

1004652 [2011] RRTA 751 (24 August 2011)

DECISION RECORD

RRT CASE NUMBER: 1004652

DIAC REFERENCE(S): CLF2010/27747 CLF2010/65406

COUNTRY OF REFERENCE: Colombia

TRIBUNAL MEMBER: Don Smyth

DATE: 24 August 2011

PLACE OF DECISION: Brisbane

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicants satisfy s.36(2)(a) of the Migration Act, being persons to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be citizens of Colombia, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicants] March 2009 and applied to the Department of Immigration and Citizenship (the Department) for Protection (Class XA) visas [in] February 2010. The delegate decided to refuse to grant the visas [in] May 2010 and notified the applicants of the decision and their review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicants are not persons to whom Australia has protection obligations under the Refugees Convention
4. The applicants applied to the Tribunal [in] June 2010 for review of the delegate's decisions.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicants have made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Migration Regulations 1994 for the purposes of the definition.
9. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

10. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any 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, is unable or, owing to such fear, is unwilling to return to it.
11. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
12. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
13. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
14. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve "serious harm" to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression "serious harm" includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
15. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
16. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase "for reasons of" serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

17. Fourth, an applicant's fear of persecution for a Convention reason must be a "well-founded" fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a "well-founded fear" of persecution under the Convention if they have genuine fear founded upon a "real chance" of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A "real chance" is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
18. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
19. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

20. The Tribunal has before it the Department's file relating to the applicants. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
21. The applicants appeared before the Tribunal [in] August 2010, and [in] May and [in] June 2011 to give evidence and present arguments. The Tribunal hearings were conducted with the assistance of an interpreter in the Spanish and English languages.
22. The applicants were represented in relation to the review by their registered migration agent.
23. The second named applicant has been described in the application as the "de facto partner" of the first named applicant. For convenience, the Tribunal will refer to the first named applicant as "the applicant", the second named applicant as "the applicant wife" and the third named applicant as "the applicant brother".
24. According to information provided in the protection visa application, the applicant was born in [town deleted: s.431(2)], Antioquia. He has been in a de facto relationship with the applicant wife since [a date in] February 2006. He indicated that he had received 15 years' education in Colombia. From December 2000 to May 2008, he worked in a retail position. He lived at an address in Medellin from January 1999 to May 2002. He lived at an address in [District 1] from, May 2002 to April 2008. For the period from February 2008 to March 2009 he gave an address in Bogota.
25. The applicant travelled to Australia on a Colombian passport issued [in] June 2008. He indicated that he had been issued with a student visa in Santiago de Chile [in] February 2009. He indicated that he had not had any difficulty obtaining a passport and that he had departed Colombia legally. The applicant indicated that he had been in the US for study in 2000 and for holidays in 2002 and 2007. The applicant indicated that he had applied to go to Canada [in] July 2008. He indicated that the application was not concluded.

26. The applicant indicated that he had a brother, [Mr A], who was resident in Colombia at the time of the application. The applicant indicated that he was in contact with his aunt by e-mail at the time of the application.
27. The applicant wife was born in Medellin, Colombia. The applicant wife indicated that she had lived at an address in [District 1] from July 1982 to February 2006. From February 2006 to April 2008, she lived at a second address in [District 1]. From February 2008 to March 2009, she lived at an address in Bogota.
28. The applicant wife received eleven years' education in Colombia. From February to November 2004, she was undertaking a [course]. From June 2005 to July 2006, she worked as a cashier for [employer deleted: s.431(2)]. She then worked in retail sales for [Employer 2] from July 2006 to May 2008.
29. The applicant wife indicated that she travelled to Australia on a Colombian passport issued [in] June 2008. She was granted a student visa for Australia in Santiago [in] February 2009. The wife applicant indicated that she had departed Colombia legally through El Dorado Bogota and that she had not had any difficulty obtaining a passport. The applicant wife indicated that she too had applied to go to Canada [in] July 2009.
30. The applicant's brother, born on [date deleted: s.431(2)], were also included in the protection visa application. The applicant brother indicated that he too was born in Medellin. He travelled to Australia on a Colombian passport issued [in] January 2009. He attended school in Colombia until May 2008. From March 2009, he was attending [school deleted: s.431(2)].
31. The applicants also completed "Personal particulars for character assessment" forms, which contains details consistent with those set out above. The information in the applicant's form indicated that his parents were deceased.
32. The Tribunal was provided with copies of various identity documents relating to the applicants. These included extracts from their Colombian passports and untranslated identity cards for each of the applicants.
33. The applicant set out written claims on a written page in the application. He claimed to fear being killed by "the criminal who killed my parents and my brother" He stated that he would not be protected if he returned to Colombia. He stated that the authorities already knew his family situation and had done nothing to bring them protection
34. The applicant made a more detailed statement, dated [in] January 2010, which includes the following claims:

...

3. In Colombia the situation for a person such as my father is not easy. Since I was a child I remember that in 1988 one of my uncles, a brother of my father whose name is [name] was kidnapped by a group of guerrillas known as FARC. At that time my family and I were living in a small town in the state of Antioquia in Colombia.

4. The details of such kidnapping were never told to me. After that moment my father always told my family that we had to be careful because of those groups.

5. My uncle was set free after his ransom was paid. My family then decided to move to Medellin where my father kept working with his business.

6. In 1996 my older brother, [Mr B], was kidnapped by a group of guerrillas in [Town 3]. My father had to pay for his ransom. After that we changed our place of residence many times for our security, because obviously we were a target for such groups.
7. Later on in 1997 another uncle of mine, [name], was kidnapped from one farm that he and my father owned in [town] Antioquia Colombia. His ransom was paid but unfortunately he was killed anyway.
8. On many occasions the group of guerrillas FARC went to our properties and asked for my father and my family and stole cattle from the farms.
9. In Colombia there are two groups-the guerrillas and the paramilitares. The government cannot control them at all and for that reason many farmers in Colombia have had to pay such groups or otherwise they could not establish their business and farms.
10. Nevertheless, on [date] of February 2008 our situation changed dramatically after my father and my oldest brother were killed by weapons of high rate which are only used by guerrillas or paramilitary groups.
11. My father and my brother were killed in [Town 4] Antioquia Colombia as it is shown in their Death Certificates. Until that time I was away from the farms and business that my father and my oldest brother managed because my interest was to study and to develop myself as a professional in the city where I was living (Medellin).
12. This situation made me and my mother, [Ms C], start to take control of all our patrimonial business. I started to help my mother with management. The death of a family member was very traumatic, even more when it was the head of the family.
13. It was when my mother told me that my father as many farmers in Colombia had to give help economically and logistically on occasions to paramilitary groups. His refusal to keep offering help to new groups that appeared after the demobilization in which my father was part of, had to do with their murders.
14. My family had a business in [Town 3], a place that is a neighbour to the place where my father and my brother were killed, in which an anonymous phone call was made saying that we could not keep going to our farms because my mother would be kidnapped and killed. The call was taken by a manager who told my mother and she told me of it. That is why my mother and I could not go to that region anymore, we were so afraid to be killed as my father and brother were. We decided to move to another suburb of Medellin to live.
15. My mother was killed on the [date] of May 2008 while she was entering the unit where my oldest brother used to live. After that I had to move to a relative's home where I stayed with my youngest brother, [Applicant 3], and my partner, [Applicant 2]. We were waiting until a solution for our situation came up, but things started to get even more complicated when [Mr D], who used to help my father with the farms and the cattle, was killed in a very brutal way. All of the cattle were then stolen by force from the farms.
16. Full of fear for our lives we decided to move to a different city, Bogota, which is the capital of Colombia. We left all of our study, our home and our jobs.

17. In Bogota we were hosted by some relatives of my partner. I needed to do all the documentation to become my brother's guardian, because I am the only person he has left.

18. I went to ICBF (Colombia Institute of Family of Welfare) where I could start the process. I told them about my situation and the risk that our lives have. They recommended seeking for protection but the authorities in Colombia did not give us any support, even though an investigation for the murders of my family was being made.

19. During the time I was living in Bogota, threats against us were sent to our business in [Town 3] which said that my father and my brother had a debt with them which I did not know, and that we have to pay them. Also they mentioned that they knew all our locations such as the place where we were living, even in different cities, plates of our cars, places of work. etc.

20. I told all of this to the local authorities in Colombia and submitted a denunciation to the Fiscalia of Colombia which is the main authority in our country.

21. My case was passed to The Gaula which is another entity of authority in Colombia. However, nothing happened since that and our situation was getting worse every day.

22. After the threats, some men went to the business in [Town 3] and they identified themselves as Don Mario people. Don Mario is a renowned narcotrafficant and paramilitary from Colombia. The men said that they were sent to take everything from the business and the worker did not have any option other than giving them what he had in cash. The men insisted that we have to show up and pay, otherwise we would pay for that with our lives. They said that they knew all about us and our movements, including the banks and locations.

23. It was clear for us that we would have them behind our backs anywhere we went so we looked for refugee programs with the help of ICBF. We made the application with Canada because it was the only country that started such process from the country of origin.

24. On [date] of September 2008 my bank account was stolen in Bogota. Someone that I do not know transferred all my money to a different account in Medellin.

25. Immediately I knew about the situation I went to the bank in Bogota and I submitted the denunciation but, while I was doing that I received a phone call from the worker. He told me that someone had called him and said that they knew that I was doing the denunciation in the bank and that I had to stop that because they knew that we were in Bogota. After I heard that I had to leave the bank as fast as I could and I left a letter with the denunciation. I believe that someone in the bank had tipped them off.

26. That night again I received another phone call from the worker who said that a new call was made, this time they said that they knew that I had left a letter in the bank. They said that I have to go again to the bank to tell them that it was all my mistake in order to stop the denunciation or otherwise they were going to kill me. I did not withdraw the denunciation. In fact I made a further denunciation at the offices of the Banking Regulatory Authority. I wrote to the bank to advise them of this and also phoned them.

27. I was hidden all the time and it had been some months since my refugee application with Canada had been lodged. I went to a government office called The Defender of People where I told them my version of what had happened. We were told that we were recognized as displaced of the violence in Colombia. I also sent a letter to the presidency of Colombia but nobody helped us to solve our problems.

28. We could not keep facing this situation. We were living with fear all the time. It was literally like being in jail all the time in a house. My little brother was not studying. We could not work. The situation was affecting us physically and psychologically.

29. After this, a worker told me that the business was robbed and armed men came and took everything. They kept saying that they would be searching for us until they found us and killed us.

30. It was clear for us that we could not stay in Colombia anymore. It was only a matter of time before we would be found. So we decided to go to a safer place and that is how we came to Australia to study.

31. Sometime after we arrived in Australia the Embassy of Canada sent to me an email where they said that we had an appointment in the Embassy in Bogota. I answered to them saying that we could not stay anymore in Colombia and we had had to leave the country because our lives were in danger. Unfortunately I received another email in which they said that the process that we were doing was only and exclusively for people inside the country and we could not keep inside the refugee program.

32. A few months ago I received an email from one relative of mine saying that another business that we had was robbed in the city of Medellin.

33. That is why I am seeking for your protection as a refugee in your country. I do not want to go back to Colombia. We are so afraid to go back. We do not want to die as my father, my oldest brother and my mother did.

...

35. The applicant wife made also made a written statement in support of the application. She touched on a number of the matters detailed by the applicant in his statement
36. The applicant wife made a subsequent statement, dated [in] December 2009, in which she referred to her previous statement and indicated that she had forgotten to mention a detail which she considered to be important. She stated that, approximately one month after the applicant's mother was killed, certain "unsavoury" people visited her grandmother at her home in [District 1]. This was related to one of her cousins who was living there with her. Two men on motorbikes came to the door and began yelling and screaming, asking, "Where is [Applicant 2]? Where is [Applicant 2]?" Her cousin responded, "Who is that? Who is she?" After some minutes of yelling, the men got on their bikes and left in what appeared to be a very angry mood.
37. The applicant's representative provided a submission, dated [in] February 2010, in support of the application.
38. It was submitted that, after numerous threats against their lives, the applicant had decided that obtaining a visa to study in Australia would provide the best opportunity for his younger

brother to complete his studies in safety. The applicant had been advised that, as they had departed Colombia, they were no longer eligible to be considered under the Canadian refugee program.

39. It was submitted that the applicant's family had been "successful in their farming and trade businesses" and "they were therefore targeted by the guerrilla group known as FARC, and also by paramilitary groups". Over the years a number of relatives had been kidnapped and ransoms paid for their release. One of the uncles had been killed even though the ransom had been paid. The applicant's father and older brother had been killed by unidentified parties in February 2008. The applicant had then left his studies and returned to the family businesses to assist his mother. After receiving further threats, the family had moved locations in an attempt to find safety. The applicant's mother had been murdered [in] May 2008. Shortly after this, one of the men who assisted in the family farming business had also kidnapped, tortured and brutally murdered and all of their cattle had been stolen. The applicants had then moved to Bogota. The applicant had applied for legal custody of the applicant brother at this time. The other brother, [Mr A], was a drug addict whose whereabouts were unknown. It was submitted that investigations into the murders of the family members had been instigated, but "to date there has been no outcome".
40. It was submitted that the applicants had been officially recognised by the Colombian Government as "Internally Displaced Persons" due to the violence. It was submitted that they genuinely feared persecution based on being members of the particular social group constituted by "internally displaced persons".
41. The submission was accompanied by numerous documents. The documentation includes a copy of an e-mail exchange which, according to the submission, concerns an application for the "Canadian refugee program" This includes an e-mail which purports to be from the Canadian Embassy in Bogota. The e-mail informs the applicant that, because he is no longer living in Colombia, he no longer meets the criteria to be eligible for the Humanitarian and Resettlement Program.
42. The submission was also accompanied by numerous untranslated Spanish language documents (folios 14 to 60 of the Department's file). The applicants' representative listed these documents. Translations of a number of the documents were subsequently produced to the Tribunal. These documents are described below:
 - A document described as "Certified copy of Certificate in relation to [Applicant 1] (Folio 7338474)". According to the translation provided to the Department, this document record the birth of the applicant on [date]. It names the parents as [Mr E] and [Ms C].
 - A certified copy of a baptism certificate for the applicant wife.
 - A certified copy of a birth certificate for the applicant brother. This too records the parents' names as [Mr E] and [Ms C].
 - A certified copy of a Bank Declaration dated September [date], 2008 (with barcoded stickers). According to the translation, this is a handwritten note from the applicant to the Superintendence of the Financial System. It requests an investigation into a transfer of funds from his savings account. It states that, when he contacted the bank on [date] September to make a complaint, he received threats in relation to proceeding with the complaint.

- A document described as “Certified copy of Bank Declaration/Accusation [number]”. According to the translation, this is a statutory declaration made by the applicant on [date] September 2008. The document refers to the applicant’s complaint about the money transfer.
- A document described as “Certified copy of Certificate in relation to the investigation of mother's death (dated [date] 08/2008)” According to the translation, this is a document signed on [date] August 2008 by an attorney at the Regional Attorney’s Office of Medellin Second Unit of Crime Against Life and Personal Safety. It refers to an investigation into the death of [Ms C] on [date] May 2008. It states that she died in violent circumstances and refers to a gunshot. The certification was issued “for the purpose of satisfying the formalities of a life insurance”.
- A Death Certificate, recording the death of [Mr B] on [date] February 2008.
- A certified copy of a Death Certificate [Ms C]. This records the date of death as [date] May 2008 and the date of registration as [date] May 2008.
- A Death Certificate for [Mr E]. This records that the death occurred on [date] February 2008 and was registered on [date] February 2008.
- A document described as “Certified copy of 2 page document in relation to displacement” This document is headed "National General Attorney’s Office Sole Form for Crime Report”. It records a complaint received in Medellin on [date] June 2008 with regard to forced displacement. It names the applicant as the victim and states that the relevant events occurred on [date] May 2008.
- Documentation described as “Certified copy of 6 page document - Government document confirming displaced person”. The first page of this documentation was apparently issued by the “Advice and Consultation Unit” of the Ombudsman Office on [date] September 2008. It records that the applicant “made this statement as a displaced person due to violence, declaring to be displaced from the Municipality of [District 1], Antioquia”. The document records a complaint by the applicant in relation to “Violations of International Rights” It records the date of the incident as [date] February 2008 and the location as Bogota. It provides a summary of the alleged facts. It records that the Attorney’s Office and “gaula” had been contacted. It described those against whom the complaint was submitted as “Illegal Armed Groups and Self Defense Groups”. The documentation records a declaration made by the applicant on [date] September 2008. It is recorded that the applicant stated that he had “been forced to move from [District 1], Antioquia District City area, [suburb], my place of residence for the last 5 years” He stated that he had lived there with three other others, including the applicant wife and the applicant brother. The documentation includes a more detailed description relating “the time, place and sequence of the events of [the applicant’s] displacement”. The applicant’s declaration includes a complaint that he had not been provided with any type of security. It also includes an allegation that an unauthorised withdrawal from his account indicated that the “bank must be in some type of complicity with the paramilitaries”. It refers to anonymous messages and phone calls. It refers to complaints to the Prosecutor’s Office of Medellin and GAULA.
- A document described as “Certified copy of Confirmation of letter to President ([number] on slip)” This states, “We have received your message sent via

electronic mail, to the President of the Republic and currently it is being processed.” It was received on [date] September 2008.

- A document described as “Certified copy of 2 page document in relation to investigation of death of [Mr B]” This relates to a complaint by [Ms C] in relation to the kidnapping of [Mr B] on [date] January 1996. It records that the complainant alleged that her husband had been taken from their farm “[name]” in [Town 3] by three kidnapers.
 - Documentation described as “Certified copy of 6 page document in relation to custody of [Applicant 3] ([Number])” This document includes a Court Order of [date] June 2008. This states that the applicant had indicated that his parents had been killed in Medellin and that he was “not familiar with the motives that led to these incidents”. It orders that “provisional custody” of the applicant brother be assigned to the applicant.
 - Document described as “Certified copy of 7 page document in relation to guardianship of [Applicant 3] ([number])”. This documentation refers to the death of the applicant’s father on [date] February 2008 and of his mother on [date] May 2008. It includes a decision nominating the applicant as the guardian of the applicant brother.
 - A document described as “Certified copy of 2 page facsimile - threat against family” The translation provided to the Department indicates that the document is addressed to the “Family [name]” and refers to debts left by “the father and the son”. It refers to matters such as past deaths and the location of various parties. It warns against alerting the authorities. It provides an e-mail address for communication if the family has any questions. It warns that, of the [name] family do not make contact by “the next weekend”, they will have to suffer the consequences.
 - A document described as “Certified copy of 2 page document - official registration for protection – [Applicant 1 and Applicant 3] (dated [in] May 2008)”. This is an e-mail marked to the attention of the “Public – Colombian Institute of Family Well being”. It refers to a request by the applicant on [date] May 2008 in relation to “Securing of Custody”. It states that the applicant’s parents were killed in Medellin. It states that “they are not familiar with the motives of the crime, but as a consequence of it they felt very unsafe and they relocated to the city of Bogota”. It refers to the death of the applicant’s father, brother and mother. It states that “they are not familiar with the circumstances that led to those murders”. It states that “the eldest brother was kidnapped by [squadron] of the FARC, and this was notified to the “Gaula Group” of Medellin”.
43. Certified copies of a number of additional documents were submitted. These were described in particular as birth certificates and medical certificates. The Department was provided with copies of a number of additional untranslated documents, including identity documents and what is described as a declaration of de facto relationship. The applicants submitted various documents relating to their studies and achievements.
44. Also submitted were a number of reports with regard to the situation of internally displaced people in Colombia. These included reports entitled “Increases forced displacement in Antioquia”, “Colombia recorded 14,715 homicides so far in 2009”, “Medellin cracked Human Rights” and “Colombia’s Paramilitary DDR: Quiet and Tentative Success”.

45. The Department's file also contains records relating to the student visa applications made by the applicant and the applicant wife. In relation to the applicant, it is noted that both parents are dead and that he has legal custody of his younger brother.

Departmental Interview

46. The applicant attended a telephone interview with an officer of the Department [in] May 2010.
47. The Departmental officer interviewed the applicant and the applicant wife together. The delegate put to the applicants a summary of the applicant's claims in the application. The applicant agreed with the summary.
48. When asked how many businesses his family had, the applicant stated that his brother had several cattle farms around Colombia in [Town 3] and other places.
49. The applicant was asked where he lived between 1997 and 2008. He stated that it was in Medellin and after his mother died they moved to Bogota. The applicant was asked what was happening in his life between 1997 and 2008. He stated that he had been [studying] in Medellin and working in the family businesses in Medellin until "this happened" and then he had to start looking after the family's other businesses. The applicant indicated that he could not finish his [studies]. When the problem happened with his father and mother, he had to stop the last semester.
50. It was put to the applicant that it sounded like between 1997 and 2008 nothing "monumental" had happened in terms of guerrillas and paramilitary groups. The applicant stated that he had been dedicated to studying. His father kept telling them they had to be careful because those sort of people attacked people who had property. That was why they moved to several places within Medellin.
51. It was noted that, in the applicant's displaced person statement, he said that he moved to Bogota [in] June 2008 but that, in his protection visa application, he said that he moved there in February 2008. The applicant stated that he moved to Bogota at the end of May.
52. The applicant was asked what happened when he went to live in Bogota. He stated that he went there to live with some of his partner's aunts. They lived there for a while and then moved to another place. There they started to do all the papers regarding his brother's custody and started doing things regarding refugee status. When they started receiving all those threats they decided to leave the country. He stated that he received two threats at the [Town 3]. The applicant stated that in the threats there was information about the car, about where she and her partner lived, and about places of work. They were written threats left under the door of the business.
53. The applicant indicated that they told the authorities about the threats. They told the Attorney General's department. This department referred them to GAULA. After that, the applicant talked to the People's Office and then to the Presidency of the Public.
54. The applicant was asked to explain more about "Don Mario's men" and their demand that they appoint someone to negotiate with them. The applicant stated that the threats were usually received anonymously. After they came to the business and stole the money, they identified themselves as Don Mario's workers. The applicant stated that Don Mario was a

well known trafficker in narcotics and a paramilitary who had been operating in Colombia for a long time. He stated that, according to the rehabilitation process, Don Mario had taken control of all the other paramilitary areas after the demobilisation. The applicant stated that they went to the authorities. They did not receive any assistance from the authorities. The applicant was asked what it was that Don Mario wanted them to negotiate. The applicant stated that apparently it was the debts his father had left. They wanted them to give their property. When asked about the debts, the applicant stated that he did not know any debts left by his father. They only said that there was a debt.

55. The applicant was asked whether he had been able to avoid them. The applicant stated that they took the written threats to the authorities but they continued receiving more threats. The applicant was asked whether anyone came to their house in Bogota. The applicant stated that in Bogota there was only the robbery at the bank. The other threats were the ones left at the other businesses. The faxed notes were sent to them by the people who received them. When asked how many faxed notes he received, the applicant stated that he received two. They were sent to the business in [Town 3] and the worker there sent them to the applicant by fax. It was put to the applicant that he had previously stated that, after taking the notes to the authorities, he kept getting threats. The applicant replied that first of all the threats were written. From then on they went to the business personally and threatened and ill treated the workers there. The applicant stated that there were also calls, for instance the one he received at the bank. Others were made to the worker at [Town 3] and he used to ring the applicant and let her know about that. The applicant was asked how many times Don Pedro's men went to the business and threatened and ill treated the workers. The applicant stated that the first time they went there and stole the money in the till. Then they took the worker, forced him to open the till and stole several things around the business. That was the first time they identified themselves as Don Mario's workers. Before that there had been anonymous written threats. Then the other business in Medellin was robbed as well. He did not know who it was because they did not identify themselves and by then the applicant did not have any more contact with his relatives.
56. The applicant stated that, after the death of his father, he was very afraid. He stated that the robbery took place in Bogota so he went to the Bogota office to make the claim. The applicant indicated that the worker who rang him was [Mr F], the person working at the [Town 3] business. [Mr F] knew the applicant was at the bank because he had received a call saying that "they" knew he was at the bank complaining about it. The applicant was asked why they did not call him directly. The applicant stated that it was because they did not have his phone number, they only had his business phone number. That was why they told [Mr F] that they already knew the applicant was at the bank presenting the complaint. They rang the business and the worker told him. The applicant stated that [Mr F] told him there had been another call saying he had to withdraw the complaint or they would kill him.
57. The applicant was asked whether he had lived with his partner's relatives in Bogota for the whole of the period between May 2008 and March 2009. The applicant replied in the negative, saying that it was only when they first arrived in Bogota because they did not know anyone else. After that they moved to another place in Bogota. They were renting that place. It belonged to his partner's relatives. From May to June, they were at the applicant's partner's aunt's place. In July they moved to another place.
58. It was put to the applicant that he had provided a threatening letter indicating that the people knew his locations and registration numbers. The applicant was asked how they had been able to keep safe. The applicant stated that the only way was to move constantly to different

places and not tell anyone where he was. When asked how he stayed safe between July 2008 and March 2009, the applicant stated that no one knew where he was. He was there with his wife and brother, and they did not tell anyone where they were. They only went out when absolutely necessary. They stayed inside the house. His brother stopped going to school. Then they came to Australia. The applicant was asked about his work. The applicant stated that he had to abandon his work and study because their lives were in danger. It was the same for the applicant wife because in the written threats they mentioned her and the place where she was working [in] Medellin. The applicant wife was working for [Employer 2].

59. The applicant confirmed that, from July 2008 to March 2009, they stayed in their rental accommodation in Bogota without leaving unless it was necessary, and that he, his partner and his brother could not continue work or studies. He was asked whether he received any threats at the Bogota address while they were there. The applicant stated that the threats did not come to them. They were going to the businesses and were sent to them. Nobody knew where they were so the threats were sent to the businesses. But in many of the threats they said that they knew where the other people who were out of Medellin were.
60. With regard to the delay in lodging a protection visa application, the applicant stated that they initially started to study because they needed a good level of English to be able to contact an immigration person and an agent. After they got in touch with an agent, it took time to get all the necessary documents.
61. The applicant was asked whether any of the family members outside Medellin were approached by the people who made the threats. The applicant stated that he had lost contact with every body because he was fearing for his life. He did not know what was going on. The applicant was asked who had phoned him in Australia to tell him that his Medellin business had been robbed. The applicant stated that it was one of his mother's sisters who was in charge of all the papers and who was the only person who knew where they were.
62. The applicant stated that if he went back to Colombia he would again have the persecution he had before. His life and those of his wife and brother would be in danger again. They would have to go back to being inside the house. Those people had already killed his mother, his father and his brother, and they could kill him also. They could kidnap him and torture him. This applied not only to him but also his brother and wife. When asked who was going to do this to them, the applicant stated that it was the same people who had already murdered his parents and brother. The applicant referred to them as the paramilitary who were under Don Mario's orders. The applicant was asked why he thought they had chosen his family to persecute. The applicant stated that his father belonged to the demobilisation process. He had had to help the paramilitary groups as many other people in Colombia had to do. After the demobilisation, when they denied help to other groups that did not demobilise from the paramilitaries, this was the main cause for their death and for the persecution of the rest of the family. The applicant was asked what his father had done to assist the demobilisation. The applicant stated that long ago his father had problems with the guerrillas. If you denied help to them, you had problems. After this, the paramilitaries appeared and got in contact with many people in that area. The applicant's father had no option but to offer them logistical help and the funds they required. When the demobilisation process appeared, he took the opportunity to help them in order to clear his name and get rid of these problems. Unfortunately not everyone got demobilised and new paramilitary groups appeared such as the one under Don Mario.

63. The applicant indicated that his father, like many other people who had farms or businesses in the area, was forced to provide logistical help for the paramilitaries. If you did not help them, they would kill you or kidnap you. The applicant was asked exactly what his father did for demobilisation. The applicant stated that this was a process organised by the Colombian government in which people accepted help and the groups promised to go back to normality. The applicant was asked what his father had actually done. The applicant stated that many times he had to allow paramilitaries to stay in their places because they were in the jungle or many times they rang them for money.
64. The applicant was asked whether he had thought of relocating to another part of Colombia. The applicant stated that this was what they did at the beginning. They went there thinking it was a bigger city and it would be harder for the people to find them. However, unfortunately the people found out where they were. After the incident at the bank, the people could locate them more easily. It was then that they decided to move out of Colombia.
65. The applicant and applicant wife were asked whether there was anything else they wished to add to their statement. The applicant stated that the debts were fictitious debts. They were not debts his father had. They were a kind of extortion. They created those sorts of fictitious debts in order to extort the funding. He stated that it was illegal in Colombia.
66. The applicant's representative made oral submissions. He stated that nothing should turn on the date of lodgement. He stated that the applicants had been here legally and had not been working in Australia illegally. He stated that the applicants had come to him in 2009. Their first meeting had been [in] September. He stated that he believed they had seen another legal service before him and they had referred the applicants to him.
67. The applicant wife stated that, when they were in hiding, some people went to her grandmother's place asking where they were. They asked, "Where is [Applicant 2]?" Her cousin said, "Who is she?" When asked whether her cousin knew who the person was who was looking for her, the applicant stated that there were two people on a motorcycle and she did not know who they were. They did not threaten her cousin. When she told them that she did not know who the applicant was, they left very angry. They did not come back. The applicant wife indicated that there was nothing else she wished to add.

Review Application

68. In support of the review application, the applicant's representative provided a further submission, dated [in] August 2010. It was submitted that the applicants were members of a social group that the Government of Colombia were unable or unwilling to protect from paramilitary organisations. Although the government had verbal commitments to protect its citizens in these regards, virtually nothing had been done to stop the paramilitary groups from persecuting people such as the applicants. It was submitted that the government of Colombia had taken no, or insufficient, steps to ensure any, or any meaningful, protection. It had taken no action to curb, or to effectively curb the illegal and persecutory activities of the paramilitary organisations.
69. Reference was made to independent information which, it was submitted, gave "a vastly different country profile than that referred to by the Decision Maker". It was submitted that a Human Rights Watch, dated 3 February 2010, illustrated that, although the government proclaimed a victory in the demobilisation process in 2003 to 2006, new groups "formed almost immediately and the threat by them is serious and steadily growing".

70. It was submitted that the threat to the applicant and to his family was a direct result of the persecution of his father, his brother and his mother and all his family. His father's refusal to assist the new paramilitary groups had "led to his slaying and the slaying of his son, the brother of this applicant" The family had been marked as landowners that had refused to involve themselves in the illegal activities. They were being hunted down and eliminated as punishment and as a warning to others.
71. It was submitted that the country information indicated that the applicant came from an area of Colombia that was "one of the main targets and homes of the violent paramilitary organizations". Although the family had left their home area, abandoning their land, their whereabouts had become known to "their enemies" It was not possible for them to relocate to another area.
72. The submissions again addressed the time delay in initially lodging an application for protection.
73. It was submitted that the Government of Colombia had demonstrated its inability or unwillingness to provide adequate protection for those men and women who were caught up in violence directed at them by "the paramilitary organization".
74. The Tribunal was also provided with a collection of independent information, apparently compiled by the applicant as well as a covering statement from the applicant.
75. The applicant stated that his major concern was "about the paramilitary groups and the successors groups that are operating after the demobilization in Colombia" He stated that he had mentioned the guerrillas groups such as the FARC "because it is part of the background of my family" but their main concern "is with the paramilitarism in Colombia".
76. The applicant indicated that he had highlighted the most important parts in the reports he was providing. He indicated that this included information "about the demobilization and the new groups of paramilitarism and the failure in such process", as well as information "that shows an union between the paramilitary groups and the Colombian government". He submitted that this showed that the "Colombian government is allied with the paramilitary groups". The applicant submitted that the reports showed the presence of such groups "basically everywhere in the country".
77. The reports provided by the applicant included the following:
 - A report from Human Rights Watch entitled *Paramilitaries Heirs*. A number of passages in this document were highlighted. The document referred to the emergence of new groups after the demobilisation process had ended. It referred to the effect of these groups on the human rights and humanitarian situation, noting that the successor groups were engaged in widespread and serious abuses against civilians, including massacres, killings, rapes, threats and extortion. It observed that the groups regularly used threats and extortion against members of the communities where they operated as a way to exert control over local populations. It noted that, in some places such as Medellin, the groups' operations have resulted in a large increase in violence. The report noted that some analysts had labelled the successor groups as "emerging criminal gangs at the service of drug trafficking" while others viewed the groups as a continuation of the AUC or a new generation of paramilitaries. It referred to a failure by the government to take strong and effective measures to protect the civilian population. It referred to a failure by

the government to effectively demobilise many AUC leaders and fighters and to flaws in the demobilisation process. It referred to displacement as a result of the activities of the successor groups. With regard to the state response, it was noted that government policies stipulated that the military was to confront the successor groups only in certain circumstances. Reference was also made to concerns about corruption and toleration of successor groups by some state officials. It was reported that the state had failed to take adequate measures to prevent abuses and protect the civilian population.

- A report of 23 December 2009 entitled *Colombia: Protect Witnesses in Paramilitary Cases* This document reported calls by Human Rights Watch for the government to investigate attacks on witnesses and bolster law enforcement efforts. It referred to the shooting of a witness in a trial relating to a demobilised paramilitary member and to other killings. It referred to increasing violence in Medellin. It noted that most of the increase was attributable to the AUC's successor groups which "control criminal activity in the city".
- A Human Rights Watch report entitled *Colombia: Obama Should Press Uribe on Rights* This referred to a letter from the director of Human Rights Watch highlighting human rights problems and threats to democracy in Colombia, including illegal surveillance and wiretapping of opposition political figures in particular, extrajudicial killings and an increase in the activity of new armed groups.
- An article of 28 January 2009, also from Human Rights Watch and entitled *Breaking the Grip*. It referred to the activities of paramilitary groups and noted that they had eliminated anyone who opposed them, including ordinary civilians. It referred to widespread displacement and the taking of abandoned lands. It noted that, with their growing clout aided by criminal activities such as drug trafficking, "paramilitaries have made mafia-style alliances" with powerful landowners and businessmen, military units and numerous members of Colombian Congress. It reported that Colombia's institutions of justice had made "historic gains against paramilitary power" but that those gains were still tentative and fragile. The report stated that the Uribe administration was squandering much of the opportunity to dismantle paramilitaries' mafias. It stated that, if the Uribe administration continued on its path, it was likely that "the enormous efforts made by Colombian courts and prosecutors to hold paramilitaries' accomplices accountable" would ultimately fail to break their power.
- An article of 29 January 2010 entitled *Who Cares About the Victims of Forced Displacement?* This cited an activist as describing the government as stingy towards the displaced. It referred to indifference to the plight faced by the nearly five million people who had been forcibly displaced in Colombia over the last 25 years.
- A CNN article entitled *Gangs tied to paramilitaries cited in Colombia violence* This reported that criminal gangs that had emerged from Colombia's paramilitary organisations were carrying out massacres, rapes and extortion. It referred to violence in Medellin and Bogota. The article highlighted flaws in the demobilisation process. According to the article, the government stressed that the gangs are simply groups of thugs dedicated to narco trafficking and extortion. It observed that the US had classified the paramilitary group as a foreign terrorist organisation. Human Rights Watch had reported that the government had failed to ensure that police and prosecutors had adequate resources. According to Human Rights Watch, a majority of the leaders of the

successor groups were midlevel AUC commanders who had never demobilised or had continued engaging in criminal activity. The groups were active in many of the same regions where the AUC had a presence and operated by controlling territory through threats and extortion, engaging in drug trafficking and other criminal activity, and committing widespread abuses against civilians.

- A Travel Warning on Colombia from the US Department of State's Bureau of Consular Affairs. This noted, for instance, that no one was immune from kidnapping on the basis of occupation, nationality or other factors. It referred to violence by narco-trafficking groups, and the potential for violence by terrorists and other criminal groups. It referred to a marked increase in violent crime in places such as Medellin.
- A document from the US Department of State entitled *Colombia Country Specific Information*.
- Further documents from the US Department of State. These indicated that the potential for violence by terrorists and other criminal elements existed in all parts of the country.
- A document entitled *Paramilitaries Threaten Canadian Embassy in Bogota* This referred to reports that the Aguilas Negras (Black Eagles) had sent threatening e-mails to the Canadian Embassy in Bogota. The article contained criticism of the Justice and Peace Law.
- The US Department of State's *2009 Country Reports on Human Rights Practices – Colombia*. This document referred to numerous forms of human rights abuse, although it noted that the government continued to make efforts to address those abuses. It noted that AUC members who refused to demobilise, AUC members who demobilised but abandoned the peace process, and other new illegal armed groups remained targets of security force action. They continued to commit numerous unlawful acts and abuses, including killings. The State Department referred to collaboration by some members of government security forces. It referred to forced disappearances and kidnappings. It reported that illegal groups routinely interfered with the right to privacy. It referred to killings by illegal armed groups, including the killing of civilians, and to persecution of human rights defenders
- A document of 2 June 2010 entitled *UN reports on Colombian parapolitics* This referred to links between paramilitary leaders and some politicians. It noted that numerous Colombian Congressmen had been charged with illicit ties to paramilitary organisations. The report also referred to investigations into governors, mayors, council members and other government officials.
- A document entitled *Humanitarian Crisis in Colombia: Impossible to Deny the Evidence*. This referred in particular to the large number of displaced people in Colombia.
- An article entitled *Colombia: Caqueta Governor Abducted and Killed: FARC Guerrillas Target Civilians with Attacks, Kidnappings*. This referred to the killing of a state governor and the targeting of civilians.
- An article entitled *Plan Colombia: A \$5 Billion Failure?* This article referred to a report which found that US military aid was associated with increased paramilitary attacks.

- A document from Amnesty International entitled *Shooting of Colombian human rights activist condemned* This referred to the killing of a human rights activist who was campaigning against abuses committed by paramilitaries. It noted that activists campaigning for the return of stolen lands had been particularly vulnerable to threats and killings.

Tribunal Hearing [in] August 2010

78. At the hearing, the representative indicated that it was not the intention that the applicant son would be giving evidence and that the applicant would be giving evidence on his behalf. It was noted that the applicant son was a minor and that his claims were the same as those of the applicant.
79. The applicant indicated that he was living with the applicant wife. He stated that they started living together [in] February 2006. At that time he was living in [District 1] in Medellin. He stated that he had moved to Medellin with his parents at the age of four. He grew up there and met the applicant wife there. The applicant indicated that his parents also had properties in [Town 5] in Antioquia. His father used to have three properties in [Town 5]. They had some others in [Town 3], a small town near the Medellin area. It was probably [distance deleted: s.431(2)] from Medellin. They had farms. They had a business in [Town 3] and three farms in [Town 3]. They had other farms in the place where his father was born.
80. The applicant stated that they moved to Bogota after his mother was killed in May 2008. The Tribunal put to the applicant that, looking through the paperwork, it had some difficulty getting a consistent picture of when he moved to Bogota. The applicant stated that when his father and brother were killed they were living in [District 1]. After that they moved to another place in the same town. After his mother was killed, they moved to the house of his aunt. Then they decided to move to Bogota at the end of May. The Tribunal asked why it said in his application that he lived in Bogota from February 2008. The applicant stated that they moved there at the end of May. The Tribunal put to the applicant that he had provided a document to the Department that related to being displaced. It put to him that this seemed to contain a complaint about being displaced. This indicated that he sought refuge in Bogota [in] June 2008. It put to him that this was different to what was in his application and different to what he had said at the hearing. The applicant stated that he gave information and they took notes. In another document, they said that they moved to Bogota [in] May. He assumed that he took notes and put that. He suggested that it might be a mistake in the document.
81. The applicant indicated that he had stopped studying in May 2008. He said that the applicant wife had been working at [Employer 2]. She stopped working in May 2008. The applicant son had been studying at high school. They all stopped on the day his mother was killed. After that, they had to hide. The applicant wife was living with him for the whole of the period from 2006 onwards.
82. The Tribunal asked the applicant whether he had family still in Colombia. He stated that he did but only had contact with his aunt who lived in Medellin. He had contact with her by mail and phone.
83. The applicant stated that he had one brother. He had not heard from him. His brother was not living with them much before. He was a drug addict. The applicant indicated that this was [Mr A].

84. The applicant stated that the applicant wife had one sister and one brother both living in [District 1]. He said that she was in contact with her family.
85. The applicant indicated that he had started an application to go to Canada in July but the process stopped one month after he arrived in Australia. They said they sent him an e-mail saying he had an appointment. When he said that he was not in Colombia, they said the process had to be stopped because it was exclusively for people who were in Colombia.
86. When asked about the family's business in [Town 3], the applicant said that it was a [shop]. They had been running it for four years. First they had a farm. Then they started that business in the town.
87. The applicant stated that he had lived mainly in Medellin. He went to [Town 3] or [Town 5] on the weekends or sometimes in the week but they did not live there. He had been studying in Medellin.
88. The Tribunal asked the applicant about his family having been targeted by FARC in the past. It noted his claim that his uncle was kidnapped by FARC in 1988. He named the uncle and said the uncle was released. He said this was when he was a child and he did not have details. He thought a ransom was paid. He said that they were living in a small town at that time. When they were living in Medellin, his oldest brother, [Mr B], was kidnapped in [Town 3]. The applicant said that this brother was kidnapped by FARC in 1996. They paid a ransom. The brother was kidnapped from the [Town 3] farm. The Tribunal asked the applicant how he got the documents he had submitted about such events. He said his mother had the one relating to his brother's kidnapping. There was another kidnapping after his brother. There was an uncle who was killed. The Tribunal expressed some concern about the appearance of the documents. The applicant said that this was how they worked in Colombia.
89. The applicant confirmed that, in 1997, another uncle was kidnapped and killed even though the family paid some money. The applicant named this uncle. He said that this occurred in [location deleted: s.431(2)], a place a bit further from the small town where he was born. This was also done by FARC. The applicant stated that the farms were in the country so the territories were under the guerrillas' control. Sometimes they would go to the farms and ask where the owners were. They would just catch the cattle. The applicant stated that his father had always told them that they had to be careful when they went to the farms. After the kidnapping of his brother they moved different times in Medellin.
90. The Tribunal put to the applicant that it understood that the situation with FARC had changed quite considerably and they had been pushed back to more remote areas. It asked whether he claimed that FARC were still engaging in activities such as taking cattle in the areas where his family's farms were located. The applicant said that they were. The farms were in remote areas. There were still some in the jungle. They were very hard to control. They had landmines. They still had some power. The Tribunal put to the applicant that it appeared that the problem, with FARC might have been something that occurred in the past and that his claim now was based more on a fear of the paramilitaries. The applicant confirmed that this is the case.
91. The Tribunal asked the applicant whether he had suffered any particular problems between around 1997 when his uncle was kidnapped and 2008. The applicant replied, "Not really" but went on to say that there was still a warning about the situation. The paramilitaries started to grow and take control. His father said to be careful. Some places were not safe. There were

kidnappings and extortions. The Tribunal put to the applicant that these might be problems that affected the population generally. It put to him that it appeared that there were groups interested in making money and gaining control of certain areas. The applicant stated that the way they gained control of the areas was by threats and extortion. That was why they did this kind of thing. The Tribunal put to the applicant that they seemed to do such things just to ordinary citizens. The applicant stated that if you had a farm in Colombia you had to help them or support them. His father did not want to help them. The Tribunal put to the applicant that it did not appear to be just farmers who were affected. Ordinary people in the cities were also subject to extortion or taxes. The applicant said that this sometimes happened in the cities but mostly outside.

92. The applicant confirmed that his father and brother were killed in [Town 3] in February 2008. The Tribunal noted that the death certificates referred to [Town 4] as the place of death. [Town 4] was a municipality just next to [Town 3].
93. The Tribunal asked the applicant whether they had complained about his father's and brother's deaths. He stated that they did. The police had started an investigation but nothing had come of that. The applicant stated that they were found by the police. They answered questions asked by the police. He made complaints after his mother was killed. When asked whether he had any record of that initial complaint, the applicant stated that he did not think so. He stated that they went to the Fiscalía or Prosecutors. They started the process of searching for help after his mother was killed.
94. The Tribunal asked the applicant how he had obtained the certificates relating to the deaths of his father and brother. The applicant stated that they went to the town where they were killed. They made copies. The Tribunal asked why the certificate for his brother looked different to the one for his father. The applicant said that he did not know.
95. The Tribunal asked the applicant whether he knew who was responsible for the death of his father and brother. He said that they did not know at the beginning. After the threats they identified themselves as workers of Don Mario, a paramilitary boss in Colombia. The Tribunal asked whether they said that they were the ones responsible for killing his father and brother. The applicant indicated that they followed a process and made that connection themselves. He said that they were referring to past threats. The father and brother were killed by long range weapons. Those are only used by paramilitary groups or the army. The applicant confirmed that he thought that the one group was responsible for the whole chain of events. He said that they killed his father and brother. Then they killed his mother and then the farm manager. The applicant said he would be next. The Tribunal put to the applicant that it appeared that no one actually identified who killed his father and brother but he just made the connection from what had happened afterwards.
96. When asked why his father was killed, the applicant stated that his father was a part of the demobilisation. After that they started to kill a lot of people from the demobilisation. They killed some witnesses and people who did not want to keep going with that. They wanted more money and more support. He believed his father did not want to keep helping them. That was why they killed him. The Tribunal asked how his father was part of the demobilisation. The applicant stated that his father helped sometimes on the farms or something like that. He gave medicine or something supporting them. That made him part of the paramilitary group. In the past he faced extortion and threats from the guerrillas. When the paramilitaries appeared he did not want to go through that again. He had no choice but to help them. The Tribunal noted that the demobilisation was carried out by the government and

it did not appear his father was directly involved in that. The applicant said that his father was part of that because he helped. That was why he wanted the opportunity to clear his name and to say that he did not want to support them any more. He stopped supporting them after the demobilisation. They kept going with the threats and extortion. A lot of witnesses from that process were killed.

97. The Tribunal asked why the applicant's father was supporting them in the past. He said that his father had had a bad experience with the guerrillas. The family had suffered kidnapping and extortion. The paramilitaries were against the guerrillas. His father did not want to be in the middle of both. He had to take one side. That was why he was with the paramilitaries group. The Tribunal asked whether they were threatening his father if he did not assist. The applicant said that this was what happened in Colombia. If you were not with one or the other, you could not be in the middle. When asked what assistance he gave the paramilitaries, he said he sometimes gave medicine or food or money or sometimes they stayed on the farms. There were some groups that did not demobilise.
98. The Tribunal asked what happened to the applicant's father. The applicant said his father kept going with the business. His father did not tell him anything else until he was murdered. He just kept running the business. The Tribunal put to the applicant that his evidence seemed to be that he knew that when they threatened him his father was giving the paramilitary things, that he knew there was a demobilisation and that he later knew his father was killed. The Tribunal queried whether there was any connection with involvement in the demobilisation process. The applicant stated that after that his father stopped helping them. The Tribunal asked what happened to his father after the demobilisation. It asked whether people came to his father. The applicant stated that after the demobilisation process they had to start some process with the government. They had to go and tell them. There was a process of returning to normal life after the demobilisation. The Tribunal put to the applicant that it was interested in what happened between his father and the paramilitaries after demobilisation. The applicant stated that his father never told them anything about that. He did not have much information about that. He just knew his father was working his farms. Most of the information he got after his father was murdered. Most of these things his mother told him.
99. The Tribunal put to the applicant that it appeared that there was a point where the paramilitaries were threatening him and, because they were threatening him, his father gave them some assistance. There was a point, albeit after the demobilisation, that some groups wanted some things from his father but his father refused to provide those things and they harmed him for that. The applicant agreed with this. The Tribunal questioned whether this had anything to do with involvement in the demobilisation as such. The applicant said that when the demobilisation happened the groups were still working but not as strong as before. The applicant indicated that he did not know whether his father was threatened by these groups after the demobilisation. The Tribunal put to the applicant that what happened after the demobilisation and up to the time of his father's death in 2008 seemed somewhat vague. The applicant said that the demobilisation was in 2004 and his father was killed in 2008. For those four years their life was normal. The Tribunal acknowledged that there was a demobilisation process, that some groups did not demobilise and that were some groups that appeared after the demobilisation. It put to him that these groups appeared to have been involved in criminal activity and trying to control areas. It put to the applicant that it might be that they harmed his father and his brother but questioned whether this was for any reason other than because they were interested in criminal or financial gain. The applicant stated that

all he knew was that [Town 3] was taken by the new groups that appeared like the Black Eagles. He was in Medellin and did not know much about those things.

100. The Tribunal noted that the applicant had provided a copy of a document which was a court order relating to the custody of his brother. It noted that this document stated that he had informed that his parents and brother had been killed in Medellin but that he was not familiar with the motives that led to these incidents. The applicant stated that they did not know who it was at that time but after they identified themselves they knew. The applicant stated that the investigator had not come through with any result. The Tribunal put to the applicant that it might doubt that there was anything that would indicate that it was other than a criminal act. The applicant stated that the threat stated that his father and brother had a debt and that they had killed his mother and the farm manager. They said that they knew his father and brother had a debt. The Tribunal put to the applicant that this might appear to reflect an interest in financial gain. The Tribunal noted that the applicant had also provided a document addressed to the Colombian Institute of Family Wellbeing. It noted that this talked about the deaths of his father, mother and brother. It stated that they were not familiar with the circumstances that led to those murders. The applicant stated that they were not sure at the time but later they received the threats. They said that they wanted them to negotiate. The Tribunal again noted that this might appear to be about money.
101. The applicant confirmed that they received an anonymous phone call after his father and brother died. He stated that they called the business in [Town 3]. They called the guy and said not to come here. The applicant said that he thought the people wanted them to stay away from the land so they could steal the things or control them. They decided to move to a different place.
102. The applicant confirmed that the worker at the business spoke to the people. The worker was not able to identify them. The applicant indicated that they moved to another place in [District 1] because they were scared.
103. The applicant confirmed that his mother was killed [in] May. He said that this occurred when she arrived at the entrance to the unit where his older brother moved in Medellin. The applicant stated that he then moved to his aunt's house and stayed there until they moved to Bogota.
104. The Tribunal asked whether it was the case that someone who used to work for the applicant's father was killed. The applicant stated that it was [Mr D], a manager at the [Town 5] farm. The applicant confirmed that they were not able to identify who was responsible for this or for killing his mother. He said that [Mr D] was killed a few days after his mother. The applicant stated that he moved to Bogota after that. He stayed in Medellin until the end of May and then moved to Bogota. They went to a place in Bogota where some relatives were living. After some time they moved to another place, an apartment owned by relatives.
105. The applicant indicated that he made a complaint about his mother's death when he was in Bogota. They talked to the Fiscalia. It was his aunt in Medellin who made the complaint. The Tribunal noted that he had provided a document from the Fiscalia dated [in] August. It asked why this was dated so long after the deaths. The applicant said that he did not know. There were different ones. The Tribunal noted that the document appeared to be of poor quality for an official document. The applicant stated that this was all that they had been given.

106. The Tribunal asked the applicant about the claimed visit to his partner's grandmother in [District 1]. He stated that some people went to her grandmother's house asking where she was. The relatives said that they did not know her. The applicant stated that he had a car in Medellin. It was stopped one day and they asked where the owner was.
107. When asked whether they received more threats after his mother's death, the applicant said that they received the printed ones. They were put under the door in the business in [Town 3]. The worker sent them by fax. There were two within three weeks.
108. The Tribunal noted that the applicant had provided a document which appeared to contain some sort of threat. The applicant confirmed that this was one of the ones he was referring to. When asked who left the notes, the applicant stated that they were anonymous. One left an e-mail.
109. When asked whether he complained about these things to the authorities, the applicant replied in the affirmative. He said that the Fiscalia referred the case to GAULA. He asked for help but they never gave him any. The Tribunal asked the applicant whether he had a record of his complaint to GAULA. He said that he did not think there was one. Sometimes they gave a copy and sometimes they did not.
110. The Tribunal asked the applicant why the Colombian Institute of Family Welfare was involved. It asked why they would be interested in the paramilitaries. The applicant said that when they moved to Bogota they had to make the process to be [Applicant 3]'s guardian. That was the only place they could do that. They told their story and the institute was interested to help because [Applicant 3] was a minor. He said that they looked after minors. In Colombia there was a big problem with children in the war.
111. The Tribunal noted that the debt note talked about debts. The applicant stated that he did not think his father and mother actually had debts to the people. He said that he thought they just created that. He said that he thought they wanted the land and the money.
112. The Tribunal asked the applicant when the people went to the business in [Town 3]. He said that the first time they went and asked the guy to give money. That was when they said they worked for Don Mario. They were some people that the person did not recognise. They said to tell his boss that they needed to talk to him and negotiate the debts of the father. They said they would kill him if he did not give the money. The applicant indicated that they stole money from the place. They threatened the worker verbally but did not hit him. The second time they came back they stole everything from the place, including the money and the jewellery. The Tribunal again put to the applicant that it seemed the people might criminals interested in financial and criminal gain.
113. The applicant stated that he thought the people were actually sent by Don Mario. He said that the people said they knew all his movements. After that his account was stolen. All the money was transferred to a different account. It was something like \$40,000. The Tribunal asked what the people said to the worker when they came to the business. The applicant stated that the first time they said they were working for Dan Mario and were sent because they needed to talk with the boss about the debts. They were threatening the worker and telling him to call the boss to negotiate with them. The second time they said that if the boss did not appear they would start making action. The applicant indicated that he never negotiated with them or paid them money. When asked how, if that was the case, he was able

to avoid harm until he left Colombia, the applicant stated that he had to disappear. He hid and only went out if it was really necessary. No one knew where he was.

114. The Tribunal asked the applicant when the money was transferred out of his bank account. He said that that was [in] September. He used to check the account ever week. His account was from [Town 3]. They had different offices. He talked to the bank and said he had not allowed the transaction. They said they would start a process. The applicant stated that he used to use an office in Bogota to make transactions. The money was transferred from the office in Bogota to another account in Medellin. The Tribunal asked where Tunja was. The applicant said that this was near Bogota. Tunja was two hours from Bogota. The Tribunal noted that the applicant had not made any evidence previously to having lived in Tunja. It asked whether there was any reason for that. The applicant stated that he just went there to make the documents. He just went there for one day.
115. The applicant stated that he went to the office of the bank in Bogota. While he was there, he received a call from the worker in the [Town 3] business. He said that they knew that he was doing something with the bank and had threatened him again. They said not to do this or he would suffer consequences. He did not have much time. He was scared and had to move quickly to another place. At night a person called and said they knew he had left a letter. They said he should remove the letter from the bank.
116. The Tribunal asked the applicant about the Defender of the People. The applicant stated that this was an office that worked with people like displaced people. That was suggested by the child welfare person. They told their story. They said that they would be recognised as displaced people. The Tribunal noted that there was a document about a complaint he had made. It asked whether there was anything indicating that this had been recognised. The applicant stated that there was one about when he made a complaint. After that they said he would be recognised. The Tribunal noted that there seemed to be a lot of documentation about the complaint and something indicating that his statement met certain requirements. The Tribunal put to the applicant that it seemed to be based simply on what he told them on that day. It put to him that it appeared to have all happened on one day and expressed doubt that any investigation had been undertaken. The applicant replied that this was how it worked. They just filled out a form and that was all. They put everything in the computer and gave a document. The document said that they could have some help services. The applicant stated that this was the only way to get the services.
117. The Tribunal noted that the applicant had provided a document from the National General Attorney's Office dated [in] June 2008. It noted that this was a formal complaint about forced displacement. The Tribunal put to the applicant that this document appeared to be of poor quality. It questioned whether this was an official document. The applicant stated that the original documents were different to the translated documents. The original had stamps.
118. The Tribunal asked the applicant about the claimed robbery at the business. The applicant said that this was after they stole the account. He said it was the same place in [Town 3], the one he had talked about. He confirmed that this was the incident he had referred to earlier. He said that the business was in [Town 3] and the farms were there. Everything was related to that. The person used to live on one of the farms. They went to the farm and took him. They took him to the business and stole things.
119. The Tribunal put to the applicant that it seemed like they were trying to take money from his accounts, to take money things from the business. It appeared that they were looking

wherever they could for money and things they could have for their own financial gain. It questioned whether, even if such things did happen, they came within the Convention. The applicant stated that all this was because his father was part of a group in the past. He was part of the demobilisation process. The demobilised people were targeted because they did not want people to make complaints. The Tribunal noted that there were reports of people who had been witnesses suffering harm but questioned whether this was what had happened to the applicant or his family. It put to him that it appeared opportunistic in the sense that they had identified an opportunity to make money out of him and other members of his family. The applicant stated that his father was part of these groups. The people who killed him identified themselves as paramilitaries. If they killed his father, it was because he did not want to be involved in that group.

120. The Tribunal noted that the applicant had claimed that one of the businesses had been robbed after he came to Australia. The applicant confirmed that this was the case. He stated that they took the person who was working in the place and stole everything.
121. The Tribunal also took evidence from the applicant wife. She indicated that she was aware of what was in the applicant's written statement and that she agreed with what was in it. She stated that she had had assistance from the applicant in preparing her application because he spoke better English. She indicated that she and the applicant had been living together since February 2006. When they were first living together, they lived in [District 1] in a house with the applicant's family. They stopped living in that house about two years later. After that they moved to another place in another place in [District 1]. The Tribunal noted that there seemed to be some inconsistency in the evidence about when they moved and, in particular, when they moved to Bogota. It noted that the applications indicated that they had lived in Bogota from February 2008. Other documents appeared to indicate that they had lived there from June 2008. The applicant wife stated that it was [in] May 2008.
122. The applicant wife confirmed that she was born in Medellin and indicated that she had been living there before she started living with the applicant.
123. The applicant wife confirmed that she had worked for [company deleted: s.431(2)] and [Employer 2] in Medellin. She stated that she had stopped working for [Employer 2] [in] May 2008, the same day that the applicant's mother was assassinated. She stated that the applicant had stopped studying [in] May 2008. When asked about the situation of [Applicant 3], she stated that he was normally going to school and having guitar lessons in the afternoon. He also stopped his classes [in] May.
124. The applicant indicated that her parents were still living in [District 1] in Colombia. She indicated that she had one sister and one brother living in [District 1]. She was in contact with them.
125. The applicant wife indicated that she had made the application to go to Canada in August 2008. When asked what had happened to that application, she said that she could recall that there had been a threat to that Embassy by the paramilitary. They advised that the Canadian Embassy had stopped receiving applications as a result of the threat. The Tribunal asked whether this was the reason they did not proceed with their application. The applicant wife replied in the negative. She stated that the applicant received an e-mail in June last year saying they could not help any more because they were outside the country. The applicant received another e-mail asking them to send an e-mail within 30 days if they wanted to continue with their request. The applicant sent an e-mail but they did not hear back.
126. The Tribunal noted that the applicant had made a statement to the Department. It noted that this raised a number of things that appeared to have occurred in the past before he was living

with the applicant wife. It noted, for instance, that he had claimed that an uncle had been kidnapped by FARC in 1988, that his older brother had been kidnapped by FARC guerrillas in 1996 and that another uncle had been kidnapped and killed in 1997. The applicant had also talked about FARC going to the family's properties, asking after family members and killing cattle. The applicant wife indicated that she knew about those things.

127. The Tribunal put to the applicant wife that these things appeared to be quite some time in the past and it appeared that there had been some change in the situation with regard to FARC in recent times. The Tribunal expressed some doubt that she would be at risk of being harmed by FARC. The applicant wife stated that she was also at risk. In Colombia there was a system in operation that if someone wanted to obtain information or money, they seized or captured people closest to you. Sometimes they would even kill the victim and say that the victim was still alive. They still went around killing people as did the paramilitaries.
128. The Tribunal asked the applicant wife whether she had been harmed by FARC in the past. She stated that she had an uncle who was kidnapped and killed in 1993.
129. The Tribunal noted the claim that the applicant's father and brother had been killed [in] February 2008, and asked the applicant wife whether she knew where they were when they were killed. The applicant wife replied in the negative, stating that the only thing she knew was that she and the applicant had to go and identify the bodies. When asked whether they complained to the police about that, she stated that they actually went to the "office of protection".
130. The Tribunal asked whether she had any idea why the applicant's father and brother were killed. The applicant wife stated that she honestly believed that it was what was termed "vaccination" She said that this was when the paramilitary came and asked for money from you, like protection money. If you refused to pay it, they would kill you.
131. The Tribunal put to the applicant wife that it appeared that the successor groups to the paramilitaries were largely interested in controlling territory and money and finances for their own personal criminal gain. It expressed doubt that this was motivated by anything more than a desire by these groups for their own personal financial and criminal gain. The applicant wife stated that the applicant was the man of the house, the responsible person of the house. She stated that she believed that they thought that he would pick up where his father left off, that he would take up the reins of the business. That was why they wanted to take over the land or the territory and kill them and make every trace disappear. It was to eliminate them. If the applicant was out of the way, it would be much easier to get to the applicant brother.
132. The Tribunal noted that the documents that had been submitted included a Court Order related to the custody of [Applicant 3]. It noted that this talked about the killings of the parents and the brother, and said that he was not familiar with the motives that led to these incidents. The Tribunal noted that there was another document for the attention of the Colombian Institute of Family Wellbeing and that this talked about the mother, brother and father being killed but stated that they were not familiar with the circumstances that led to these murders. The applicant wife stated that they were not totally sure why they were killed. She stated that they assumed that it was because of the protection money.
133. The Tribunal questioned whether the harm that she and the applicant's family had suffered or feared was related to any of the five Convention reasons. The applicant wife stated that the applicant's father had formed part of the paramilitary group. He had had to participate. He had to contribute food and a place to stay because otherwise he would have been killed himself. The applicant wife stated that she thought he was trying to protect his family. If he did not help the paramilitary, he knew that his wife and children would be at risk. In

Colombia, since demobilisation there was a fear that people who had belonged would talk too much. That was why they were interested in killing these people and their families. The Tribunal put to the applicant wife that there did not appear to be a lot of evidence that this was what had happened in this case. She stated that in Colombia it was only the guerrilla or paramilitary groups that had long-range weapons. It was proven that it was long-range weapons. Common criminals did not have these types of weapons.

134. The Tribunal noted that it had also been claimed that there was an anonymous call to the family business in 2008 saying that they could not keep going to the farms and threatening kidnapping. The applicant wife stated that she was aware of this. After the applicant's mother was killed, they had to go to the farms to look after them. When they stopped going to the farms, the applicant told her that when they killed her mother they received a call on the same day saying that they had to stop going to the farms. The Tribunal asked whether she was aware of a call before the applicant's mother was killed. The applicant wife said that the applicant told her about the threat related to the farm on the same night that they killed his mother. The Tribunal asked whether the applicant wife was aware of an anonymous threat made before the applicant's mother was killed. She said that she was and this was why they moved house. She indicated that they did not know who made this threat.
135. With regard to the killings of the applicant's father, mother and brother, the Tribunal asked whether the people responsible for those things had ever been found. The applicant wife stated that they received threats and they knew it was from the staff of Don Mario or maybe from Don Mario himself. The Tribunal asked the applicant wife whether she thought Don Mario's people were responsible for all the things that happened to the applicant's family in 2008. She replied that it could have been Don Mario but it was maybe also people who were afraid that the applicant's father would talk about what he knew about the paramilitaries. The Tribunal asked what basis she had for suggesting that it was people who were afraid that the father would talk. The applicant wife stated that in one of the threats it was said that Don Mario was exerting the pressure. The Tribunal put to the applicant wife that it appeared that the people who had committed the killings were not found. It noted that it appeared from her evidence that, because of things that happened later, they thought that Don Mario was involved. The applicant wife stated that they asked the DPP for help. They said that all assassinations of this type were based on paramilitaries. They did not find them but the threats clearly said Don Mario.
136. The Tribunal asked about the claim that another person who used to help on the farms, [Mr D], was killed after the death of the applicant's mother. The applicant wife stated that he was killed on the Monday after the applicant's mother. When asked whether she knew who killed [Mr D], the applicant wife stated that the paramilitary was known for wanting to erase all traces because they feared and wanted to take possession of these territories. They wanted to eliminate all traitors, everything that linked them to the applicant's father. The Tribunal asked how she knew this. She stated that this was what paramilitaries did in Colombia. The applicant wife indicated that she was aware that the cattle were stolen when [Mr D] was killed. The applicant wife stated that she thought what they really wanted to do was to eliminate all of the family of the applicant's father so that they could feel at ease in taking possession of the farm. They also wanted to take possession of all the businesses.
137. The applicant wife indicated that she had seen the documents that had been provided to the Department. The Tribunal noted that some of the documents which purported to be official documents appeared to be of very poor quality. For instance, they were not on pre-printed letterhead. The applicant wife stated that they were official documents. They were original

documents. All these proceedings were done in Medellin. They were trying to conduct all these negotiations hiding in a house in Bogota. They had to accept whatever was sent to them. The applicant wife indicated that they had brought with them to Australia all of the documents with the exception of the identification card that proved that the applicant's father was demobilised. This had been sent by certified mail later. The Tribunal asked whether a translation or copy of the ID card had been provided.

138. The Tribunal noted that it had been claimed that people came and visited her grandmother and asked for her. It asked whether she knew who these people were. The applicant wife stated that they were probably thugs.
139. When asked about claimed threats to the applicant's business during the time they were living in Bogota, the applicant wife indicated that there were two written threats. She indicated that they were delivered anonymously under the door when the business was closed. They complained about this to the Fiscalia. When asked whether they had complained to anyone else, she referred to a complaint to GAULA. The Tribunal asked whether anything happened because of these complaints. The applicant wife replied in the negative, stating that they did not help at all. Even when the applicant was a victim of bank theft and called the Fiscalia, the person in charge said they could not do anything. They just dismissed the case.
140. The Tribunal asked about the claim that people went to the business in [Town 3] and identified themselves as Don Mario people. The applicant wife stated that she was not too sure when this happened, although she knew it was 2008. She stated that they stole gold and money in the till. She confirmed that they went back there on another occasion. When asked whether she was aware that they threatened the person who worked there, she said that they tied him down. She indicated that they threatened him. The Tribunal put to the applicant wife that it appeared that the people might have been taking things from the business and might have been interested in financial gain. The applicant wife stated that the people were also interested to kill them.
141. The applicant wife indicated that the money was taken from the bank account in September 2008. She indicated that she did not know who took the money. She stated that there were threats. The worker in [Town 3] received a phone call. He told the applicant that people had said to withdraw the complaint because the people knew exactly where they were.
142. The Tribunal asked how it was that the applicant and applicant wife had been able to avoid being seriously harmed by these people if they had that information. The applicant wife stated that they left the shopping centre very quickly. They left their car behind and took a cab home. They looked everywhere to make sure they were not being followed.
143. The applicant wife indicated that they left Colombia in March 2009. The Tribunal asked how they had been able to avoid being seriously harmed in the period up to March 2009. The applicant wife stated that they cut themselves off from everything. They did not even receive phone calls. The applicant wife stated that the people called when they were at the [bank]. When they got the phone call from the worker, she assumed that the people knew exactly where they were. She stated that they were living in a house that was thoroughly sealed off. Even the door was sealed off.
144. The applicant wife confirmed that they made complaints to the Defender of the People, the President of Colombia and the Colombian Institute of Family Wellbeing. The only result was that they got a Christmas card from the office of the President.

145. The Tribunal asked the applicant wife whether she was aware that one of the businesses had been robbed since they had been in Australia. She replied in the affirmative. The applicant wife stated that they were honestly afraid that they could be chased and assassinated themselves.
146. When asked about the lodgement of her protection visa application, the applicant wife stated that the applicant needed his English to come to a point where he could communicate well with the representative. They needed to find someone who would truly be able to help them. They also needed for the applicant brother to feel okay.
147. The Tribunal asked the applicant wife what she was afraid would happen if she were to go back to Colombia. She stated that the persecution would start anew until they were killed. The paramilitaries would persecute them.
148. The Tribunal then spoke again with the applicant. With regard to the lodgement of the protection visa application, he stated that nobody helped them. He said that, when they first arrived, they already had a process with Canada. They found that out later and did not know what to do. It was not easy to find someone who could help. They were afraid to ask someone who spoke Spanish. They took some time to get good English. The applicant stated that he was studying. They went to a place in [suburb deleted: s.431(2)] which suggested the agent. They started the process with the representative [in] September 2009.
149. The Tribunal raised a number of points with both the applicant and the applicant wife. In particular, it noted that it would have to consider whether the persecution they claimed to fear was for one of the five Convention reasons. The Tribunal put to them that a number of the sources talked about the successor groups to the paramilitaries. For instance, one of the Human Rights Watch reports referred to such groups targeting people, including ordinary citizens. It referred to the involvement of such groups in mafia-like criminal activities. The Tribunal noted that this, along with other sources, appeared to suggest that any ideological basis for the groups' activities was fairly limited. The Tribunal noted that an article in the *Toronto Star* referred to the fighting as providing a useful cover for those seeking to expand and protect their economic interests. Another report in *The Economist* indicated that the new criminal gangs appeared to lack the ideological convictions of their forebears. The Tribunal noted that the reports seemed to indicate that society generally was affected by this sort of violence, that this was not exclusive to rich people and that in some senses the violence was worse in poor areas of places such as Medellin. The Tribunal noted that there were reports of people like farmers and drivers being affected by things like extortion and ordinary people being "taxed" The Tribunal put to the applicants that it appeared the paramilitaries were involved in criminal activities and were keen to make financial gain from individuals it regarded as suitable targets. The Tribunal put to the applicants that it appeared that what the people were interested in was extracting money or gain from suitable victims.
150. The applicant indicated that he understood what the Tribunal was saying. However, he stated that he believed that they were still part of that definition. He stated that it all happened because his father was part of the group. If he was not part of this, probably none of it would have happened. The Tribunal noted that it needed to consider whether one of the five Convention reasons was the essential and significant reason for the harm that they feared. The applicant wife referred to having belonged to a paramilitary group. The Tribunal noted that a large number of people had been involved in demobilisation and some demobilised groups had involved themselves in criminal activities. It questioned whether people were targeted just because they were involved in demobilisation in the past. The applicant wife

stated that the fact that her father-in-law and brother-in-law did not want to pay the protection money again could be construed as forming part of another group. They did not want any more violence.

151. The applicant stated that they were going through all this because his father formed part of that group. If his father had not been part of that group, they would not be suffering all this.
152. The Tribunal noted that a travel warning from the US Department of State referred to criminality in Colombia. It noted that this indicated that crimes like extortion and kidnapping were problems. However, it stated in relation to kidnapping that no one was immune based on occupation, nationality or other factors. The applicant wife stated that the situation changed if you had a history of a family member who was part of the paramilitaries. The Tribunal noted that it seemed that a lot of former paramilitaries were involved in these activities themselves. The applicant wife stated that these people who were not harmed had “friends” that looked after them and they denied things that involved them.
153. The Tribunal noted that it had seen reference to the family as landowners but expressed doubt that that was the reason they had been targeted. It expressed doubt that the independent information indicated that landowners were targeted for reason of being landowners. It noted that independent information referred to alliances between landowners and paramilitaries. The Tribunal noted that independent information indicated that a whole range of people, rich and poor, were targeted by the paramilitaries.
154. The Tribunal noted the claim that they were being harmed as internally displaced people. The Tribunal questioned whether this was a particular social group. It noted that this might be seen as being defined in terms of the persecution. The Tribunal noted that their claim appeared to be that they had been internally displaced as a result of the claimed persecution. The applicant stated that the fact of being displaced meant they had moved. They moved as a result of everything that happened, not because they wanted.
155. The Tribunal noted that a family could be a particular social group. However, it referred to s.91S.
156. The Tribunal noted that it might also need to consider whether any deficiencies in state protection would be related to discrimination for one of the five Convention reasons. It noted that there were reports questioning the effectiveness of the state response to the paramilitary groups. It noted that there seemed to be a lack of adequate investment of resources in the police and adequate capacity. It noted that there also appeared to be corruption. However, the Tribunal noted that this seemed to be things that affected the population at large. The applicant wife stated that she had read in a report from the USA that the President had avoided proper negotiations to end the paramilitary. She said that there was a question about whether there was an alliance somewhere between the president and the paramilitary. The applicant stated that the US had recognised the paramilitaries in one of the reports as terrorists. They also had a travel advisory for people not to travel to Colombia.
157. The applicant stated that it was a fact that his father was part of a group. He described this group as “paramilitarism” He stated that his mother and father were murdered with long-range weapons which was a clear indication that they were illegal groups. He stated that the manager of the farm was also a “demobiliser” He stated that they identified themselves as Don Mario’s staff or employees. He stated that Don Mario was a paramilitary and continued to be a paramilitary. He stated that the theft he suffered was not like a common theft. It was a

considerable amount of money, around \$40,000. This was not the hand of any common criminal. It was clear that it was not just any criminal but the paramilitaries were involved. The applicant stated that they were the next target.

158. The representative also made submissions. He said that they only had a copy of the card showing demobilisation and not a certified copy. The translator would not translate it. With regard to the genuineness of documents, he stated that they had originals.
159. The representative stated that many of the paramilitaries had reformed in another guise. He stated that what set this off was that the applicant's father did not. He belonged to the group of those who chose not to get involved or support their way of life. The Tribunal asked which group was being proposed. The representative stated that it was "those individuals who choose not to do that" He said that they became the targets. He noted that there was a lot of indiscriminate violence. He stated that the murder of the mother was not indiscriminate. He stated that they had to kill her because of the husband and the group he belonged to. The applicants were next in line. On the one hand, there was widespread violence but there was something that set this apart. There was the direct targeting of the applicant's father and brother. There was also the murder of the mother. The Tribunal noted that such violent incidents did seem to occur in the context of violent crime such as extortion. The Tribunal noted that documentation that had been submitted suggested that the circumstances and motives were unknown. The representative stated that this might be related to a fear of corruption or a fear of having to back that up. The Tribunal asked what he believed the Convention nexus to be. He stated that it was the social group he belonged to. He was one of those who chose not to participate any longer. He was part of another group of those who had opted out and withstood the pressure to become involved again. The Tribunal asked whether he wished to point to evidence of the existence of such particular social groups. The representative indicated that he would look again.
160. The applicant wife referred to the killing of the applicant's mother. She stated that they knew the mother had to protect the family and her children. She needed to protect the business and think about the future. The paramilitary might have been afraid that she might start selling the farm or the cattle. That way they could not exert any pressure. The applicant wife stated that the mother-in-law had been targeted for being the wife of a man who had been part of the paramilitary. The Tribunal noted that this appeared closely related to the submission that the father had been harmed for reason of being part of the paramilitary. The applicant said that one of the threats mentioned at the end that the responsables were paramilitaries. They said that they got rid of the mother and wanted the others to deal with them. He stated that it was linked. The applicant stated that the threat stated that the father and son were paramilitaries. This was why they were getting rid of them. It also stated that they could not say anything to the authorities. The Tribunal noted that the note appeared to be asking for payment of debts. The applicant stated that they said that his mother knew the business that his father and brother had with them.
161. The applicant referred to a document which it was claimed related to demobilisation (this appears at folio 23 of the Department's file). He indicated that it was headed "The Program for the Reincorporation into Civil Life". He indicated that it had his father's name, ID number, date and place of birth, and when the document was made, namely [in] September 2005. The Tribunal noted that it was quite a significant time after this that his father was killed. The applicant stated that the demobilisation was in 2004. This was a 2005 document. The process to get a card like that took time. The applicant stated that this was before when he decided to reintegrate into civil life. The applicant stated that some of the documents

stated that after demobilisation some of the bosses stopped the crime and killing because they joined with the government. But they were trying to make it look like demobilisation was working but it was not.

Material Submitted in relation to [Mr A]

162. [In] December 2010, the Tribunal received from the applicant's representative information relating to the murder of the applicant's brother, [Mr A], in July 2010. This material included a death certificate, an e-mail from the applicant's aunt and an untranslated document. A translation of the document was received by the Tribunal [in] February 2011. The document is an acknowledgement of a complaint to the Attorney's Office in relation to the killing of [Mr A]. Also submitted were a copy and translation of a document requesting registration of the death of [Mr A].

Further Hearing [in] May 2011 and [in] June 2011

163. The Tribunal invited the applicants to a further hearing to discuss, in particular, the information relating to [Mr A]. This hearing was commenced [in] May 2011 and, following an adjournment, completed [in] June 2011.
164. The Tribunal was provided with additional country information and reports at these hearings. It has had regard to this material which is referred to, in part, in its reasons.
165. The issue of Convention nexus was also discussed further, in particular [in] June 2011. [On a date in] June 2011, the Tribunal received a further submission from the applicant's representative which dealt, in particular, with the issue of Convention nexus. This is discussed in the Tribunal's reasons.
166. At the hearing [in] May 2011, the Tribunal took evidence from the applicant and applicant wife, both of whom were present in the hearing room. The Tribunal noted that the circumstances of his brother's death seemed somewhat unusual. It asked when the applicant's brother was killed. The applicant stated that he was told about that in December. The murder was in July. The applicant wife stated that she found out at the same time, in December.
167. When asked how he had found out about the death, the applicant stated that his aunt had told him. The Tribunal asked how the aunt had found out about this. The applicant stated that she was contacted by another aunt on his father's side. The Tribunal asked what the other aunt had told her. The applicant replied that she had heard on the local radio station that he had been killed and had been asked to go and identify him. She heard this on the radio in December. The Tribunal put to the applicant that it had some difficulty understanding why, if the brother was killed in June, the aunt heard this on the radio in December. The Tribunal noted that it had some difficulty accepting that the brother passed away in July but his death was reported in December. The applicant stated that his brother was not identified at first when he was killed. He was transferred to legal medicine. They did different tests to get his identity. Then they discovered that he was born in the same hamlet the applicant's aunt lived in. They had an announcement over the radio and that was how she found out. The Tribunal asked how it was that the brother was not identified in July but he was in December. The applicant stated that his brother had no identification at all when he died. It took some time to find out who he was. When asked how he was identified, the applicant stated that it was because of his fingerprints. The applicant wife confirmed that this was how she understood the case.

168. The applicant stated that the town where his brother was born was a very small town. The Civil Register was not very accurate. In Colombia identifying a corpse was very difficult. It took a long time. The Tribunal questioned whether this would be the case even if the authorities had the victim's fingerprints. The applicant stated that it was done by different tests they ran. In Colombia, it was not immediate when they identified someone. It all took a long time. They did not do the tests straight away. The applicant wife indicated that she understood that.
169. The Tribunal questioned the plausibility of the claim that the applicant's brother died in July and was identified in December by use of his fingerprints. It asked the applicant wife whether she wished to comment on this issue. The applicant wife stated that the legal system in Colombia worked very slowly. That was why there was a delay. Everything took a long time in Colombia.
170. The applicant wife stated that all she knew was that the applicant's brother was found in July and it was reported to them in December. The applicant stated that it was in December that he first knew. His aunt told him. She said that she had been told by another aunt that she had heard a message on the radio saying they had found someone born in that town. The aunt from his father's side went to look and discovered that it was his brother. She told the applicant's aunt who told him. She went to the place where they put everyone who was not identified. The applicant said that his aunt had to go there to identify a picture because he had been buried already in December. She had to identify him and then make the process to register his death. She had to make the whole process to register it because it was not registered. The Tribunal questioned why the aunt would have to identify him if it had already been done through his fingerprints. The applicant stated that he was identified where he was born but they had to be 100 per cent sure that that was the person.
171. The applicant wife also gave evidence. She stated that, when the applicant's father and brother were killed, the applicant had to take his mother to town to identify the bodies. That was what happened with [Mr A]. The relative had to go and identify to be 100 per cent sure that that was the person. It was announced over the radio. When the person showed up and identified the body, they had to say whether it was them or not.
172. The applicant expressed concern that the interpretation was too general. The Tribunal adjourned the hearing. The hearing was resumed with a different interpreter [in] June 2011.
173. The Tribunal raised with the applicant concerns about the delay between when he claimed his brother's death occurred in July and when he found out about it in December. He stated that the process was long. He referred to the absence of relatives to claim the body or identify him. He stated that they were all running away or hiding somewhere else. The applicant named the aunt who identified the body as [name deleted: s.431(2)]. He said that this was his mother's sister. He said that the person who heard about it on the radio was [name deleted: s.431(2)], a person on his mother's side.
174. The applicant confirmed that his aunt had reported the death and initiated an investigation. He said that she did all that was needed. He indicated that the authorities had not established who was responsible for the death or the circumstances of the death.
175. The applicant indicated that he had had lost contact with his brother, [Mr A]. He had not had contact with his brother for two or three years. His brother was a drug addict.

176. When asked whether his father was demobilised in 2005, the applicant indicated that he was not sure and that it might have been 2004.
177. The Tribunal also spoke with the applicant wife. The Tribunal confirmed its understanding of the evidence concerning the death of [Mr A]. The applicant wife confirmed that this was how she understood it. She stated that one aunt had provided information to the other aunt.
178. The Tribunal put to the applicant wife concerns about the delay between the claimed event and finding out about the death. The applicant wife stated that this was what happened in Colombia. If someone was killed without identification, it took a long time. There were so many deaths in Colombia. It was not strange because there was no identification. They found out when the aunt told them that the other aunt had heard it on the radio in an announcement. The applicant wife named the aunt who told them as [name deleted: s.431(2)]. She stated that the aunt who lived in [town deleted: s.431(2)] got in contact with the applicant's aunt to tell her that [Mr A] had been found. His body was at the morgue in Medellin. Then the aunt went and did an official identification of the body.
179. The Tribunal asked whether it was the case that it had not been established in what circumstances [Mr A] had died or who was responsible. The applicant wife stated that she felt that they just wanted to keep on killing them. They wanted the whole family to disappear. She confirmed that she and the applicant had not had much to do with [Mr A] and had not seen him for the last two or three years. She indicated that he was a drug addict.
180. The Tribunal asked whether it was the case that the applicant's father had been demobilised in 2005. She stated that she knew he had been demobilised. She knew about the card. The card was an original document. She said that her father-in-law had wanted to be demobilised.
181. With regard to the question of Convention nexus, the Tribunal expressed doubt that the killing of [Mr A] took the matter any further. The applicant wife stated that it was about their lives. They could not simply take their chances. The applicant's father had been a part of this. He was a wealthy person. The guys who wanted to keep going targeted the people who did not want to be part of that any more. The people who did not want to be part of it still represented a threat or danger to them. They were powerful people. These people would kill them. They had not done it before because they had not found them.
182. The Tribunal questioned how the incident with [Mr A] was relevant to their fears. The applicant wife stated that it was why they formed part of the definition of refugee. The applicant's father was a member of a group that operated outside the law. He left that group but he knew people. The simple fact that he abandoned or left the group got him killed. The family would be next.
183. The applicant stated that it was true that the demobilisation was a long time ago. The process was not a short process and was not finished yet. First they gave up their weapons. The second stage was truth. The third was reparation for the victims. The process was slow. It took too long. They were killing members every day. The Tribunal put to the applicants that this might be related to criminal activities, including drug-related activities that such groups were involved in. The applicant referred to documents about people being killed. He said that there were other similar cases for the same thing. These were new groups that were rearming. They were trying to get people who were part of the paramilitaries before. If they refused, they would kill them.

184. The Tribunal questioned why the threat note that had been provided would contain an e-mail address. The applicant stated that it was because they were running away. The Tribunal questioned why they would be interested in them if the motives were related to the demobilisation. He stated that the people wanted to find them as well.
185. When asked whether she wished to comment, the applicant wife stated that she agreed with what the applicant said about those things. The criminals had a lot of power in Colombia. The criminals could track them through their bank account. They knew when they were in Bogota. One of the staff received a call saying that they knew they were in Bogota and that they would kill them if they did not stop the charges. In Colombia the criminals had a lot of power.
186. The applicant's representative made submissions concerning the method for notifying deaths. He said that the first thing they would do would be to contact the father. They would then go to sisters and brothers. The process could take some time. Unidentified bodies were not a high priority.
187. The representative stated that those who demobilised were taking a political stance. They were siding with the government of the day.
188. With regard to the death of [Mr A], it was submitted that there was no evidence to absolutely tie it to the family but no evidence that it was not as a result of being a family member. The applicant's father, brother and mother had been killed. The applicants had been chased and pursued. The government could not protect them. There was enough evidence of the number of killings. There was corruption at all levels of the police. They hunted people because of membership of the family.

FINDINGS AND REASONS

189. The applicants claim to be nationals of Colombia and travelled to Australia on Colombian passports. For the purposes of the Convention, the Tribunal has assessed their claims against Colombia as their country of nationality.
190. The applicant and applicant wife have made claims in similar terms and essentially seek to rely on largely the same facts. The Tribunal accepts that the substantive claims made by the applicant relate also to the applicant brother. It has approached the matter on the basis that substantive claims have been made on behalf of the applicant brother.
191. The applicants have claimed that they and their families have been the victims of a series of violent acts and acts of criminality. In particular, it has been claimed that, in February 2008, the applicant's father and older brother were killed in [Town 4], Antioquia. It has been claimed that the applicant's mother then told the applicant that the applicant's father had had to give help, economically and logistically, to paramilitary groups. A call was later made to the family's business in [Town 3]. The manager of the business was told that the family could not keep going to their farms because the applicant's mother would be kidnapped and killed. The applicant's mother was killed [in] May 2008. The applicants then moved to a relative's home. A man who used to assist the applicant's father with the farms and cattle was killed and all the cattle were stolen. Fearing for their safety, the applicants moved to Bogota. They informed the Colombian Institute of Family Welfare about their circumstances and were told that they should seek protection. However, the Colombian authorities did not give them any support. While they were living in Bogota, threats against them were sent to the business in

[Town 3]. The applicant submitted a complaint to the Fiscalía of Colombia. The case was passed to another authority, the Gaula. However, nothing happened. Men identifying themselves as Don Mario people went to the business in [Town 3] and took property from the business. They made further threats against the applicants. [In] September 2008, money was taken from the applicant's bank account. The applicant was threatened after making a complaint about this. The applicants were hiding and living in fear. They could not work or study. Armed men came and took everything from the business. They kept saying that they would be searching for the applicants until they found them and killed them. Another business in Medellin city has been robbed since the applicants have been in Australia.

192. The applicant gave evidence about these claims at an interview with the delegate. Both the applicant and applicant wife gave lengthy oral evidence to the Tribunal. They have maintained a plausible and generally consistent account of the various events that they claimed affected them and their family members in Colombia. They appeared genuinely fearful of returning to Colombia. They presented as credible and convincing witnesses.
193. The applicants presented a number of documents in support of their claims. These included death certificates for the applicant's father, mother and brother. Also submitted were a complaint in relation to displacement, a document from the Regional Attorney's Office of Medellin relating to the applicant's mother's death, a complaint in relation to forced displacement and documentation from the Ombudsman office in relation to forced displacement. The Tribunal also has before it orders and other documentation relating to the guardianship of the applicant brother, a complaint made to the Colombian Institute of Family Wellbeing and a copy of a threat purportedly issued to the applicant's family. The Tribunal notes that a number of these documents, including those relating to the custody or guardianship of the applicant, refer to the killing of the applicant's parents and brother. The document of September 2008 from the Ombudsman Office (in relation to displacement) also records various events, including the killing of the applicant's father, mother and brother, and the issuing of threats by people associated with Don Mario. While a number of the official documents do not appear to be of a high quality, the Tribunal considers that, in circumstances where there is no other basis for doubting the genuineness of the documents, this does not provide sufficient reason to find that the documents are not authentic and reliable in their content. As noted above, the applicants described the events to which the documents relate in a credible and convincing manner.
194. The Tribunal has some reservations about the claimed threat note. In particular, it appears somewhat odd that a paramilitary group would provide an e-mail address to be used if the family had any questions. However, in circumstances where the applicants have otherwise provided a credible account of the past threats and harm, the Tribunal gives them the benefit of the doubt and accepts that they did receive such a threat.
195. Colombia has a history of violence and political unrest, as outlined in the following extract from a BBC Country Profile:

Colombia has significant natural resources and its diverse culture reflects the indigenous Indian, Spanish and African origins of its people.

But it has also been ravaged by a decades-long violent conflict involving outlawed armed groups, drug cartels and gross violations of human rights.

... Peace talks with the main left-wing rebel group, the Farc, collapsed in 2002.

At the other end of the political spectrum are illegal right-wing paramilitary groups, who are sometimes in the pay of drug cartels and landowners, and backed by elements in the army and the police.

Efforts are under way to demobilise the groups, which have been particularly active in the north-west where they have targeted human rights workers, peasants suspected of helping left-wing guerrillas, street children and other marginal groups.

...

Alongside politically-motivated blood-letting is drug-related crime, which has become the most common cause of death after cancer and has fuelled kidnapping. Together with the political violence, this has made Colombia one of the most violent countries in the world, deterring investors and tourists alike.

The US, a key market for Colombian cocaine, has bankrolled the fight against the trade to the tune of billions of dollars. But critics say "Plan Colombia" has had little impact on the supply and price of drugs. ("Country Profile: Colombia" 2009, BBC News, 1 April, http://news.bbc.co.uk/2/hi/americas/country_profiles/1212798.stm, accessed 14/4/09)

196. Independent country information indicates that there have been improvements in the security situation in Colombia in recent years. For instance, between 2002 and 2008, Colombia reportedly saw a decrease in homicides by 44%, kidnappings by 88%, terrorist attacks by 79% and attacks on the country's infrastructure by 60%" (US Department of State 2011, *Background Note: Colombia*, <http://www.state.gov/r/pa/ei/bgn/35754.htm>, accessed 24/8/2011).

197. While the paramilitary group, the United Self Defenses Force of Colombia (AUC) demobilised by 2006, independent information indicates that new illegal armed groups continue to cause problems in Colombia. For instance, in its most recent report on human rights practices for the country, the US Department of State observed:

New illegal armed groups, which included some former paramilitary members, also committed numerous human rights abuses. The last United Self Defense Forces of Colombia (AUC) bloc demobilized in 2006, but AUC members who refused to demobilize, AUC members who demobilized but later abandoned the peace process, and other new illegal armed groups remained targets of arrest and criminal prosecution. These new groups lacked the political agenda, organization, reach, and military capacity of the former AUC and focused primarily on narcotics trafficking and extortion. The AUC demobilization led to a reduction in killings and other human rights abuses, but paramilitary members who refused to demobilize and new illegal armed groups continued to commit numerous unlawful acts and related abuses, including: political killings and kidnappings; physical violence; forced displacement; subornation and intimidation of judges, prosecutors, and witnesses; infringement on citizens' privacy rights; restrictions on freedom of movement; recruitment and use of child soldiers; violence against women, including rape; and harassment, intimidation, and killings of human rights workers, journalists, teachers, and trade unionists. (US Department of State 2011, *Country Reports on Human Rights Practices for 2010: Colombia*, 8 April)

198. Human Rights Watch has also documented the rise of successor groups following the demobilisation of the AUC. It, along with other sources, has referred to the involvement of such groups in a range of criminal activities. For instance, it stated:

Between 2003 and 2006 the Colombian government implemented a demobilization process for 37 armed groups that made up the brutal, mafia-like, paramilitary coalition known as the AUC (the Autodefensas Unidas de Colombia, or United Self-Defense Forces of Colombia). The government claimed success, as more than 30,000 persons went through demobilization ceremonies, pledged to cease criminal activity, and entered reintegration programs offering them training, work, and stipends. Since then, the government has repeatedly said that the paramilitaries no longer exist.

But almost immediately after the demobilization process had ended, new groups cropped up all over the country, taking the reins of the criminal operations that the AUC leadership previously ran.

Today, these successor groups are quietly having a dramatic effect on the human rights and humanitarian situation in Colombia. Of particular concern, as documented extensively in this report, the successor groups are engaging in widespread and serious abuses against civilians, including massacres, killings, rapes, threats, and extortion. They have repeatedly targeted human rights defenders, trade unionists, displaced persons including Afro-Colombians who seek to recover their land, victims of the AUC who are seeking justice, and community members who do not follow their orders. The rise of the groups has coincided with a significant increase in the rates of internal displacement around the country from 2004 through at least 2007. And in some regions, like the city of Medellín, where the homicide rate has nearly doubled in the past year, the groups' operations have resulted in a large increase in violence. To many civilians, the AUC's demobilization has done little to change the conditions of fear and violence in which they live.

The threat posed by the successor groups is both serious and steadily growing. Colombia's National Police estimates that they have more than 4,000 members. Non-governmental estimates run as high as 10,200. According to conservative police figures, the groups are quickly increasing their areas of operation and as of July 2009 had a presence in at least 173 municipalities in 24 of Colombia's 32 departments.

...

The Colombian government and some analysts label the successor groups as "emerging criminal gangs at the service of drug trafficking" (*bandas criminales emergentes* or BACRIM), insisting that the successor groups are something new and very different from the paramilitaries. Other experts and many residents view them as a continuation of the AUC, or a new generation of paramilitaries.

Regardless of how the successor groups are categorized, the fact is that today they are frequently targeting civilians, committing horrific crimes including massacres, killings, rapes, and forced displacement. (Human Rights Watch 2010, *Paramilitaries' Heirs*, 3 February, Summary and Recommendations)

199. Another recent report refers to growing unease within Colombia that the paramilitaries have managed to regroup and flourish once again. It notes that there are clear signs that new illegal armed groups have inherited command structures and personnel from the paramilitary forces and are now at the forefront of illicit activities (Drews, M, Rouw, H. & Briscoe, I. 2011, *A Community Dilemma: DDR and the changing face of violence in Colombia*, Peace Security and Development Network, July, http://www.clingendael.nl/publications/2011/20110700_briscoe_derks_colombia.pdf)

200. Independent information confirms that Daniel Rendon Herrera, or “Don Mario”, has been involved in mobilising armed bands following the demobilisation process. For instance, the BBC has reported as follows:

Colombian officials believe that Don Mario's strength was in his ability to mobilise the armed bands that appeared after right-wing paramilitary groups (the so-called paras) were demobilised three years ago.

Don Mario refused to surrender under the peace deal and instead used his network of contacts to build up an army of up to 1,000 heavily-armed fighters.

Those groups are blamed for at least 3,000 crimes in roughly 18 months.

Don Mario is also accused of using this power to gain absolute control of the main export corridor for Colombian drugs through the Gulf of Uraba, on the border with Panama.

He also controlled large trafficking zones in Central and Eastern Colombia, according to Gustavo Duncan, a researcher on paramilitary groups. (BBC 2009, *Colombia's Unending drugs battle*, 16 April, <http://news.bbc.co.uk/2/hi/americas/8002514.stm>)

201. In all the circumstances, the Tribunal accepts that the applicants and members of their family have been targeted by an illegal armed group formed in the wake of the demobilisation of the AUC. It accepts that the applicant's father, mother and brother have been killed. It accepts that another man who worked for the family was killed. It accepts that the family's businesses have been targeted, that property has been stolen, that threats have been made against the applicants, that they moved because of their fear of harm and that they went into hiding.
202. The Tribunal has had regard to the fact that, having arrived in Australia [in] March 2009, the applicants did not apply for protection until [a date in] February 2010. However, the Tribunal accepts the evidence that they first consulted their representative in September 2009 and that they had first sought legal advice prior to this. It accepts that it took some time to compile and submit the application. The Tribunal does not consider the delay to be a matter of particular significance in this case.
203. Some difficulty arises in identifying the motive or motives for the various acts of harm and violence that have been directed at members of the family. These difficulties arise, at least in part, because of the failure of Colombian authorities to apprehend the perpetrators or to achieve any clarity in investigating the matters. The Tribunal notes, for instance, that a Court Order [in] June 2008 in relation to the custody of the applicant brother indicated uncertainty as to the motives that led to the killing of the applicant's parents. Similarly, a document relating to the complaint to the Colombian Institute of Family Wellbeing reflects uncertainty as to the motives for these crimes. Further, there are aspects of the evidence that suggest financial or criminal motives for the acts that have been directed at the applicants and their family members. For instance, the evidence indicates that the family's businesses have been targeted for theft both before and after the applicants' departure for Australia. Money has been taken from the applicant's bank account. Cattle have been stolen from the family's farm. Demands have been made in relation to “debts”. Such acts would appear to be consistent with independent country information indicating that illegal armed groups have extensive involvement in criminal activities including extortion. These aspects of the case give rise to some doubt as to whether the targeting of the applicant's family has been motivated otherwise than by a desire for criminal or financial gain on the part of illegal groups involved in criminal activities.

204. However, it has effectively been submitted that, taken as a whole, the series of acts directed towards the family should be seen as being motivated by something more than mere criminal motives. The arguments in this regard have crystallised over the course of the review process. The material before the Department did not appear to clearly identify any relevant particular social group or to identify how the harm might be related to membership of any such group. Further submissions on the issue of Convention nexus have been made to the Tribunal. These were most clearly articulated in the submission [in] June 2011. It was submitted that the applicants were members of the family of a citizen of Colombia who had chosen “to take a particular political stance and join a particular social group, that is the participants in demobilisation which are distinguished and identifiable in the society of Colombia at large”. The submission emphasised that the applicant’s father had moved from being a supporter of armed paramilitaries to a group which participated in the government process. It was submitted also that the applicant’s father had taken a political stance by taking part in the demobilisation process.
205. The precise details and circumstances of the killings of the applicant’s parents and brother are somewhat unclear. Nevertheless, given the intensity of the harm directed at the family over a relatively short period, the Tribunal accepts that it is reasonable to infer that the various events are related. The Tribunal accepts that the family has been the victim of a course of intimidation and violence. It accepts that the various events should not be seen in isolation but as part of a series or course of events affecting the family. The Tribunal accepts that the applicants received threats from people identifying themselves as working for Don Mario. It accepts that these threats made reference to the fate of their parents and brother. This too supports a conclusion that the various events are related. The Tribunal accepts that the applicant’s family have been the victims of a course of intimidation and violence directed at the family by an illegal successor group to the AUC. While the circumstances of the parents’ deaths may not have been clearly identified by the authorities, the Tribunal accepts in all the circumstances that these deaths were part of this course of conduct. The Tribunal accepts that the applicant’s father and brother, and later his mother, were killed by members of an illegal armed group connected with Don Mario. While the matter is not entirely beyond doubt, the Tribunal considers that it is appropriate to give the applicants the benefit of the doubt.
206. In circumstances where the harm suffered by the applicants forms part of a course of conduct directed at their family, the Tribunal accepts that they have been targeted for reason of their membership of the family group. It is well established that a family is capable of constituting a particular social group (e.g. *MIMA v Sarrazola* (1999) 95 FCR 517, *C & Anor v MIMA* (1999) 94 FCR 366, *Giraldo v MIMA* [2001] FCA 113 (Sackville J, 23 February 2001), *MIMA v Sarrazola (No.2)* (2001) 107 FCR 18).
207. The importance of family in Colombian society is highlighted in numerous sources. For instance, one source states, “As a collectivist culture, family is the central unit of Colombian society. Close ties between extended families and communities can have a major influence on individual behaviour.” (Malinak, C. 2007, *Doing Business in Colombia: Colombian Social and Business Culture*, Communicaid, <http://www.communicaid.com/access/pdf/library/culture/doing-business-in/Doing%20Business%20in%20Colombia.pdf>). The Tribunal accepts that, in the context of Colombian society, one’s immediate family unit is a group set apart from society at large. It accepts that the applicant’s family unit constitutes a particular social group. It constitutes an identifiable group of persons with a social presence, set apart from other members of society, and united by the common characteristic of membership of that family.

208. Where the particular social group relied upon is membership of a family, it is necessary to have regard to s.91S of the Act which provides as follows:

For the purposes of the application of this Act and the regulations to a particular person (the first person), in determining whether the first person has a well-founded fear of being persecuted for the reason of membership of a particular social group that consists of the first person's family:

(a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in Article 1A(2) of the Refugees Convention as amended by the Refugees Protocol; and

(b) disregard any fear of persecution, or any persecution, that:

(i) the first person has ever experienced; or

(ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

209. Submissions made to the Tribunal have suggested that it was the applicant's father who was the initial or primary target of the illegal armed group and that other members of the family have been targeted for reason of their membership of his family. Applying s.91S, the applicants could not succeed on the basis of membership of the father's family if the reason for his persecution was not a Convention reason.

210. As noted above, the precise circumstances of the killing of the applicant's father are not entirely clear. Nevertheless, the Tribunal accepts on the basis of the death certificate that he was killed in Antioquia [in] February 2008. The Tribunal notes that Antioquia has been described as the power base for Don Mario's group (Just the Facts 2011, *Colombia's "new" paramilitaries*, 21 June, <http://justf.org/blog/2011/06/21/colombias-new-paramilitaries>). Having regard to all the circumstances, the Tribunal accepts that the applicant's father was killed by a paramilitary group associated with Don Mario.

211. In submissions to the Tribunal, emphasis has been placed on the applicant father's position as a former supporter of the paramilitaries who had been demobilised under the government's demobilisation program. The Tribunal has before it a copy of a card issued to the applicant's father [in] September 2005 under the "Programa para la Reincorporacion a la Vida Civil". Independent information confirms that the Program for Reintegration into Civilian Life (Programa para la Reincorporación a la Vida Civil) is offered to demobilised combatants. Under the program, former combatants receive an allowance for 18 months, plus housing and training (Canadian Immigration and Refugee Board 2008, *Colombia: The recruitment methods of the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC) and government measures to help FARC members reintegrate into civilian society (2005 - February 2008)*, 14 April, COL102767.FE). The Tribunal accepts the applicant's evidence that his father previously provided support to the AUC and that he later participated in the demobilisation process.

212. At the hearing, the Tribunal questioned whether demobilised former paramilitary members were targeted for reason of being demobilised former members of paramilitary groups. However, over the course of the review, additional information has emerged to support the contention that former members of the paramilitaries who have demobilised have in fact been targeted for harm.
213. In this regard, the Tribunal notes, firstly, that the materials provided at the hearing [in] May 2011 included an article entitled “Demobilized paramilitaries rearm or are murdered”. This article, dated 25 September 2009, referred to the murder of more than 2,000 members of illegal armed groups. It noted that that more than 2,000 had been killed after their demobilisation and ten per cent had been arrested because they had continued with criminal activities or enrolled in new organisations. However, there was a strong suggestion that a significant number of the murders referred to in the article were associated with continued involvement in illegal activity. For instance, it was reported that “most murders are related to the rearmament of former paramilitaries and them joining drug trafficking organisations”. It was also noted that “the vast majority of arrested or killed members of these new groups are new to the violent conflict and never part of the AUC”. Nevertheless, the report also identified as a problem “the ongoing intimidation and murders of former combatants to join the gangs that villed [sic] the void after the AUC’s demobilization”. It cited the government’s High Commissioner of Reintegration as saying that such threats were out of control in towns where drug trafficking was the main economic activity.
214. This article contains some, but limited, information on the targeting and intimidation of former combatants, particularly those who have not joined new gangs or successor groups. Having explored this matter further, the Tribunal is satisfied that there is further information that lends weight to the suggestion that former combatants or demobilised former members of paramilitary groups have been specifically targeted. The Tribunal notes in particular a recent report from the Peace Security and Development Network. This report observed that former fighters who wanted to avoid returning to illegal activities often had to deal with threats and intimidation. It stated that the number of murders of demobilised combatants, particularly former paramilitaries, showed “how perilous and vulnerable the return to civilian life can be” (Derks, M. et al 2011, *A Community Dilemma: DDR and the changing face of violence in Colombia*, Peace Security and Development Network, July, p.8). The same report noted that many ex-combatants faced threats from armed groups. It stated that those who had emerged from guerrilla groups “may be at the receiving end of intimidation and death threats from their former comrades in arms, who see them as deserters and traitors”. New criminal groups tended to regard demobilised paramilitaries “as a well-trained and experienced reserve from which they can recruit” (p.36). According to the report, recruitment, and the threat of violence if an ex-combatant does not wish to co-operate is one of the reasons explaining the high murder rate of demobilised paramilitary members, the vast majority of them ex-paramilitary. The report cites figures indicating that, from 2003 to June 2010, 1,645 demobilised fighters, out of a total of 52,000, were murdered (p.37).
215. The report stated, “Because of the high murder rate among demobilized ex-combatants..., the fundamental security concern for both individually and collectively demobilized people is their survival. Murders are attributed to both former colleagues and former foes. In the case of individual demobilization, the chance of being threatened by former colleagues was seen as higher...” (ibid., p.44). The report referred to a range of security problems faced by ex-combatants, including threats conveyed by “community vigilantes” threatening to kill

“subversive elements” and regular contact from emerging criminal structures in relation to “job offers”. It noted also that stigmatisation of former combatants is not uncommon (p.45).

216. In its eligibility guidelines for Colombia, the UNHCR refers to “present and former members and supporters of one of the parties to the conflict” as one of the groups in Colombia that “face a particular risk of persecution or serious harm” (UN High Commissioner for Refugees 2010, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia*, 27 May, HCR/EG/COL/10/2). In a June 2011 report, Freedom House similarly noted that human rights groups had reported violence against former combatants (Freedom House, *Freedom in the World 2011 - Colombia*, 17 June 2011).
217. The Tribunal accepts that there is evidence in the independent information that former members or supporters of the paramilitaries who have participated in the demobilisation have been targeted by the successor groups and that a very large number of them have been killed. It may be the case that a large number of former paramilitary members who purported to demobilise have in fact involved themselves in the activities of the successor groups. However, in the Tribunal’s view that does not detract from the fact that the independent information indicates that many others have been specifically targeted as former members or supporters of the paramilitary who have participated in the demobilisation.
218. The Tribunal accepts that the fate of the applicant’s father follows a common pattern which is highlighted in the sources referred to above. He was a person who, having supported the paramilitaries and having participated in the demobilisation process, was subsequently killed by one of the successor groups. The events following his death indicate that he and his family were subjected to demands by successor groups. This is consistent with independent information indicating that former paramilitary members are particularly targeted by the successor groups in terms of demands for support and violent harm. The Tribunal accepts that this goes beyond mere criminality motivated simply by a desire for financial or material gain.
219. The circumstances of the killing of the applicant’s father are not entirely clear. Nevertheless, the Tribunal accepts that he was killed by a successor group to the paramilitaries and that his family was then subjected to a series of violations by the same group. While the matter is not beyond doubt, the Tribunal accepts on the evidence before it that the targeting of the applicant’s father was not simply a matter of criminal violence lacking in Convention motivation. It accepts that, as a former paramilitary supporter who demobilised, he was specifically targeted for harm by one of the successor groups. In this sense, his treatment was consistent with that of many others in a similar situation. As the Tribunal put to the applicants, it would seem that he had demobilised by 2005. He was not killed until some years later. However, although the demobilisation of the AUC was concluded by 2006, recent reports indicate that the targeting of demobilised former paramilitary members has continued to be a problem.
220. It is apparent from the independent information that demobilised paramilitaries are a group that is clearly distinguishable in Colombian society. For instance, as indicated above, they are the subject of special programs to assist with their reintegration into society. Given Colombia’s long history of violence, the Tribunal accepts that previous support for the paramilitaries and subsequent demobilisation are matters of some importance in Colombian society. The Tribunal accepts that “former members or supporters of the paramilitary who have demobilised” constitute a particular social group in Colombia. It accepts that the members of the group share the characteristics of their past support for the paramilitaries and their demobilisation. The common attribute is not the shared fear of persecution. The

Tribunal accepts that the relevant characteristics distinguish the group from society at large. The Tribunal accepts that the applicant's father was persecuted for reason of his membership of this particular social group. The reason for his persecution was therefore one of the Convention grounds. In considering whether the applicants have a well-founded fear of persecution for reason of membership of a particular social group consisting of their family, the Tribunal is not required to disregard the persecution of the applicant's father or the applicants' fear of persecution related to the father's persecution.

221. The Tribunal accepts that the applicant's family have been targeted for a range of acts by an illegal armed group. It accepts that this has included the killing of a number of family members. It is apparent that the methods of such groups are extremely violent. In these circumstances, the Tribunal accepts that there is a real chance in relation to each of the applicants that they would suffer serious harm from members of the illegal armed group if they were to return to Colombia. The Tribunal accepts that there is a real chance that the applicants would be persecuted, including by being subjected to very serious physical harm. It accepts that this would be for reason of membership of the particular social group constituted by the applicants' family (of which the father of the applicant and applicant brother was a member). While the applicant wife is not a blood relative of the applicant's father, the Tribunal accepts that she has lived with the applicant as his partner for some years. It accepts that she is, in this sense, part of the family unit and that she is perceived, in particular by the family's persecutors, as part of the family unit. The Tribunal is satisfied that the persecution would involve conduct which is systematic in the sense of being deliberate and premeditated (see *VSAI v MIMIA* [2004] FCA 1602) and discriminatory in the sense that it would be directed at the applicants for reason of membership of the particular social group constituted by the family unit. It is satisfied that membership of that particular social group would constitute the essential and significant reason for the persecution.
222. The Tribunal is not satisfied that the applicants would be able to access adequate or effective state protection in relation to the harm they fear. It accepts that they have in the past reported to the authorities acts such as the killing of other family members. It accepts that these matters remain unresolved. The Tribunal notes that a number of sources point to serious flaws in the Colombian state's response to new illegal armed groups. For instance, Human Rights Watch has observed that the police lack the capacity and resources to effectively pursue the successor groups and that the military does not appear to be stepping in to fight the successor groups in areas where the police have no presence. It has referred to "the failure of the government to invest adequate resources to ensure that members of the successor groups and their accomplices are held accountable for their crimes". It has stated, "The state has also failed to take adequate measures to prevent abuses by the successor groups and protect the civilian population." (Human Rights Watch 2010, *Paramilitaries' Heirs*, 3 February)
223. The evidence indicates that the state has taken some steps to address the activities of the successor groups. The Tribunal does not consider that the Colombian state is indifferent to the activity of such groups. Nevertheless, the independent country information supports a conclusion that the applicants would not be able to access any effective protection against violent harm from the illegal armed group that they fear.
224. The Tribunal accepts that the paramilitary groups wield significant power in Colombia. It accepts that the applicant's family has faced threats and harm in a number of parts of Colombia. The Tribunal is not satisfied that the applicants could be safe from the harm they fear by relocating within Colombia. It is satisfied that they would have a well-founded fear of Convention-related persecution even if they sought to relocate within Colombia.

225. With regard to the applicant's brother, [Mr A], the Tribunal accepts that he was killed in July 2010 as claimed. It accepts the applicants' explanation for the delay in being notified of his death. There is no clear evidence that the applicant's brother's death was connected with other matters affecting the applicant's family. Nevertheless, the Tribunal accepts that this event would have been of significant concern to the applicants. It reinforces the gravity of the risk facing people such as the applicants who have come to the adverse attention of an illegal armed group in Colombia.
226. The Tribunal is satisfied that the applicants do not have a legally enforceable right to enter and reside in any third country and that they are not excluded from Australia's protection by s.36(3). It notes in this regard that the applicants have provided information indicating that they commenced a process to obtain settlement in Canada. However, there is nothing to indicate that they ever succeeded in obtaining a right to enter and reside in Canada. Indeed, the documentation which they have provided in relation to their communications with the Canadian authorities indicates that they lost their eligibility for the relevant program when they left Colombia. The Tribunal is satisfied that they do not have a right to enter and reside in Canada.
227. Looking to the reasonably foreseeable future, the Tribunal is satisfied that each of the applicants has a well-founded fear of being persecuted in Colombia for reason of membership of the particular social group constituted by their family.

CONCLUSIONS

228. The Tribunal is satisfied that each of the applicants is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicants satisfy the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such visas, provided they satisfy the remaining criteria.

DECISION

229. The Tribunal remits the matter for reconsideration with the direction that the applicants satisfy s.36(2)(a) of the Migration Act, being persons to whom Australia has protection obligations under the Refugees Convention.