

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO. 74495**

**AT AUCKLAND**

<b><u>Before:</u></b>	L Tremewan (Member)
<b><u>Counsel for Appellant:</u></b>	R McLeod
<b><u>Appearing for NZIS:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	17 and 18 March 2003
<b><u>Date of Decision:</u></b>	25 February 2004

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**DECISION**

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[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) declining the grant of refugee status to the appellant, a citizen of Guinea, of Mandingo (Konyaka) ethnicity, who also holds Liberian nationality.

**INTRODUCTION**

[2] The appellant arrived in New Zealand on 17 March 2001 and applied for refugee status on 21 May 2001. He was interviewed by the RSB on 11 February 2002. His application was declined on 17 September 2002. The appellant has appealed to this Authority in respect of that decline decision, in a letter dated 20 December 2002.

[3] The Authority particularly acknowledges Mr McLeod's post-hearing submissions (received on 5 February 2004) addressing recent developments in terms of the country situation, which have been helpful. These were in addition to those received at the time of the hearing, which have also been considered by the Authority.

## **APPLICATION TO APPEAL OUT OF TIME**

[4] Before turning to the appellant's case and the substantive merits of the appeal, the Authority notes that the appellant's appeal was lodged out of time, being filed outside the 10 working day period from notification of the RSB decision. The Authority can only consider an appeal lodged out of time when it is satisfied that special circumstances warrant an extension (s1290 Immigration Act 1987).

[5] It is apparent from the file that the appellant and his then representative (Mrs P, who was also a witness at the appeal hearing) provided the RSB with two contact addresses for the purposes of the application. One was the appellant's address (comprising a flat number and then a street number) and the other Mrs P's own address. The decline decision was sent to neither. The address to which it was 'sent' was an incorrect one (the appellant's flat number and street numbers were run together to form a new, wrong, number).

[6] Consequently, neither the appellant nor his representative was aware of the decision until three months later, when the appellant was advised of it when he endeavoured to renew his work permit. At that point, Mrs P wrote a number of letters on the appellant's behalf, seeking to clarify the situation, obtain a copy of the RSB decision, and lodge the appeal.

[7] In previous decisions of this Authority it has been determined that the factors to be considered in determining whether special circumstances exist, include the reasons why the appellant failed to lodge the appeal within the 10 working day period and the substantive merits, or lack thereof, of the appeal (see for example *Refugee Appeal No 71620/99* (28 January 2000)). As indicated already, a clear explanation exists as to why this appeal was lodged out of time. There has been no fault on the part of the appellant or his then representative.

[8] Further, once the appellant and his then representative became aware of his declined decision they have diligently pursued the appeal. For reasons that will later become apparent, the appellant's case also has merit.

[9] Special circumstances clearly exist, warranting an extension of the time for filing of the appeal. Leave is granted for the late filing of the appeal which will now be dealt with in the normal manner (s1290 Immigration Act 1987).

## **THE APPELLANT'S CASE**

[10] What follows is an outline of the appellant's case. It is followed by the Authority's assessment as to the credibility of the account presented.

[11] This narrative includes the evidence of both the appellant and, where relevant, his witness, Mrs P (which the Authority records at this juncture was materially consistent with the appellant's own evidence).

[12] As it is not intended to separate Mrs P's evidence from the general narrative which follows, the Authority notes that she is a New Zealand citizen who, with her husband, spent two decades of her life living in Nigeria, Ghana, Cote d'Ivoire, Kenya and Guinea. More than four years was spent in Guinea. It was there that she met the appellant, and was witness to some of the events material to this appeal. Indeed, as a result of her contact with him, she herself had experiences which are relevant to the appeal.

[13] In the appellant's narrative below, the Authority has referred, at times, to occasional historical detail. This approach has been adopted in order to contextualise some sections of the narrative.

### **The appellant's early life**

[14] The appellant is a widower aged in his early thirties. He was born in S, Guinea, the son of Konyaka Madingo parents. His father was a successful businessman who owned property in Guinea and Liberia. The family was Muslim.

[15] The appellant's parents had seven children. His father, however, had three other wives to whom he had fifteen other children. Until his father's death the whole family generally lived together. The appellant was closest to those near his own age, irrespective of whether they were full or half siblings. In this decision, the Authority has not differentiated between those who were full, or half siblings.

[16] The appellant's family spoke Konyaka, the appellant's mother tongue.

[17] The appellant attended a local (non-State run) Muslim school from the age of about five until his father's death, when the appellant was about ten. The

language of instruction was Konyaka, but the appellant also learnt to read Arabic from the Koran, and to understand some spoken Arabic.

[18] Whilst the official language of Guinea is French, the appellant never learnt to speak it, except for some very basic phrases and vocabulary. This was because the people of his area were Konyaka, who spoke their own language, and, as Muslims the other language in which they had an interest was Arabic. The appellant's father, a strict Muslim, was not interested in his children learning other languages and would not send his children to French speaking schools.

#### The appellant was sent to Liberia

[19] After his father's death, the appellant was sent from Guinea to (English-speaking) Liberia, to stay with an older sister and her husband. There he lived in difficult conditions, working as a street seller. Through his work he learnt to speak English and a smattering of some of the local tribal languages, such as Loma.

[20] At the age of about sixteen the appellant ran away from his sister's home and located a paternal uncle with whom he then lived, in Monrovia. The appellant worked at the local market.

[21] Soon afterwards he met and married his wife, a Christian Liberian of Krahn tribal background. They then lived together in Monrovia until 1991, when civil war forced them to leave.

#### Rebel war forces appellant to return to Guinea

[22] The country information which follows is sourced from the United Kingdom Home Office *Liberia Country Report*, October 2003.

[23] President Doe took power in Liberia in 1980, in a coup d'état. Five years later (in the mid-1980s) he survived an unsuccessful coup attempt led by a former Brigadier-General of the Armed Forces of Liberia (the AFL). The AFL retaliated by, inter alia, carrying out massacres of the Mano and Gio tribes in Nimba county.

[24] In late 1989, an uprising against Doe's Krahn-dominated People's Redemption Council (PRC) was led by Charles Taylor's National Patriotic Front of

Liberia (NPFL) starting in Nimba county. Ethnic Krahn and Mandingo people were seen as allied with the repression of the Doe government. The NPFL was Gio and Mano tribal based.

[25] By early 1990, the NPFL had taken, by armed force, the whole of Liberia, except for Monrovia. The revolt quickly became an ethnic-based civil war between the Krahn and Mandingo dominated AFL and the NPFL.

[26] In 1990, the Economic Community of West African States (ECOWAS) Ceasefire Monitoring Group (ECOMOG) sent in troops, who then became engaged in a protracted violent armed conflict against the NPFL (which was to effectively continue until 1997). Indeed, in the early 1990s ECOMOG was accused of impeding relief efforts and conducting its own attacks against even non-combatant, neutral targets.

[27] In September of 1990, President Doe was captured and publicly executed by Prince Yormie Johnson's Independent NPFL (INPFL), a splinter group of the NPFL, after which Charles Taylor then declared himself President.

[28] Returning now to the appellant's evidence, approximately three months after Doe's death, in around 1991, it had become clear to the appellant and his wife that they must leave Monrovia. Mandingos were being openly targeted and the appellant constantly feared for his life. Grave atrocities were regularly being committed and he had already encountered problems. There was also a desperate food shortage.

[29] There was no public transport. They, like many others, decided to attempt walking to Guinea, a perilous journey of some three months.

[30] The couple underestimated how difficult their journey would be. En route, they had intended to stay with some of the appellant's family. As they approached the home of a cousin, however, the rebels had turned the family out and cut their throats. The appellant assumed that neighbours might have alerted the rebels to the presence of the Mandingo Muslims.

[31] The appellant and his wife were frequently stopped on their journey north. They were often asked if they were "Mandingo or ULIMO". They managed to

proceed by passing themselves off as having a different ethnicity (depending on where they were and who was challenging them). For the first part, it was safer for them to claim to be Liberian Christian Krahns (true in the appellant's wife's case) and later, Loma. In this regard his wife assisted the appellant – speaking Krahn and, later, Loma to him (languages of which he had a basic understanding) and calling him by an agreed 'Christian' name.

[32] These encounters were, however, always 'close-shaves'. For example, Muslims with prayer marks or those who could only speak Mandingo were being killed by the NPFL and the checkpoints were littered with the bodies of suspected Muslims. At one checkpoint the appellant was beaten, when someone pointed to him as a likely Mandingo. He vehemently denied it and managed to talk his way out of the situation - although suffering a cut to his throat in the incident.

[33] In their trek northwards, the appellant and his wife were in the company of many others. The group - such as it was - tried to assist each other in whatever way they could. However there were regular encounters with NPFL (and other) rebels that invariably left large numbers of people killed.

[34] While still in Liberia, heading north, on one occasion, rebels attacked the group by ambush. Many civilians were killed, including the appellant's wife. It emerged that the attacking rebels were not in fact NPFL themselves but another rebel group who had been surprised by the civilians.

[35] The appellant also suffered injuries in the attack - his right calf was wounded by a ricocheting bullet, his right lower thigh was wounded by a machete and he had a cut hand.

[36] The appellant, feeling like he had little to lose with the loss of his wife, challenged the rebels, "What's your problem, we are running from Prince Johnson's people; we are unarmed civilians and you are killing us when we need protection".

[37] The rebels shot those who were disabled by injury or who were delirious with fear. They took the survivors, including the appellant, back to their base where they were detained.

[38] The appellant was required to do tasks such as cooking. He managed to pass himself off as a Loma from Lofa county. His time at the camp was harrowing and he was significantly mistreated. For refusing to 'fight to the death' with another captive (to entertain the rebels, who were frequently intoxicated) he was left in a cage on the ground for three days, with his arms and legs strung up behind him. The ropes, initially wet, "ate into" the skin on his upper arms as they dried. At the appeal hearing, the appellant showed the Authority distinctive scarring on his upper arms. He assumed that the rebels had not simply killed him because he was of use to them and he was not a direct threat.

[39] After three months, the appellant and another captive managed to escape, the appellant suffering a stick puncture wound to his right lower leg while fleeing. He eventually reached Guinea.

#### Back in Guinea

[40] On arrival in Guinea, the appellant was challenged by (French speaking) Guinean military officers as to whether he was a Liberian rebel, given his inability to converse in French or pidgin Creole. The Guinean military were concerned to prevent rebels crossing the border regions. Fortuitously they did not act against him summarily (although had him on the ground at gunpoint), and took him to a military base at N camp.

[41] The military did not accept the appellant's explanation as to his identity. However, someone who had known the appellant's late father subsequently recognised him and sent a message to his mother. She travelled from G to confirm his identity.

[42] Over the next two years (until late 1993/early 1994) the appellant remained with his mother. Life was extremely hard and he remained traumatised as a result of his earlier experiences. There were also bombings in the border area; the region was a dangerous one in which to live.

[43] The greatest difficulty the appellant faced was that, as a young (non-French speaking) Konyaka Mandingo male, he was easily mistaken for a Liberian rebel. Guinea was a country where one had little recourse to the law or human rights when dealing with the authorities, who were suspicious of refugees from Liberia or

Sierra Leone crossing the border, as suspected rebels. The appellant found himself automatically targeted as a possible member of the ULIMO-K, a Mandingo faction which had evolved from the remnants of the AFL.

[44] The appellant's mother urged him to leave.

[45] In 1994, the appellant heard that the situation in Liberia had, apparently, improved. The Authority notes that during this period, the warring factions had agreed on a timetable for disarmament and the setting up of a joint Council of State – see Timeline: Liberia *BBC News*. The appellant decided to return to his home at N, in Monrovia, in the hope that the conflict had ended.

#### Return to Liberia

[46] The appellant had a difficult trip returning to Liberia which he covered by foot and then by car (in which he paid to be hidden).

[47] People who knew him were surprised to see that he had returned. He was told that, despite efforts towards a cease fire, killings continued. Moreover, Charles Taylor had directed that Roosevelt Johnson kill some of his own people, an order which Johnson had refused to obey. In response, there was a directive from Charles Taylor that his forces be deployed to arrest all supporters of Johnson. There were continued assaults on the capital in the renewed fighting.

[48] The appellant fled to the port, exercising extreme caution, as there was a fierce gun battle between the rebels and the Nigerian ECOMOG troops taking place. He was fortunate to receive shelter at the ECOMOG base for some weeks until he managed to return to Guinea, by sea.

#### Back in Guinea

[49] For the next two to three years the appellant remained in Guinea. He struggled, unable to speak the language properly or to find proper work. He lived by taking scraps from some Soussou people.

[50] The political situation in Guinea was problematic. Early in 1996, President Lansana Conte narrowly survived a military mutiny and coup attempt during which



the Presidential palace was set alight. The Guinean rebels had trained inside Liberia, under Gbago Zoumanigui and the army mutineers who had fled after failing to overthrow the government in 1996 (see "The Guinea conflict explained" *BBC News*, 13 February 2001).

[51] Against this unstable backdrop, the appellant tried to make a living cutting firewood and he built a makeshift stall, from which he sold black coffee. He located one of his brothers who helped him, although it was an almost pointless enterprise in terms of being able to support them.

[52] One of the appellant's customers, knowing he spoke English, told him about a business seeking an English-speaking security guard. The appellant then began working for the company, from October 1996, as night guard for the premises of a New Zealand couple working in Guinea, Mr and Mrs P.

[53] Mrs P learned that the company contracted to provide security was not paying the appellant. He, meanwhile, was walking over 30 km daily, between his two 'jobs'. Mrs P befriended the appellant and ensured that he was paid.

[54] The coffee bar only ran for three months before the authorities shut it down. The appellant had apparently been reported to the 'Community Chief' as a suspected Liberian rebel. Other small enterprises run by Mandingo were treated similarly.

[55] The appellant had a relationship with a Guinean woman (a Mandingo) who had a son by him in February 1997. She later indicated that it was "too much trouble" being with a Mandingo man. Although she herself was Mandingo, she was able to speak Soussou and so fared better than the appellant. She left with their son, who the appellant only ever saw twice, although his son was later handed to the appellant's mother to care for.

[56] The appellant was constantly stopped and questioned by authorities. He would frequently be detained and accused of being a Liberian rebel and often mistreated on such occasions, sometimes seriously.

[57] For example, he suffered a serious injury to his right arm while being dragged off during one arrest (taking four months for the skin to subsequently re-

grow). A photograph taken by Mrs P at the time was produced in evidence, showing the appellant with this arm (and also a leg) injury apparent.

[58] At other times he was beaten, and had, for example, sticks used on him in various ways.

[59] Whenever the appellant was detained, Mrs P secured his release by sending money for a bribe and people such as neighbours went to verify his identity.

[60] Mrs P's evidence was that, in the time that she knew the appellant in Guinea, she had personally seen him twice being taken off by the authorities. In addition, there were another eight to nine times when she received messages that he was being detained, and she would send money for his release. There was never any reason for these arrests, other than the appellant's ethnicity.

[61] Mrs P also helped with securing the release of some of the appellant's other Mandingo relatives.

[62] The appellant understood that other Mandingo (who did not have the ability to pay bribes) were known to simply disappear. Some, including his partner's father and two of his own brothers, were detained indefinitely. The appellant did not know whether the Guinean authorities seriously suspected him of being ULIMO-K. Irrespective of their actual beliefs, as a Mandingo, he would be constantly targeted, and even more so because of the fact that he was non-French speaking.

[63] At about this time, accusations began to be levelled against Dr Alpha Conde, the opposition leader, from the Rassemblement du Peuple de la Guinee (RPG) party. Dr Conde was Mandingo. The allegation was that he was endeavouring to bring mercenaries - Mandingo from the forest region - into the country to overthrow the government. This further increased tensions against Mandingo generally.

[64] Mrs P also recalled the steps taken by the Guinean authorities to curb Liberian and Sierra Leonean refugees. In her written statement (dated 11 March 2003) she described the general situation in the following terms:

“...Whilst I was there, at least one million Liberian and Sierra Leonean refugees poured across the border into Guinea. The majority of them were placed into camps mainly around the Forest Areas.... Those with money made their way to the capital, Conakry, and tried to set up small businesses...”

This influx put huge pressure on an already volatile country, and the Guinean Government knew that amongst these people were many rebels. Anyone speaking English was targeted as a rebel. The soldiers many times would arrest people, take them to their barracks, question, and beat them. But as tension grew, they forced them all out of their businesses and homes, and they were made to assemble outside the Sierra Leone Embassy and were deported back to their country, which was still in conflict. Anyone suspected of being a rebel was badly tortured – some were even shown on T.V. to discourage others...”

### The appellant's brief return to Liberia

[65] By mid-1997, the situation in Guinea had become so serious that the appellant again decided to return to Liberia, hopeful that circumstances had improved there. From Guinea, however, it was difficult to assess how safe the situation was in Liberia. There was, for example, no free press.

[66] Given recent history, Mrs P was unhappy about the appellant simply returning to Liberia and decided to accompany him, to see for herself whether it was safe and, if so, whether she could assist him to re-establish himself there.

[67] Against her husband's better judgement, the appellant and Mrs P left Guinea by air at the end of July. They stayed in Liberia for only three days. Liberia remained in turmoil and it was extremely dangerous for the appellant, as a Mandingo, to remain.

[68] Mrs P told the Authority that they went to the appellant's previous, now bullet-ridden, home but no one remained in the area except for a Liberian woman (previously a neighbour) and her daughter. The woman who was so gravely ill that the rebels had told her that they would not kill her as she was dying anyway. The woman was shocked that the appellant had been foolish enough to return and warned them that he was not safe.

[69] Another man, who had recognised the appellant at the airport on their arrival, told him that his kind were still being killed only the previous day, and took a bribe so as not to point out the appellant. Mrs P had not known until later what had happened in this regard but had realised that there was a problem which she

had had to settle with a bribe.

[70] Mrs P also noted how fearful and anxious the appellant was during the Liberian trip, for himself and also because he felt concerned for her own safety.

[71] They returned to Guinea by air, via Cote d'Ivoire. Mrs P's passport was produced, bearing the relevant entries.

[72] It is unnecessary to record here all of the safety measures which the appellant and Mrs P took on their short trip to Liberia (en route and while there) but it may be noted that these were canvassed in their evidence.

### Return to Guinea

[73] The situation back in Guinea was only marginally better than in Liberia. The appellant continued to be arrested and detained on numerous occasions, on suspicion of being a rebel.

[74] Before his departure for Liberia, Mrs P had assisted the appellant to apply for a Guinean passport, which was issued on 7 August 1997, after his return. She hoped that this would assist him in establishing that he was not a Liberian but a Guinean. On one occasion, when he was out in the street with Mrs P, the appellant was overheard speaking English by undercover security police. Mrs P recalled:

“By his general appearance, dress, manner and language they took him to be Liberian. At that time he had his Guinean passport but it made little difference. It clearly stated that he is from Banakoro Kerouane, where the Konyaka [Mandingo] came from.”

[75] In any event, one could easily buy a Guinean passport so it was a document which did not command much respect.

[76] The appellant was continually harassed by the local authorities, who would come to his home in the middle of the night and question him as to his ethnicity and where he came from. He was detained on some occasions and physically mistreated by the Guinea government troops in Conakry, who also came to his home in the middle of the night. On one occasion he was picked up outside a restaurant and held for about seven hours, during which time he was tortured.

[77] After their return to Guinea, Mrs P made efforts to set up some small enterprise for the appellant to run. Her efforts all failed, which she attributed to corruption and obstruction on the part of the authorities.

[78] She instead set up a small bar for him to run (of which she produced some photographs in her evidence). She stated that the appellant “experienced great hassles from the Guinean authorities during this time, such as tax inspectors wanting up-front tax payments, police demanding money to register the building and plainly intimidating him because he was a Konyaka”.

[79] In late 1998, Mrs P herself was ordered to report to the Guinean Security Police and was detained for five hours. (She had ignored an earlier demand to report there, but decided this time she had better go). They initially questioned her about herself, but then moved on to interrogate her about the appellant – clearly the matter in which they were actually interested. They demanded to know what she knew about him. It was apparent that he was suspected of being a Konyaka Mandingo rebel. She was told that he was in serious trouble because “he’s from Liberia and we know who he is”. She responded that he was merely her business partner and that there was nothing to tell them.

[80] They also threatened to close the bar, take all of her keys and have her deported. She then told them that she was going to leave the premises, but they continued harassing her. Her driver eventually advised her to pay them off, suggesting a significant bribe of 300,000fg. The officials told Mrs P that “the interview [record] would be sent to the President’s office, the Gendarmerie and Security Police” although she supposed that this was merely an attempt to intimidate her.

[81] In mid-December 1998, on the eve of the Presidential elections, the Mandingo opposition leader, Dr Alpha Conde, was arrested and charged with attempting to destabilise the government. Thirteen other politicians who demonstrated against his detention were imprisoned for three months while Conde himself remained in custody, with 47 others.

[82] Conde and the others were not brought to trial until mid-2000. International observers (both African and European) accused the prosecution of witness tampering, intimidation and fraud. Conde’s trial, conducted under a media ban,

resulted in his being sentenced to a term of five years imprisonment, for endangering state security and recruiting foreign mercenaries, but he was pardoned in May 2001. Conde's right to vote, and to run for political office in the country was not restored. (See for example, Amnesty International *Guinea :The Alpha Conde affair – a mockery of a trial*, 12 December 2000 [www.amnesty.org](http://www.amnesty.org); US Department of State *Country Reports on Human Rights Practices for 2000: Guinea* (31 March 2001) and US Department of State *Country Reports on Human Rights Practices for 2002: Guinea* (31 March 2003); Timeline: Guinea *BBC News*; Committee to Protect Journalists *Country Report: Guinea 1999* and *Country Report: Guinea 2000* [www.cpj.org](http://www.cpj.org)).

[83] The appellant recalled that, after Conde's arrest, Liberian businesses were closed and Liberians and Sierra Leoneans were arrested and liable for deportation for posing a risk to national security.

[84] The appellant and Mrs P understood that people accused of being rebels were routinely taken and left in places of detention, such as Kassa Island.

[85] One night in 1999, at about 2am, while Mrs P and the appellant were closing the bar, a truckload of about twenty armed soldiers arrived and raided the premises. They took the appellant. While there, they also raided the house next door, where there were six or seven Sierra Leonean women refugees staying. The women were also arrested and taken away.

[86] Mrs P paid for the appellant to be released but as far as the women were concerned, they were not seen again.

[87] A short time later there was another uprising in Conakry, initiated by students. Madina market was attacked, shops were destroyed and people were killed. The city was closed while tribal fighting took place and a curfew was imposed.

[88] By September 2000, the appellant's situation had become so dangerous that Mr and Mrs P arranged for him to travel, temporarily, to the United Kingdom with Mrs P. This was the same month Dr Conde was sentenced to five years imprisonment for endangering state security and recruiting foreign mercenaries.

[89] From September 2000, incursions by rebels across the border from Liberia and Sierra Leone began, claiming more than 1,000 lives and causing massive population displacement. The Guinean government accused Liberia, the Sierra Leonean United Revolutionary Front (RUF), Burkina Faso and former Guinean army mutineers of trying to destabilise Guinea. (See Timeline: Liberia *BBC News*).

[90] In 2000 and 2001, forces loyal to President Taylor attacked areas of southern Guinea. Guinea responded “robustly” to these incursions (see UK Home Office *Liberia, Country Report* October 2003).

[91] In 2001, in response to incursions by the RUF into Guinea, Guinea launched cross-border attacks into Sierra Leone. These were seen as being aimed at RUF-held areas and as part of a wider conflict between Liberia and Guinea on their common border (see UK Home Office *Sierra Leone, Country Report* October 2003).

[92] UNHCR described the situation at the border regions of Guinea, Liberia and Sierra Leone as being in a state of political and military turmoil, with the situation in Guinea being “the most dramatic faced by the agency anywhere in the world”. The rebels fighting the Guinea army were believed to be a mixture of Guinean dissidents and mercenaries from Liberia and Sierra Leone. Truckloads of Guinean soldiers were heading towards Gueckedou to try to expel the insurgents. (See “Guinea crisis ‘worst in world”” *BBC News* 24 January 2001).

[93] From the United Kingdom, the appellant learnt of the cross-border incursions by Liberian rebels into Guinea and an attack on Gueckedou where his mother and family lived. People were killed and houses ransacked and shelled. Rebels had also captured the town of Nongoa, killing a large number of civilians as an act of retribution over what was perceived as an attack by Guinean rebels against Liberians. The appellant later heard that his mother had been evacuated on foot and had been sent to Kissidougou, then on to Conakry by truck. She was without any means of support.

[94] The appellant did not have the right to remain indefinitely in England. As the situation in both Guinea and Liberia were clearly unsafe for the appellant to be able to return to, Mr and Mrs P then arranged for him to travel to New Zealand

where he then sought refugee status, in early 2001.

[95] The appellant fears returning to Guinea, where he would again be suspected of being a Liberian rebel (particularly as he is non-French speaking and has English as his second language to Konyaka).

[96] The appellant has experienced a long history of abuse at the hands of the government security forces. At least one brother and a stepbrother are still being held by Guinean security forces, which is where the appellant would expect to be, but for Mrs P's intervention on his behalf. He last heard that his mother was living in a park.

[97] The appellant fears returning to Liberia where, as an ethnic Konyaka Mandingo he would expect to face persecution. He bases that fear on his own past experiences and observations and country information of which he has been made aware.

[98] For her part, Mrs P agreed that the appellant cannot stay in Guinea as he will continue to be targeted and will face arbitrary detention and mistreatment. She considered that he would fare even worse in Liberia. He is obviously a Mandingo and "can't change the way he walks and talks".

[99] The appellant produced in evidence a medical report, dated 19 February 2002, from Dr MH Harris, of Hamilton which gave a detailed assessment of the appellant's scarring (to his arms, right calf, right lower thigh, left hand and right lower leg). The scarring was consistent with the appellant's description of events as described to the medical practitioner and also to the Authority.

## **THE ISSUES**

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

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



being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

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

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

## **ASSESSMENT OF THE APPELLANT'S CASE**

### Credibility assessment

[102] Before turning to the above issues, it is necessary to assess the credibility of the appellant's account.

[103] The Authority found the appellant to be a credible witness who had quite obviously been deeply affected by his past experiences. Mrs P was also a reliable and insightful witness. It is unusual for the Authority to have such first-hand corroborative evidence as it has had in this appeal.

[104] Both witnesses provided evidence that was consistent with country information. Documents submitted, including detailed medical evidence, various photographs taken by Mrs P and other evidence (not all of which has been referred to in the decision) have also been of assistance in confirming aspects of the appellant's account.

[105] In summary, the appellant's account is accepted.

### Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Guinea?

[106] Although born in Guinea, the appellant left for Liberia while still young. He knew only his tribal tongue, Konyaka, and some Arabic. It is noted that his family lived in a distinctively Konyaka area and the children were sent to local Muslim

schools. He never learnt French, other than some basic words and phrases.

[107] In Liberia, the appellant quickly picked up English, the official language, needing it to support himself - as well as a limited amount of some other tribal languages.

[108] Perhaps unsurprisingly given his inability to communicate in the official language of his own country, but rather that of its neighbouring country, when in Guinea, the appellant has not been readily identified as a Guinean, but rather as a Liberian.

[109] The appellant has clearly faced considerable problems of an ongoing and serious nature in Guinea on account of his being perceived as a Liberian. He has been looked upon repeatedly as a possible rebel. In order to understand why, it is necessary to look at relations between the two countries.

[110] There have been enormous hostilities over recent years between Liberia and Guinea. Their respective governments regularly charge each other with harbouring rebel groups and sponsoring invasions. (See for example, US Committee for Refugees *Crisis in West Africa: Half Measures, Desperate Measures* 9 February 2001; Amnesty International *Liberia: Civilians face human rights abuses at home and across borders* 1 October 2002).

[111] A recent report from the Forum on Early Warning and Early Response (FEWER) from December 2003, *Policy Brief – Guinea Conakry Presidential Elections December 2003: Stakes for Sub-Regional Peace*, stated that:

“Guinea consistently accused refugees for all ills perpetuated in its land” and “has been suspicious of rebel penetration into its territory in the guise of refugees since the rebel attack of September 2000”...

The same report stated:

“...recent riots between the refugees and the UNHCR authorities in Guinea constitute a serious security threat that could aggravate and provoke a major uprising if not properly handled”.

[112] It is clear from his past experiences that the appellant has been targeted as a suspected rebel from Liberia by the Guinean authorities. He has been apprehended and detained on numerous occasions. He has been subjected to serious mistreatment.

[113] Of additional concern is that his past attempts to support himself have also been interfered with, at times leaving him without any effective means of supporting himself.

[114] It is clear that, but for Mrs P's repeated intervention on the appellant's behalf, his situation would have been very serious. It is reasonable to assume that, at the very least, he would otherwise have suffered numerous lengthy detentions in harsh circumstances. This is the fate which a brother and stepbrother have apparently suffered.

[115] We note, too, that the authorities even went so far as to hold and interrogate Mrs P herself. Whilst they seem to have wanted to intimidate her, clearly their interest was in the appellant, who they speculated was a rebel. That the authorities would deal with her in this manner suggests serious interest on their part, in regard to the appellant.

[116] Mrs P no longer lives in Guinea. She is not there to 'bail him out'. If he returned he would no longer enjoy that ready source of assistance and protection.

[117] It is accepted that, on one occasion, the appellant's mother came to identify him and secured his release. At other times, neighbours have identified him as Guinean. There was a large degree of luck involved on those occasions, however, and the appellant may just as easily have been left languishing in detention as a suspected rebel with no recourse.

[118] It is also accepted that the appellant secured a Guinean passport in the hope that this would assist him to establish his identity. However the document proved of limited benefit for reasons earlier explained.

[119] Country information confirms that members of the Guinean security forces continue to commit abuses, often with impunity. Prison conditions are said to be inhumane and are even life threatening. Arbitrary arrest and prolonged pre-trial detention were also problems (see US Department of State *Country Reports on Human Rights Practices for 2002: Guinea* (31 March 2003)).

[120] The fact that the appellant twice tried to return to Liberia, despite the terrible problems he could face there, is a further indication of the extent of the real

difficulties he faced in Guinea.

[121] Apart from the appellant being perceived in Guinea as a possible Liberian rebel, it is also clear that his actual identity as a Konyaka Mandingo has been an overlapping source of difficulty for him.

[122] It has been recently reported that the domination by the minority Soussou in government - who hold virtually all positions of responsibility and comprise 80% of recent recruits to the military - has resulted in serious acts of repression against Fullah and Mandingo. They have been described as dangerously marginalised. There have been reports of cases of enforced castration of young Fullah and Mandingo males by the government's security forces, in order to slow their birth rates. One source referred to one group of Mandingo being the most vulnerable groups of refugees in West Africa. (See FEWER *Presidential Elections December 2003: Stakes for Sub-regional Peace* December 2003; Guinea Forum *Republic of Guinea: Memorandum on the Guinean Paradox* (est. 2000) [www.guinea-forum.org](http://www.guinea-forum.org); "Arizonan tries to help W. Africans" *The Arizona Republic* 22 January 2004).

[123] It is also noted that, on 19 January 2004, Lansana Conte was sworn in for another seven-year term as President, in elections described as a farce. The poll which resulted in the President gaining 92.5% of the vote was boycotted by opposition parties and swathed in accusations of electoral fraud and vote-rigging (see "Guinea: Ailing Conte is sworn in for another seven year term" *IRIN News* 6 June 2003).

[124] Some sources of country information predict that Guinea could disintegrate into an ethnic based civil war given the current tensions (see for example, FEWER *Presidential Elections December 2003: Stakes for sub-regional peace* December 2003; Writenet *Guinea: Early Warning Analysis* August 2003).

[125] However, matters are not entirely clear cut. Reference must be made to President Conte's apparent support of the Liberians United for Reconciliation and Democracy (LURD) – a highly capable rebel group which draws its very support from the Mandingo. Indeed, LURD (which has won victories in Liberia in recent times) has been described as ULIMO-K reorganised and renamed. (See for example, United Kingdom Home Office *Liberia Country Report* October 2003).

[126] Conte's apparent support for LURD must however be seen in context. It has been aptly described as a case of 'hosting my enemy's rebels'. As reported in a WRITENET independent analysis report, *Guinea: Early Warning Analysis* commissioned by the UNHCR Emergency and Security Services, August 2003:

"But relations with Liberia have been embittered by the deep mistrust between President Conte and Charles Taylor, President of Liberia until his resignation in August 2003. Conte and the Guinean military have repeatedly been accused of active support for LURD guerillas who were fighting to overthrow Taylor; they have denied these charges, but detailed research by the International Crisis Group (ICG) has highlighted the extent of connections..."

[127] In other words, Conte's apparent support of LURD is pragmatic - a tool to destabilise Liberia (and, recently, successful). The situation in Guinea itself appears to be quite different for Mandingo (as set out above). If this were not complex enough, Conte's support of LURD may well have repercussions at home, among the anti-Mandingo populace, and is considered to be a major cause for concern for further sub-regional instability. (See FEWER *Presidential Elections December 2003: Stakes for Sub-regional Peace* December 2003).

[128] The Authority concludes that in all the circumstances, and in light of the current situation, the appellant, a Konyaka Mandingo who presents as a Liberian, with the characteristics of a suspected rebel infiltrator in Guinea, faces a real chance of persecution on return there. Thus, in answer to the first question earlier posed, the answer is in the affirmative.

#### Convention Ground

[129] Turning then to the issue of Convention ground, the harm that the appellant fears is, principally, for reason of an imputed political opinion (that is, that he is a rebel of a force which poses a risk to the Guinean authorities). There is also the related matter of his being Konyaka Mandingo. The Authority accepts that this ground, relating to his race (ethnicity) would also be an overlapping, and contributing factor.

[130] Given this conclusion, it is now necessary to assess the appellant's situation in the context of Liberia, where he concedes that he has both the right to return and to permanently reside.

Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Liberia?

[131] In a previous decision of this Authority *Refugee Appeal No. 72496/01* (23 October 2001) the Authority was required to assess the situation of a Liberian man of Mandingo tribal background. In allowing the appeal, the Authority spoke of the need to proceed with the utmost caution before returning such an individual to Liberia, given the history of serious conflict in that country.

[132] The decision noted the role played by ethnic-based factions in the conflict. There were references to reports of the violence committed against Mandingo over recent years. There is no need to repeat what is set out in the decision, particularly at paragraphs [20]-[36]. However those paragraphs are adopted for present purposes to the extent that they provide a relevant background.

[133] A 2003 report from the Forum on Early Warning and Early Response (FEWER) *The Last Chance for Peace*, 8 July 2003 sets out a helpful analysis of the conflict in Liberia until mid 2003, in the following terms:

“The plantation civilization was brutally quashed by Samuel Kanyon Doe in a bloody coup in 1980, and effectively replaced it with the Krahn hegemony. The 10-year Krahn rule was characterized by widespread human rights violations, corruption and mediocrity. Charles Taylor, with support from the Gio and Mano (bitter enemies of the Krahn) ended the Krahn hegemony in his (1989) coup, returning the pioneers (as Americo-Liberians call themselves) to power. The Mandingos who stood by the Krahns during the first civil war (1989-1997) were targeted by the Gio, Mano, and American-Liberian groups in Taylor’s National Patriotic Front of Liberia...

...LURD’s Mandingo ethnic group is the oldest politically marginalized group in the country. The American-Liberians fearing the religion (Islam) and enterprising nature of the Mandingos denied them citizenship although they are mentioned as one of the 16 ethnic groups in Liberia. Most of the ethnic groups in Liberia generally fear and somewhat resent the Mandingo. Their domineering presence in LURD would make it difficult for the force to be accepted even if it overruns Monrovia...

When ethnic-based factions are formed, their first operations are usually attacks on their historical ethnic rivals. These enemies are groups within close geographical proximity. This scenario has prevailed not only in current civil conflict but throughout the history of Liberia. Political demagogues have always exploited historical divisions amongst groups to mobilize ethnic hatred and xenophobia. The bloodiest battles and worst atrocities were committed when armed groups split into ethnic factions and engaged one another in a fierce battle for ethnic dominance...

...All indications suggest that if ECOWAS and the international community do not act soon, increasing fears on all sides may soon turn into ethnic cleansing and, possibly, genocide. The dispersed nature of ethnic hatred could make it far worse and difficult to

control, compared to genocides witnessed in Rwanda, Burundi and currently in the Democratic Republic of Congo. Also, the small size of the country and the constant movement of the population to the center (Monrovia), leading to the closer proximity and momentarily high population density are accelerating factors for genocide. This genocide would possibly be unleashed if Taylor is evicted, killed or forced into exile, his opponents starting jubilation and provoking Taylor's supporters. Taylor's departure must therefore be well managed."

[134] The FEWER article was published in the period when there was continued fighting between Taylor's forces on the one hand and LURD and Movement for Democracy in Liberia (MODEL) forces on the other. It is noted here that MODEL is Krahn based and backed by the Ivory Coast. It has been described as a wing of LURD but appears to have been organised separately (see for example, United Kingdom Home Office *Liberia Country Report* October 2003).

[135] It must be noted, however that in June/July 2003, the hostilities saw LURD capture parts of Monrovia. Hundreds of people were killed in the capital. By the following month, Charles Taylor stood down from office, and left for Nigeria, handing power to his Vice President, Moses Zeh Blah as Interim President. US peacekeepers arrived and, on 19 August, a peace agreement was signed in Ghana by LURD, MODEL and the Liberian government. Gyude Bryant was chosen to head an interim administration from October. (See for example, United Kingdom Home Office *Liberia Country Report* October 2003 and Timeline: Liberia *BBC News*).

[136] In September and October 2003, the US forces pulled out and the UN launched a major peacekeeping mission, deploying thousands of troops. Bryant was sworn in as head of state. By December, the UN peacekeepers from UNMIL (UN Mission in Liberia) were beginning to disarm former combatants and, in early 2004, international donors pledged significant grants in reconstruction aid (see Timeline: Liberia *BBC News*).

[137] Thus, there has been a successful ousting of Taylor by LURD (a force dominated by Mandingo) and MODEL, along with a new peace accord, a new head of state, and a major UN peacekeeping mission deployed in Liberia. The question that arises is whether this has reduced the risk of the appellant being persecuted there to below the level of a real chance. In the Authority's view, such a conclusion would, at this time, be premature.

[138] Despite these major steps towards stability, country information suggests

that the situation in Liberia remains insecure.

[139] There are continued reports of fresh fighting in Nimba county and other rural areas, with the fighting filtering into the capital. Regardless of the growing UN presence, in large parts of the country there are no peacekeepers and lawless militias retain control. Despite some progress with disarmament, UNMIL is having to develop new strategies to deal with this major issue – there being an estimated 40,000 combatants remaining armed. Difficulties have meant that programmes have been postponed to February 2004 (this month). Numbers of peacekeepers are to increase in upcoming months and to spread out more into the interior of Liberia (see for example “Fresh fighting erupts in Liberia’s north-eastern Nimba county” *Agence France Presse* 6 January 2004; “Liberia: Relief agencies move in behind peacekeepers” *IRIN News* 16 January 2004 “Liberia disarmament shelved again” *BBC News* 16 January 2004; “UN team starts Liberia groundwork” *BBC News* 18 January 2004).

[140] It is also to be noted that human rights in Liberia are still threatened by the ongoing fighting and general chaos resulting from the actions of all of the parties involved. There are reports of random shooting, banditry and looting of humanitarian supplies in various parts of the country, caused by former combatants dissatisfied with the terms of the ongoing disarmament programme. (See for example, UNHCR *IDP relocation on standby after security incidents in Liberia* 9 December 2004; “Liberia ‘not safe for refugees’” *BBC News* 30 December 2003).

[141] A recent report from the International Crisis Group (ICG) *Rebuilding Liberia: Prospects and Perils* 30 January 2004, makes a number of relevant points;

- UNMIL's slower than anticipated deployment means that it is unable to deal effectively with sporadic fighting and the ongoing looting and harassment of civilians. UNMIL face problems such as operational difficulties, lack of adequate planning, poor co-ordination, and confusion over funds for fighters that agree to disarm;
- Rumours continue to circulate about links between Charles Taylor and his key commanders. However, no verifiable evidence has been produced by either UNMIL or other security agencies. Still, ICG noted that his proximity in Nigeria



remains a significant threat. Many ordinary Liberians will not be persuaded the peace process is sustainable unless Taylor is arrested and brought before the Special Court for Sierra Leone. On the other hand, it was noted that Taylor's die-hard commanders may not find many fighters willing to continue the struggle for the former President's return - around 20,000 have already agreed to disarm, and many have not been paid for two years.

- The future of the transitional government was referred to as bleak, with a deadlock between Chairman Gyude Bryant and rebel politicians. It is widely considered within the government that Bryant has no real political power - instead his duty has been described as co-ordinating between the three warring factions;
- The behaviour of politicians from the warring factions was said to have raised concerns about the sustainability of the peace process. They are described as prepared to sacrifice the peace process for the sake of gaining the power and prestige that goes with top positions. On 7 January 2004 Bryant had to concede to rebel demands to award 51 of the 86 assistant minister's positions to members of the warring factions. An UNMIL official stated: "it is unfortunate that Bryant had to concede to rebel demands since it will now signal the beginning of a slippery slide towards potential chaos".

[142] In summary, the peace accord is only months old, in a country which has effectively had a 14 year bloody civil war, based on ethnic conflict. An estimated 300,000 to 500,000 people have died in that conflict, from a population of about 3.3 million people. One fifth are refugees. Despite the apparent victory of LURD (which, in any event, may ultimately be offered little power in the peace process), the Authority is unable to conclude that the appellant as a Mandingo – whose tribe is widely seen as foreigners in Liberia despite their long presence there - no longer faces a real chance of being persecuted on a return. (See International Crisis Group *Liberia: Security Challenges* 3 November 2003; "Fresh fighting erupts in Liberia's north-eastern Nimba county" *Agence France Presse* 6 January 2004; "Charles Taylor: A wanted man" *CNN* 4 December 2003). Any doubt which might be raised in this regard, as a result of the recent peace process, must be exercised in his favour.

[143] The Authority, in making this finding notes the past problems the appellant

has faced in Liberia (these being a useful indicator of possible future difficulties). He has had to flee the country not once but three times, in risk of his life. On one of those departures he was detained and tortured by rebels, in the context of the ethnic conflict. He witnessed many atrocities and his wife was killed. Whilst it may be hoped that the recent improvements may prove to be of long lasting benefit, it is currently too soon to assert such a position.

[144] In answering the issue posed, the Authority finds that the appellant has a well founded fear of persecution on return to Liberia.

[145] The appellant's fear of persecution in Liberia would be for the reason of his ethnicity (race) with an overlapping imputed political opinion based on that ethnicity.

### **CONCLUSION**

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

.....  
L Tremewan  
Member