a real risk of him being persecuted. These activities by the appellant amount to an exercise of his right under Article 19 International Covenant on Civil and Political Rights 1966 (ICCPR) to freedom to hold opinions without interference and to freedom of expression. The demand that he cease all political activity *whether inside the mosque or outside* or be killed amounts is such a blanket and substantial interference as to amount to denial of the core of his article 19 rights. It also amounts to a denial of the core of his right under Article 25(a) ICCPR to take

part in the conduct of public affairs in Algeria. His predicament easily qualifies as 'being persecuted' as that term is cogently explained in the Authority's decision in *Refugee Appeal No 74665* (7 July 2004) at [56]-[79].

[68] The first principal issue is answered in the affirmative.

Nexus to Convention ground

[69] There is no doubt that his actions inside the mosque are based upon his firmly held opinions. The appellant's predicament is plainly being contributed to by opinions and activities held and carried out by the appellant of an overtly political nature, even if carried out and dressed up to some extent as matters of religion. His political opinions thus directly cause him to be at risk of being persecuted in Algeria easily crossing the required threshold – see here discussion in *Refugee Appeal No 72635/01* [2003] INLR 629 at [162]-[179]. The second principal issue is answered in the affirmative.

CONCLUSION

[70] For the reasons mentioned above, 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.

"B L Burson"

B L Burson
Member