



RPD File No. / N° de dossier de la SPR : TB6-18975
TB6-19010 TB6-19011 TB6-19189

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX XXXX XXXX XXXXXXXXX XXXX XXXX XXXXXXXXX XXXX XXXX XXXX XXXXXXXXX XXXX XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	May 28, 2018 August 27, 2018 September 12, 2018	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision and reasons	October 15, 2018	Date de la décision et des motifs
Panel	M. A. McColl	Tribunal
Counsel for the Claimant(s)	Adela Crossley	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
Designated Representative(s)	XXXX XXXX XXXX XXXX	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du (de la) ministre

2018 CanLII 145577 (CA IRB)

REASONS FOR DECISION

[1] This is a decision in the claim of XXXX XXXX XXXX XXXX (hereinafter referred to as the “principal claimant”), her husband, XXXX XXXX XXXX XXXX (hereinafter referred to as the “male claimant”) and her children, XXXX XXXX XXXX (hereinafter referred to as the “female minor”) and XXXX XXXX XXXX XXXX (hereinafter referred to as the “male minor”) (hereinafter collectively referred to as the “minor claimants”) who are all claiming refugee protection pursuant to section 96 and 97 of the *Immigration and Refugee Protection Act* (IRPA).¹

[2] I heard these claims jointly pursuant to Rule 55 of the Refugee Protection Division Rules.² In addition, the IRPA requires the designation of a representative for all claimants less than 18 years of age.³ For the purposes of these claims for refugee protection, the Refugee Protection Division (RPD) appointed the principal claimant to be the Designated Representative for the minor claimants.

[3] On January 13, 2017, in accordance with Rule 26(1), the RPD notified the Minister that 1F(a) exclusion may apply in this case.⁴ The Minister intervened on February 10, 2017 and applied for a change in date and time so that the Canada Border Services Agency (CBSA) could investigate possible inadmissibility issues under section 35 of IRPA.⁵ On May 19, 2017, the Minister advised that the CBSA had concluded their investigation regarding the male claimant’s inadmissibility to Canada and that this issue will not be pursued by them.⁶ Further, the Minister withdrew their intervention.⁷

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c.27, as amended.

² *Refugee Protection Division Rules*, SOR/2012-256.

³ *Immigration and Refugee Protection Act*, S.C. 2001, c.27, as amended.

⁴ Exhibit 12.

⁵ Exhibit 13.

⁶ Exhibit 8.

⁷ Exhibit 8.

Allegations

[4] The claimants are a family from XXXX, Antioquia, Colombia. The male claimant is a retired XXXX of the Colombian National Police and the principal claimant is a XXXX. The female minor is five years old and the male minor is three years old.

[5] The male claimant alleges that he joined the Colombian National Police in 1991 as a XXXX and advanced through the ranks. He became a superior officer in 2005 by becoming a XXXX and, in 2010, he became a XXXX XXXX. Finally, he was promoted to a XXXX in 2015. The claimants have lived in various places throughout Colombia as a result of the transfers received by the male claimant as his career advanced. For the majority of his career, the male claimant worked in zones in high conflict with the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN).

[6] The claimants allege that, in XXXX of 2014, the male claimant took the position as the XXXX XXXX of the Police Department in XXXX. While holding this position, he became a military target of the ELN.

[7] The claimants allege that, in XXXX of 2016, the male claimant took the position as the XXXX XXXX of the Police Department in XXXX. Shortly after his arrival, there was an Intelligence Alert indicating that the ELN intended to take action against XXXX of the Colombian National Police or their immediate families. The claimants allege that, as a result of this alert, the principal claimant and the minor claimants moved to XXXX straightaway and the male claimant put in his request to retire. The male claimant retired, over four months later, on XXXX XXXX XXXX 2016.

[8] After retirement, the claimants allege that the male claimant began to research a business he wanted to start in Antioquia. The male claimant wanted to start a business XXXX XXXX from the rural north of the department to XXXX. The claimants allege that the male claimant travelled throughout the department to identify suppliers and hand out his phone number.

[9] On XXXX XXXX, 2016, the claimants allege that the male claimant received a threatening telephone call from the ELN. This caller stated that he knew what the male claimant

was doing in the area and that he does not belong there. The male claimant alleges that he was told that he had 24 hours to leave the area.

[10] The next day, on XXXX XXXX, 2016, the claimants allege that the male claimant received another telephone call wherein the caller threatened to kill his family because the male claimant did not leave the area. The claimants allege that the male claimant spoke to the XXXX XXXX of the Police Department in XXXX, made a report with the Office of the Attorney General and made a Request for Protection. They immediately went to Medellin, Antioquia to live with a friend.

[11] The claimants left Colombia, five days later, on XXXX XXXX, 2016 and flew to the United States of America where they stayed, until they entered Canada on XXXX XXXX XXXX 2016 and made a claim for protection at the port of entry.

[12] On XXXX XXXX, 2016, the claimants allege that a neighbour has informed them that individuals have come by looking for them on two occasions.

[13] The claimants allege that they cannot return to Colombia because their lives are in grave danger.

Determination

[14] I find that the male claimant is not a Convention refugee or a person in need of protection because there are serious reasons to consider that the male claimant has committed a crime against humanity. Therefore, I find that the male claimant is excluded from claiming protection pursuant to Article 1F(a) of the 1951 Convention Relating to the Status of Refugees and section 98 of IRPA.⁸

[15] With respect to the principal claimant and the minor claimants, I find that these claimants are not Convention refugees as they do not have a well-founded fear of persecution for a Convention ground in Colombia. Further, I find that they are not people in need of protection as

⁸ *Immigration and Refugee Protection Act*, S.C. 2001, c.27, as amended.

their removal to Colombia would not subject them personally to a risk to life, to a risk of cruel and unusual treatment or punishment or to a danger of torture.

[16] I will largely address these claims separately below.

Analysis

Have the claimants established their identities?

[17] The claimants' identities are established by the supporting documentation filed; namely, certified copies of their passports.⁹ I am satisfied, on a balance of probabilities, that these claimants are Colombian.

The Claim of the Male Claimant

[18] Article 1F(a) specifies that a person is to be excluded from making a claim for refugee protection in Canada when there are serious reasons for considering that the individual committed a crime against peace, a war crime, or a crime against humanity.¹⁰

[19] I find that the male claimant is excluded from making a claim in Canada because there are serious reasons to consider that, as a high ranking police officer within the Colombian National Police, who led operations against guerrilla groups, the male claimant either committed a crime against humanity or was complicit in the commission of a crime against humanity.

[20] The test for complicity is that there must be serious reasons for considering that the male claimant voluntarily made a significant and knowing contribution to the organization's crime or criminal purpose.¹¹

⁹ Exhibit 1, Passports.

¹⁰ 1951 Convention Relating to the Status of Refugees, 189 U.N.T.S. 2545, entered into force on April 22, 1954 and the 1967 Protocol Relating to the Status of Refugees, 606 U.N.T.S. 8791, entered into force on October 4, 1967.

¹¹ *Ezokola v. Canada (Citizenship and Immigration)*, [2013] 2 S.C.R. 678.

Colombian National Police and Crimes against Humanity

[21] *The Crimes Against Humanity and War Crimes Act* defines the meaning of crimes against humanity as murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.¹²

[22] The Colombian National Police is the national police force of Colombia. It is responsible for internal law enforcement and is under the jurisdiction of the Ministry of Defense.¹³ The National Police is the only civilian police force in Colombia. Military units sometime provide logistical support and security for criminal investigators to collect evidence in high-conflict or remote areas; but largely speaking, it is the Colombian National Police who are responsible for law enforcement and maintenance of order within the country.¹⁴

[23] The Colombian National Police have been involved in forced disappearances, extrajudicial killings, sexual violence and torture.

[24] The Unit for the Victims' Assistance and Reparation, created in 2011, recorded approximately 8.5 million victims for the five-decade duration of the armed conflict. This included approximately 363,000 victims of threats, 23,000 victims of sexual offences, 168,000 victims of enforced disappearance, 7.3 million victims of forced displacement and 11 million victims of anti-personnel mines.¹⁵ These numbers are the total number of victims at the hands of all parties to the conflict, including security forces like the police.

¹² *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24

¹³ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 2.1: Colombia. Country Reports on Human Rights Practices for 2017. United States. Department of State. 20 April 2018.

¹⁴ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 2.1: Colombia. Country Reports on Human Rights Practices for 2017. United States. Department of State. 20 April 2018.

¹⁵ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 2.4: Colombia. Amnesty International Report 2017/2018: The State of the World's Human Rights. Amnesty International. 22 February 2018.

[25] Forced disappearance involves the deprivation of liberty of a person in whatever form, followed by concealment and refusal to acknowledge the deprivation or to give information on his whereabouts.¹⁶ Sometimes, the disappearance is a temporary phenomenon in order to terrorize, that may culminate with the release of the victim. On other occasions, retention was only a prelude to his assassination, followed by the disappearance of the body, thus, making it difficult to establish the whereabouts of the person who was responsible for his death.¹⁷

[26] Historically, Colombia has one of the world's highest levels of forced disappearances,¹⁸ showing the systematic use of this tactic by both paramilitary groups and state agents, like the police. In the hearing on human rights and the peace process held in December 2016, it was indicated that efforts by the State have not translated into a real, effective, and lasting response by the State to fight impunity with respect to forced disappearances.¹⁹

[27] The approach to the forced disappearance investigations address the cases under the responsibility of the paramilitary groups; however, the responsibility for forced disappearances involve members of the Armed Forces and security agencies of the State, like the police.²⁰ There has been no progress on the part of the Office of the Procurator General of the Nation in disciplinary investigations on the responsibility of public servants, both those with highest-level responsibilities and lower-ranking public servants.²¹ This constitutes discrimination by the Public Ministry against victims disappeared by state agents.²²

¹⁶ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 1.8: Colombia: Humanitarian Situation Infogram, II Semester of 2017. United Nations. Office for the Coordination of Humanitarian Affairs. 14 September 2017.

¹⁷ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 1.8: Colombia: Humanitarian Situation Infogram, II Semester of 2017. United Nations. Office for the Coordination of Humanitarian Affairs. 14 September 2017.

¹⁸ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 1.5: Colombia. The World Factbook. United States. Central Intelligence Agency. 10 April 2018.

¹⁹ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 2.11: Columbia. Chapter V - Follow-Up on Recommendations made by the IACHR in its Country and Thematic Reports. Annual Report of the Inter-American Commission on Human Rights 2016. Organization of American States. Inter-American Commission on Human Rights. 15 March 2017.

²⁰ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 2.11: Columbia. Chapter V - Follow-Up on Recommendations made by the IACHR in its Country and Thematic Reports. Annual Report of the Inter-American Commission on Human Rights 2016. Organization of American States. Inter-American Commission on Human Rights. 15 March 2017.

²¹ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 2.11: Columbia. Chapter V - Follow-Up on Recommendations made by the IACHR in its Country and Thematic Reports. Annual Report of the Inter-

[28] With respect to extrajudicial executions by the security forces in Colombia, these crimes continue to be reported; however, they have recently been reported in fewer numbers than during the administration of President Álvaro Uribe (2002-2010).²³ The Office of the Attorney General has reportedly failed to make progress in bringing to justice most of those responsible for these crimes, especially senior officers.²⁴ Therefore, while some state agents have been held responsible for extrajudicial executions, senior officers, like the male claimant, have enjoyed impunity. So, while I acknowledge that the male claimant has never been prosecuted for crimes against humanity, this is consistent with the country conditions which indicate that senior officers largely go unpunished for these types of crimes in Colombia.

[29] The most well-known extrajudicial killings in Colombia were the false positive extrajudicial killings, in which thousands of civilians were killed and falsely presented as guerrilla combatants in the late 1990s to late 2000s.²⁵ False positive extrajudicial killings were a practise used by state agents, including both military and police.²⁶

[30] Also, sexual violence was a widespread and systematic practice in the context of the internal conflict.²⁷ Sexual violence was a practice used by all actors, including state security

American Commission on Human Rights 2016. Organization of American States. Inter-American Commission on Human Rights. 15 March 2017.

²² Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 2.11: Columbia. Chapter V - Follow-Up on Recommendations made by the IACHR in its Country and Thematic Reports. Annual Report of the Inter-American Commission on Human Rights 2016. Organization of American States. Inter-American Commission on Human Rights. 15 March 2017.

²³ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 1.7: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia. United Nations High Commissioner for Refugees. September 2015.

²⁴ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 1.7: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia. United Nations High Commissioner for Refugees. September 2015.

²⁵ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 2.1: Colombia. Country Reports on Human Rights Practices for 2017. United States. Department of State. 20 April 2018.

²⁶ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 2.11: Columbia. Chapter V - Follow-Up on Recommendations made by the IACHR in its Country and Thematic Reports. Annual Report of the Inter-American Commission on Human Rights 2016. Organization of American States. Inter-American Commission on Human Rights. 15 March 2017.

²⁷ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 2.8: Colombia: Human Rights and the Peace Agreement: Amnesty International Submission for the UN Universal Periodic Review, 30th Session of the UPR Working Group, May 2018. Amnesty International. 26 October 2017. AMR 23/7357/2017.

forces.²⁸ Cases of sexual violence have been committed by both members of the Armed Forces and National Police.²⁹

[31] There is a high rate of impunity in cases of sexual violence.³⁰ While 90,000 cases of sexual violence against women have been reported during the 50-year armed conflict, less than 10% of the perpetrators of the crimes have been sentenced.³¹ The Inspector General's Office has not shown an interest in investigating disciplinary actions in relation to incidents which involve State agents.³²

[32] Torture is another method that has been used by security agents, including police. Of particular concern is that persons of diverse sexual orientations and/or gender identities have been exposed to torture in detention and to police violence.³³ State authorities, especially the police, are reported to participate in violent acts against persons of diverse sexual orientations and/or gender identities.³⁴

²⁸ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 5.3: Access to justice for women victims of sexual violence. Sixth Monitoring Report on Auto 092 of 2008 and the First Monitoring Report on Auto 009 of 2015 of the Constitutional Court - Confidential Annexes. The Working Group to monitor compliance with Constitutional Court Auto 092 and 009 and its Confidential Annexes. March 2016.

²⁹ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 2.11: Columbia. Chapter V - Follow-Up on Recommendations made by the IACHR in its Country and Thematic Reports. Annual Report of the Inter-American Commission on Human Rights 2016. Organization of American States. Inter-American Commission on Human Rights. 15 March 2017.

³⁰ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 2.11: Columbia. Chapter V - Follow-Up on Recommendations made by the IACHR in its Country and Thematic Reports. Annual Report of the Inter-American Commission on Human Rights 2016. Organization of American States. Inter-American Commission on Human Rights. 15 March 2017.

³¹ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 5.1: Colombia. Social Institutions and Gender Index 2014. Organization for Economic Co-operation and Development.

³² Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 5.3: Access to justice for women victims of sexual violence. Sixth Monitoring Report on Auto 092 of 2008 and the First Monitoring Report on Auto 009 of 2015 of the Constitutional Court - Confidential Annexes. The Working Group to monitor compliance with Constitutional Court Auto 092 and 009 and its Confidential Annexes. March 2016.

³³ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 1.7: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia. United Nations High Commissioner for Refugees. September 2015.

³⁴ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 1.7: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia. United Nations High Commissioner for Refugees. September 2015.

[33] While the government has made improvements in investigating and trying all of the above abuses, the Attorney General's Office is criticized for indicting low-ranking personnel while allegedly avoiding investigations of higher-ranking commanders,³⁵ like the male claimant.

[34] Given the above, I find that the Colombian National Police have been engaged in crimes against humanity.

Voluntary Contribution

[35] I find that the male claimant's involvement in the Colombian National Police, and their crimes, was voluntary.

[36] The male claimant testified that he joined the Colombian National Police at the age of 16 because this is what he always wanted to do for a living. The male claimant testified that he joined because he wanted to help people. There was no suggestion that the male claimant was somehow coerced into becoming a police officer.

[37] He described that being a police officer was in his blood and he loves it. He stated that he was a police officer, is a police officer and always will be a police officer. He testified that the gratification one feels from serving the public, as a police officer, is extremely high and beyond any other profession. There was no suggestion that the male claimant was forced to remain a part of the force; rather, the male claimant was exceedingly passionate about his career as a police officer.

[38] The male claimant also described that, when he initiated his voluntary retirement at the age of XXXX, although it took two months, it was eventually approved. There was no suggestion that the male claimant was unable to leave the organization.

[39] I find that the male claimant's involvement in the Colombian National Police was voluntary.

³⁵ Exhibit 14, Department of State Report for 2014.

Significant Contribution

[40] The male claimant had a XXXX year career with the Colombian National Police, working his way up the ranks through promotions. At the height of his career, he was XXXX and had XXXX XXXX XXXX men reporting to him. In the Colombian National Police, XXXX is the XXXX XXXX XXXX XXXX XXXX. The rankings are as follows: Sub-Lieutenant, Lieutenant, Captain, Major, Lieutenant Colonel and Colonel. The ranks of Major, Lieutenant Colonel and Colonel are considered to be “superior officers.” The next step above a Colonel are the various types of Generals. The male claimant was one of the XXXX XXXX XXXX XXXX in the Colombian National Police. He did not have just a mere association with the organization, he was in direct control of a number of men on the ground.

[41] Although he had other positions as well, throughout much of his career, the male claimant testified that he was part of the XXXX XXXX XXXX XXXX of the Colombian National Police. He testified that he was responsible for areas with high interaction with FARC and ELN. As early as 1997, when he was approximately 22 years old, he was designated as a XXXX of the XXXX XXXX XXXX in XXXX.³⁶ At the age of 28, in 2003, he worked as the XXXX of the police station in XXXX XXXX, a police unit with high interference with the FARC.³⁷ By 2014, he was the XXXX XXXX of the police department in XXXX where he was responsible for leading all actions that would hinder the criminal purpose of the ELN.³⁸ He was in charge of leading and organizing operations against the ELN.³⁹ At the height of his career, he was XXXX XXXX of the XXXX police department, where he oversaw and led the operations and attacks against the ELN.⁴⁰ The male claimant was not passively acquiescent in the actions of the Colombian National Police.

[42] As stated above, during the late 1990s (when the male claimant was the XXXX of a XXXX XXXX XXXX of the police) through to the late 2000s (during which time the male claimant’s police unit had a high interference with the FARC) thousands of civilians were killed and falsely presented as guerrilla combatants by Colombian Security forces, including the police.

³⁶ Exhibit 2, Narrative.

³⁷ Exhibit 2, Narrative.

³⁸ Exhibit 2, Narrative.

³⁹ Exhibit 2, Narrative.

⁴⁰ Exhibit 2, Narrative.

Also, sexual violence was a widespread and systematic practice in the conflict by all parties, including the police, as were forced disappearances. Given the male claimant's rank, posting and duties during this time of conflict, his specific activities are linked to the crimes of this organization.

[43] Despite the male claimant's role in leading operations and attacks against guerrilla groups, the male claimant testified that he never did anything, in the performance of his duty, that resulted in harm to another individual. The claimant was asked this question both by counsel and by me. He was adamant that he never harmed anyone. I do not find this to be credible. The male claimant alleges that he engaged with guerrilla groups and even led attacks against the ELN for more than 20 years, while perhaps not consistently as he held other positions. I am not persuaded that he never once harmed anyone, throughout any of these attacks. This defies logic given that the Colombian National Police, and the claimant specifically, engaged in armed combat with these guerrilla groups. The fact that he maintains that he never once harmed anyone, even legitimately through the course of his duty, undermines his credibility with respect to his particular contributions to the Colombian National Police as an organization.

[44] While I did not ask the male claimant questions about every position he held within the Colombian National Police, as he has held many, he was questioned about a significant number of them.

[45] As stated above, in 1997, as a XXXX, he was designated as a XXXX of the XXXX XXXX XXXX in XXXX which patrolled the city and defended against any attacks from guerrillas. During this time, he had approximately XXXX men under his command. His role was to determine where his men would be located (based on intelligence data) and administer logistics like communications, transportation and weaponry. He would then supervise the unit and report the results to his superiors. They would commonly capture people and/or seize drugs and/or illegal weaponry. The male claimant was a XXXX in the part of the organization that was directly concerned with fighting guerrillas. Therefore, he was a XXXX of a part of the organization that contributed to the thousands of civilians that were killed and falsely presented as guerrilla combatants as well as the widespread and systematic practice of sexual violence and forced disappearances.

[46] While he held different commanding positions in the interim, in 2003, he became the XXXX of the police station in XXXX XXXX in the Antioquia Department. At this time, the city was being attacked by FARC and the male claimant testified that he had to discharge his weapons here. As with the previous role discussed above, the male claimant testified that his duties were to plan the service and control the administration of resources (human and material). He had approximately 30 to 40 people under his command. Again, the male claimant was a XXXX of a part of the organization that contributed to the false positives, sexual violence and forced disappearances that were pervasive during this point in Colombian history.

[47] While there is no evidence before me that the male claimant directly engaged in a specific identifiable crime during his time fighting guerrillas, I have serious reasons for considering, given his role, post, duties and the prevalent impunity among high ranking officers, that his conduct would have assisted in the furtherance of the crimes.

[48] The most concerning specific incident occurred later in the male claimant's career, when he was a superior officer. In XXXX of 2013, as a XXXX XXXX, the male claimant became the XXXX XXXX at the XXXX XXXX in the Valle del Cauca region. He held this position until XXXX of 2014. In this role, he managed the financial resources, including the provision of vehicles, communication tools, weaponry, etc. Essentially, he explained that he managed everything required for the operations for the Valle del Cauca region.

[49] According to the national police, there were more than 10 cases of torture and homicide allegedly committed by the police between January 2014 and March 2014 in the Valle del Cauca region.⁴¹ The male claimant's role of managing the financial resources in Valle del Cauca, thereby providing each police officer with resources, significantly contributed to the ability of these officers to commit this crime.

[50] I find that the male claimant, either directly (as a combatant against the guerrilla groups), or more broadly as an aid (in his position of providing resources and as a superior officer), contributed to these crimes.

⁴¹ Exhibit 14, Department of State Report for 2014.

Knowing Contribution

[51] As stated above, the male claimant was a XXXX of the Colombian National Police. Therefore, his classification was as the XXXX XXXX XXXX XXXX in the police force. Given the male claimant's ranking, it is very likely that he had knowledge of the crimes being committed by the Colombian National Police. Further, the male claimant even writes in his Narrative that the Colombian National Police is internally corrupt.⁴²

[52] The male claimant held positions within the Colombian National Police where there are serious reasons for considering that he knew what was going on and, although he was a high ranking officer, did nothing to stop it and continued what he felt was a fulfilling career within the organization.

[53] For example, in 2009, after holding a number of other roles, he became a senior officer with the rank of a XXXX. At this time, he was the XXXX XXXX XXXX XXXX XXXX XXXX at The Directorate for Citizens Security. The Directorate for Citizen Security is where all the activities of the national police are directed. This office builds all the policies for the functioning of the police at the national level. As the XXXX XXXX XXXX XXXX XXXX XXXX the male claimant testified that he would generate statistical analyses of police activity at the national level. He testified that, with his reports, the Director of the Department of Citizenship Security (a General, and the highest ranking police official) would make decisions with regards to personnel, logistics, and/or the implantation to special plans to counteract criminal activities.

[54] In Colombia, during this time, cases of extrajudicial killings attributed to the government also included "social cleansing" (including vagrants, gay men, lesbians, and other "undesirables").⁴³ In one "social cleansing" case, on January 9, 2009, police officers allegedly tortured and killed Robinson de Jesus Gil, a homeless man in Bogota.⁴⁴

[55] Despite the fact that the male claimant was living and working in Bogota at the Directorate for Citizen Security, where all the activities of the national police are directed, he claimed not to recall this incident. Further, the male claimant's duties of generating reports that would allow the

⁴² Exhibit 2, Narrative.

⁴³ Exhibit 16.

⁴⁴ Exhibit 16.

highest ranking police official to make decisions regarding personnel and logistics is a significant contribution to the Colombian National Police. He would likely have known that his position would assist in the furtherance of the crimes being committed by the Colombian National Police.

[56] Additionally, in 2016, ranked as a XXXX, the male claimant was promoted to the XXXX-XXXX of the Department of XXXX. He had approximately 1200 police officers under his command. During this time, the male claimant admits that he knew of officers who accepted bribes from ELN to allow ELN to continue operating. While this may not be considered a crime against humanity, this is extremely concerning because he would have been the superior officer in charge of these lower-ranking officers who were assisting guerrilla groups. When I asked the male claimant about this, he testified that he did not directly supervise these officers; rather, the supervisors of their supervisors reported to him (i.e. he was three levels above these officers). This does not exonerate the male claimant. His high ranking position is all the more reason he should have stopped this from occurring. As stated above, this would not be considered a crime against humanity; however, the fact that the male claimant was willing to allow his police officers to assist organized criminal groups, without punishment, shows the male claimant's willingness to tolerate, when he would have had the ability to stop, the wrongdoing of men within the Colombian National Police. It also shows the he had knowledge of the actions of officers within the police force. It does not seem to follow that he had knowledge of officers being bribed by organized criminal groups; but, no knowledge of false positives, sexual violence, forced disappearances and torture.

[57] Given that the claimant would have known about these specific crimes of torture and extrajudicial killing, let alone the other crimes against humanity going on in the country at the time, he would have been aware that his continued rise through the ranks of the Colombian National Police would assist in the furtherance of these crimes.

Defences

[58] Counsel argues that CBSA withdrew their intervention and therefore the male claimant has been "cleared" of any wrongdoing. However, the letter from the CBSA only addresses section 35 inadmissibility and specifically states that it should not be construed as an opinion to the

merits of the refugee claim.⁴⁵ Further, even if the CBSA did have an opinion regarding the merits of the claim, I would not be bound to accept their opinion. Therefore, I do not accept counsel's argument.

[59] I find that the male claimant either committed a crime against humanity or was complicit in the commission of a crime against humanity because he was a high ranking police officer with the Colombian National Police, who led operations against guerrilla groups, managed police resources on a large scale and prepared reports at the head office which assisted the General in making logistical decisions.

The Claims of the Principal Claimant and the Minor Claimants

[60] There is a presumption, except in situations where the state is in a complete breakdown, that it is capable of protecting its nationals.⁴⁶ A claimant who alleges that state protection is inadequate must persuade me that, on a balance of probabilities, the evidence establishes that the state protection is inadequate.⁴⁷ In this case, the RPD is not obliged to prove that Colombia can offer the claimants effective state protection; rather, the claimants bear the legal burden of rebutting the presumption that adequate state protection exists by adducing clear and convincing evidence which satisfies me on a balance of probabilities.⁴⁸

[61] While the effectiveness of the protection is a relevant consideration,⁴⁹ the preponderance of Federal Court decisions have held that the test for a finding of state protection is whether the protection is adequate.⁵⁰ The protection need not be perfect.⁵¹

[62] In determining whether protection is adequate, it is important to consider both whether a legislative and procedural framework for protection exists and also whether the state, through the police or other authorities, is able and willing to implement that framework.⁵²

⁴⁵ Exhibit 8.

⁴⁶ *Hussein Ramadan v. Canada (Citizenship and Immigration)*, 2010 FC 1093.

⁴⁷ *Flores Carrillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94.

⁴⁸ *Kaleja v. Canada (Citizenship and Immigration)*, 2011 FC 668, citing *Carrillo v. Canada (Citizenship and Immigration)*, 2008 FCA 94.

⁴⁹ *Quinatzin v. Canada (Citizenship and Immigration)*, 2008 FC 937.

⁵⁰ *X (Re)*, 2015 CanLII 57062 (CA IRB).

⁵¹ *X (Re)*, 2015 CanLII 57062 (CA IRB), citing *Zalzali v. Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 605 (C.A.).

[63] While the state's efforts are relevant to an assessment of state protection, they are not determinative. The efforts must have actually translated into adequate state protection at the operational level.⁵³ But again, no government is expected to guarantee perfect protection to all of its citizens at all times, as no state can guarantee perfect protection.⁵⁴

[64] Furthermore, the law states that the burden to prove an absence of state protection is directly proportional to the level of democracy of that state.⁵⁵

[65] Despite decades of internal conflict and drug related security challenges, Colombia maintains relatively strong democratic institutions characterized by peaceful, transparent elections and the protection of civil liberties.⁵⁶

[66] With respect to the protection that would be available to these particular claimants, the Ministry of the Interior has developed an agency called the National Protection Unit (Unidad Nacional de Protección, UNP). The UNP is responsible for providing protection to individuals, groups of persons, or communities that, given their position or activities, may be subjected to extraordinary or extreme risk.⁵⁷

[67] UNP indicates that the program grants protection measures either: (1) based on the risk that a person faces; or (2) based on their position.⁵⁸ In this case, the male claimant was one of the XXXX XXXX XXXX officers of the Colombian National Police. Given this position as a high ranking public official, I find that he would have access to this program, if the claimants were in the danger they allege.

⁵² *X (Re)*, 2015 CanLII 57062 (CA IRB), citing *Elcock (Milkson) v. Joan Theresa v. M.C.I.* (F.C.T.D., no. IMM-2985-98), Gibson, September 20, 1999.

⁵³ *Velazquez v. Canada (Citizenship and Immigration)*, 2011 FC 775; *Williams v. Canada (Citizenship and Immigration)*, 2011 FC 1134.

⁵⁴ *Canada (Minister of Employment and Immigration) v. Villafranca*, 1992 CanLII 8569 (FCA)

⁵⁵ *Canada (Citizenship and Immigration) v. Kadenko*, 1996 CanLII 3981 (FCA).

⁵⁶ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 1.5: Colombia. The World Factbook. United States. Central Intelligence Agency. 10 April 2018.

⁵⁷ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 7.3: State protection programs for victims and witnesses of crimes; requirements to access the programs; statistics on the number of applications for relocation that are granted and refused; duration and effectiveness of these programs (2012-March 2016). Immigration and Refugee Board of Canada. 6 April 2016.

⁵⁸ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 7.3: State protection programs for victims and witnesses of crimes; requirements to access the programs; statistics on the number of applications for relocation that are granted and refused; duration and effectiveness of these programs (2012-March 2016). Immigration and Refugee Board of Canada. 6 April 2016.

[68] Further, this protection available to the male claimant would extend to the male claimant's family. For example, the UNP took measures with the aim of protecting the life of a social leader and his family.⁵⁹ Also, with respect to an example of teachers, the protection and relocation of teachers falls under the Ministry of National Education and the departmental education secretaries; but, the UNP retains responsibilities for the risk analysis and protection of family members.⁶⁰ Therefore, if the male claimant's family was at risk, the protection provided by UNP would extend to them.

[69] Protection measures provided to people by the UNP include: (1) personal security details, which include bodyguards, vehicles, and bullet-proof vests; (2) transportation-related costs by land or sea, or plane tickets for national and international flights; (3) temporary relocation assistance, which consists of a monthly sum for up to three months (or six months in "exceptional cases") to help cover relocation-related costs; (4) moving-related costs; (5) telecommunication devices; and (6) the armoring of property.⁶¹ This is the type of protection that the claimants had while the male claimant was working with the Colombian National Police. The male claimant testified that he had a driver with an armored vehicle and his family were provided with vehicles as well. Further, he and his family had bodyguards. Given that the state felt that this type of protection was needed in the past and the male claimant has indicated that his risk has increased since he left the force, it seems that the male claimant and his family would be perfect candidates for the UNP program.

[70] The Director of the UNP also indicated that protection measures are assigned for a minimum of one year; but, there is no limit on the duration.⁶² Each case is re-evaluated every year to determine if the person still needs protection.⁶³

⁵⁹ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 1.7: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia. United Nations High Commissioner for Refugees. September 2015.

⁶⁰ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 2.1: Colombia. Country Reports on Human Rights Practices for 2017. United States. Department of State. 20 April 2018.

⁶¹ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 7.3: State protection programs for victims and witnesses of crimes; requirements to access the programs; statistics on the number of applications for relocation that are granted and refused; duration and effectiveness of these programs (2012-March 2016). Immigration and Refugee Board of Canada. 6 April 2016.

⁶² Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 7.3: State protection programs for victims and witnesses of crimes; requirements to access the programs; statistics on the number of applications for

[71] The UNP has a large budget. UNP indicates that the budget for 2014 was 470.1 billion Colombian pesos [approximately C\$196 million], and for 2015 the UNP was assigned 371.3 billion pesos [approximately C\$152.3 million].⁶⁴ In the course of 2016, the budget of the UNP came to US\$ 151 million⁶⁵ [approximately C\$197 million].

[72] The UNP had, as of the end of 2014, 506 "conventional" vehicles, 1,022 armored vehicles, 1,195 fuel cards, and 2,872 bodyguards, of which 324 were UNP personnel and the rest belonged to private security agencies.⁶⁶

[73] In order to apply for protection, a person must submit the following documents: (1) an application form, (2) a copy of the national identification card (Cédula de ciudadanía), (3) an original copy of a document that evidences membership to one or more of the groups considered to be a "target population," and (4) an original copy of a police complaint or evidence of prosecution related to the case, if available.⁶⁷ These documents can be submitted via email or to one of the UNP offices.⁶⁸

relocation that are granted and refused; duration and effectiveness of these programs (2012-March 2016). Immigration and Refugee Board of Canada. 6 April 2016.

⁶³ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 7.3: State protection programs for victims and witnesses of crimes; requirements to access the programs; statistics on the number of applications for relocation that are granted and refused; duration and effectiveness of these programs (2012-March 2016). Immigration and Refugee Board of Canada. 6 April 2016.

⁶⁴ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 7.3: State protection programs for victims and witnesses of crimes; requirements to access the programs; statistics on the number of applications for relocation that are granted and refused; duration and effectiveness of these programs (2012-March 2016). Immigration and Refugee Board of Canada. 6 April 2016.

⁶⁵ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 2.11: Columbia. Chapter V - Follow-Up on Recommendations made by the IACHR in its Country and Thematic Reports. Annual Report of the Inter-American Commission on Human Rights 2016. Organization of American States. Inter-American Commission on Human Rights. 15 March 2017.

⁶⁶ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 7.3: State protection programs for victims and witnesses of crimes; requirements to access the programs; statistics on the number of applications for relocation that are granted and refused; duration and effectiveness of these programs (2012-March 2016). Immigration and Refugee Board of Canada. 6 April 2016.

⁶⁷ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 7.3: State protection programs for victims and witnesses of crimes; requirements to access the programs; statistics on the number of applications for relocation that are granted and refused; duration and effectiveness of these programs (2012-March 2016). Immigration and Refugee Board of Canada. 6 April 2016.

⁶⁸ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 7.3: State protection programs for victims and witnesses of crimes; requirements to access the programs; statistics on the number of applications for relocation that are granted and refused; duration and effectiveness of these programs (2012-March 2016). Immigration and Refugee Board of Canada. 6 April 2016.

[74] Colombia has taken measures to protect a large and growing number of persons at risk as well as invested a considerable amount of economic resources so that the program can perform its functions.⁶⁹ As of June 2016, the UNP has adopted measures to guarantee the rights to life, security, and humane treatment for 8,138 persons, among them political leaders, human rights defenders, trade union activists, representatives of ethnic groups, members of the Medical Mission, journalists, victims, and public officials, among others.⁷⁰

[75] I acknowledge that the UNP program has been criticized for its bureaucratic delays;⁷¹ however, the mechanism has saved lives.⁷² Further, while the risk assessments are being conducted, people are covered by preventive measures taken by the National Police;⁷³ and, in cases of imminent and exceptional risk, an expeditious procedure is provided for.⁷⁴ As the male claimant was a XXXX with the National Police who led attacks against paramilitary groups, I find, more likely than not, protection would be forthcoming to him and his family. Further, on a balance of probabilities, in the interim, the Colombian National Police would protect one of their own.

[76] The male claimant testified that he met with the XXXX XXXX of the XXXX Police Department. The male claimant testified that this man is a XXXX, like himself, who he had

⁶⁹ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 2.11: Columbia. Chapter V - Follow-Up on Recommendations made by the IACHR in its Country and Thematic Reports. Annual Report of the Inter-American Commission on Human Rights 2016. Organization of American States. Inter-American Commission on Human Rights. 15 March 2017.

⁷⁰ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 2.11: Columbia. Chapter V - Follow-Up on Recommendations made by the IACHR in its Country and Thematic Reports. Annual Report of the Inter-American Commission on Human Rights 2016. Organization of American States. Inter-American Commission on Human Rights. 15 March 2017.

⁷¹ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 1.7: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia. United Nations High Commissioner for Refugees. September 2015. HCR/EG/COL/15/01.

⁷² Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 2.8: Colombia: Human Rights and the Peace Agreement: Amnesty International Submission for the UN Universal Periodic Review, 30th Session of the UPR Working Group, May 2018. Amnesty International. 26 October 2017.

⁷³ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 2.11: Columbia. Chapter V - Follow-Up on Recommendations made by the IACHR in its Country and Thematic Reports. Annual Report of the Inter-American Commission on Human Rights 2016. Organization of American States. Inter-American Commission on Human Rights. 15 March 2017.

⁷⁴ Exhibit 6, National Documentation Package, Colombia, 30 April 2018, tab 2.11: Columbia. Chapter V - Follow-Up on Recommendations made by the IACHR in its Country and Thematic Reports. Annual Report of the Inter-American Commission on Human Rights 2016. Organization of American States. Inter-American Commission on Human Rights. 15 March 2017.

known since police school.⁷⁵ The XXXX XXXX got him in touch with personnel in the intelligence department who gave him information about the ELN in XXXX. Thereafter, XXXX XXXX told the male claimant to report the case to the Attorney General. The XXXX XXXX provided a letter to this effect.⁷⁶

[77] The male reported his case to the Attorney General in XXXX on XXXX XXXX XXXX 2016.⁷⁷ He was issued a “Request for Police Protection” by the Attorney General and was to give this to the police station in XXXX.⁷⁸ This Request for Protection applied to all of the claimants.⁷⁹

[78] The male claimant testified that this process made him realize that he would not get immediate protection. However, just because the claimants were not handed a bodyguard or armored vehicle instantaneously does not mean that the state protection the claimants had access to was inadequate. After all, at this point the male claimant had only received two telephone calls.

[79] In any event, given the male claimant’s direct access to police intelligence, police personnel and his personal relationship with the XXXX XXXX of the XXXX Police Department, I find that if he needed assistance, the police would, more likely than not, be there.

[80] Further, the claimants did not give the state the opportunity to protect them. They left the country within five days. The claimants must give the authorities sufficient opportunity to respond to the request for assistance.⁸⁰ Doubting the effectiveness of protection offered by the state when one has not really tested it does not rebut the existence of a presumption of state protection.⁸¹

[81] Further, the claimants did not exhaust their options for state protection. It does not seem as if the claimants applied to the UNP, the unit with the ability and resources to provide the longer-term protection they desired. A claimant must show that they have taken all reasonable steps in the circumstances to seek protection.⁸² Given the male claimant’s position as a XXXX who led

⁷⁵ Exhibit 2, Narrative.

⁷⁶ Exhibit 11, Letter from XXXX XXX of the XXXXXXX Police Department.

⁷⁷ Exhibit 11, Crime Report Form.

⁷⁸ Exhibit 11, Request for Police Protection.

⁷⁹ Exhibit 11, Request for Police Protection.

⁸⁰ Montemayor Romero, Santiago Cosme v. M.C.I., 2008 FC 977/

⁸¹ *Rio Ramirez, Leticia Lizet Del v. M.C.I.*, 2005 FC 1214.

⁸² Peralta, Gloria Del Carmen v. M.C.I., 2002 FTC 989.

aggressions against the ELN, they would have been eligible for this program and I would reasonably expect the claimants to exhaust all avenues for protection available. Further, in this particular case, it is likely that these claimants would have access to more resources than the average person given the male claimant's connections.

[82] The male claimant testified that the ELN is a terrorist organization and no protection is going to be good enough. He testified that we have seen terrorist activities in the United States of America and in Canada and even our governments cannot provide protection against terrorists. He stated that no matter what protections are in place, terrorists are able to get around them. It seems as if the male claimant is asking for perfect protection; however, this is not the standard. The RPD should not impose on other states a standard of perfectly effective protection that police forces in our own country, regrettably, sometimes only aspire to.⁸³

[83] I find, in this case, given the male claimant's role and rank within the Colombian National Police, the claimants will all have access to adequate state protection.

Conclusion

[84] I find that the male claimant is not a Convention refugee or a person in need of protection because there are serious reasons to consider that the male claimant has committed a crime against humanity. Therefore, I find that the male claimant is excluded from claiming protection pursuant to Article 1F(a) of the 1951 Convention Relating to the Status of Refugees and section 98 of IRPA.

[85] With respect to the principal claimant and the minor claimants, I find that these claimants are not Convention refugees as they do not have a well-founded fear of persecution for a Convention ground in Colombia. Further, I find that they are not people in need of protection as their removal to Colombia would not subject them personally to a risk to life, to a risk of cruel and unusual treatment or punishment or to a danger of torture. Therefore, I reject their claims.

⁸³ *Smirnov v. Canada (Secretary of State)*, [1995] 1 F.C. 780 (T.D.).

(signed)

“M. A. McColl”

M. A. McColl

October 15, 2018

Date