

0908399 [2010] RRTA 82 (18 February 2010)

DECISION RECORD

RRT CASE NUMBER: 0908399

DIAC REFERENCE(S): CLF2009/103014

COUNTRY OF REFERENCE: Guinea

TRIBUNAL MEMBER: Tony Caravella

DATE: 18 February 2010

PLACE OF DECISION: Perth

DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Guinea arrived in Australia [in] May 2009 and applied to the Department of Immigration and Citizenship (“the Department”) for a Protection (Class XA) visa [in] August 2009. The delegate decided to refuse to grant the visa [in] October 2009 and notified the applicant of the decision and his review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention
4. The applicant applied to the Tribunal [in] October 2009 for review of the delegate’s decision.
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 applicant has 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. 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’

9. 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.

10. 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.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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.
14. 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.
15. 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.
16. 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.

17. 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.
18. 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

19. The Tribunal has before it the Department's file relating to the applicant. 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.

Application made to the Department for a Protection Visa

20. The applicant is a [age deleted: s.431(2)] year-old national of Guinea. He was born in [location deleted: s.431(2)], Guinea and declares that he is of the Foulah ethnic group. He declares that he is a [occupation deleted: s.431(2)] by profession. He arrived in Australia [in] May 2009 as the holder of a subclass TH 442 Occupational Trainee visa which provides that he is permitted to remain in Australia until [a date in] February 2011.
21. The applicant lodged a protection visa application which is the subject of this review [in] August 2009. The applicant's protection claims were set out in response to questions 40 to 45 of Part C of the application forms. The respective responses to each question are set out below.
22. In response to question 40, the applicant states he is seeking protection in Australia so that he does not have to go back to Guinea.
23. In response to question 41, *Why did you leave that country?* the applicant states:
 - [Company A] sponsored him in August 2007 to come to Australia as an occupational trainee. He claims he was granted the relevant visa for this [in] February 2009. [In] April 2009, [Company A] sent him a letter advising him the training program was cancelled. He says that he was not told his visa was no longer valid and in his view the visa was still valid and the only thing he needed to enter Australia was to buy a ticket;
 - He claims he borrowed US\$10,000 to buy his air ticket and to have some money for his expenses. He also claims he gave his family US\$4,500 out of the US\$10,000;
 - He claims that his family were starving and he was too. He claims they had one meal a day and sometimes nothing. He claims the training program was his only hope for him and for his family to improve their situation. He claims now he is in trouble and scared for his life because he does not know how to pay the money back to the moneylenders.
24. In response to question 42, *What do you fear if you go back to that country?* the applicant states:

- [Company A] have offered the Department to pay the costs to send him back to Guinea, however, the people from whom he borrowed the US\$10,000 have threatened to kill him if he returns to Guinea without their money. He claims the moneylenders are sending SMS messages almost every day and the messages are threatening that his family should dig his grave before he goes back because they are going to kill him if their loans are not repaid;
 - He says “The only thing I know as soon as I get there, I will be killed. Nobody can protect me.....In my country, if someone calls someone a thief in the street he will be killed. Back in my country, I know and they know, I can never find US\$10,000 for the rest of my life.”;
 - He claims he is concerned about his family because the moneylenders are threatening and harassing them.
25. In response to question 43, *Who do you think may harm/mistreat you if you go back?* the applicant states: “The people I owe the money.”
26. In response to question 44, *Why do you think this will happen to you if you go back?* the applicant writes:
- “They know as soon as I get there I can never pay them for the rest of my life. There is no job there, even if I find one my salary can never recover that amount of money.”
27. In response to question 45, *Do you think the authorities of that country can and will protect you if your go back? If not, why not?* the applicant claims the authorities in Guinea cannot protect him. He claims that since 23 December 2008 all the country’s institutions are suspended. He claims the army took power since the death of the President who had been in power for 24 years. He states the constitution, the parliament, the supreme court and justice have been suspended. He claims there is corruption and people are found dead in the street and the police do not find who killed them. He claims the police do not have petrol for their cars.
28. In addition to the applicant’s completed *Application for a Protection Visa Form* (Form 866C), the Tribunal considered all the documents on the Department’s file, including:
- A covering letter dated [in]July 2009 from the applicant’s migration agent;
 - A certified copy of the applicant’s passport issued by the Republic of Guinea;
 - A copy of the applicant’s visa file in relation to his Occupational Trainee (Subclass 442) visa, including a copy of a letter dated [in] October 2008 from [Company A] which explains the offer of a bursary program made to the applicant, and a copy of a letter dated [in] July 2009 from [Company A] to the applicant explaining that the offer of the bursary placement in the training in Australia is withdrawn;

The delegate’s decision

29. [In] October 2009, the delegate decided to refuse to grant the applicant a protection visa. The delegate’s decision record shows the delegate reached this decision because the delegate was not satisfied the applicant is owed protection obligations for the

purposes of section 36 of the Migration Act and regulation 866.221 of the Migration Regulations.

30. The delegate's decision record indicates, among other things, the delegate:

- Found from the information provided by the applicant that there is not a Convention reason (race, religion, nationality or political opinion) for the claimed persecution; and
- Found the applicant's feared persecution was not for reasons of membership of a particular social group.

Application for review

31. The Tribunal received an application for review of the delegate's decision [in] October 2009.

Tribunal hearing

32. The applicant appeared before the Tribunal [in] December 2009 and [in] January 2010 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the French and English languages.

33. The applicant was represented in relation to the review by his registered migration agent.

The hearing held [in] December 2009

At the hearing the applicant provided the following documents which have been attached to the applicant's Tribunal file:

- a translation of a death certificate issued by the [medical facility deleted: s.431(2)] of the Republic of Guinea certifying the death of [name deleted: s.431(2)] (the applicant's brother) aged 25 years. The cause of death is stated as thoracic abdominal contusion with pluricostal fracture;
- a statutory declaration sworn by the applicant [in] November 2009;
- an internet news article titled "*Guinea junta's No 2 returns after President shot*";
- a letter of support from the [agency deleted: s.431(2)] which states the applicant has been seeing a Trauma Counsellor / Advocate there since [a date in] October 2009. The letter states that the applicant presents with symptoms indicative of post-traumatic stress including sleeplessness, nightmares, difficulty concentrating, feelings of numbness and withdrawal, loss of appetite and crying. The letter expresses the opinion that the applicant's symptoms are linked to the recent killing of the applicant's brother and his fear of returning to Guinea.
- a colour photograph showing slain people which the applicant says was taken at the stadium in Conakry where a strike was held.

Fear of returning due to threats from moneylenders

34. The applicant told the Tribunal that he worked with [Company A] in Guinea as they have a [description] operation there. He told the Tribunal that [Company A] offered opportunities to come to Australia for occupational training for suitably qualified Guinean people. He said that to qualify he was required to take a test. Three hundred and eighty six other people also took the same test and from this large number he and

five others were selected for a short list of candidates to come to Australia for occupational training. There was a further requirement that he was required to satisfy before [Company A] would confirm his attendance on the occupational training course and that was that he successfully complete an English course and that he also attain suitable marks in a Graduate Diploma in [type deleted: s.431(2)] course.

35. The applicant explained that he commenced the relevant English course at [education provider deleted: s.431(2)] in Johannesburg. He told the Tribunal that the English course was difficult because the teacher moved it along very fast and some of the other attendees were more advanced in English than he was. He said he was having trouble keeping up and covering the material in the English course even though he was working very diligently. Notwithstanding the difficulties, he said he completed the course. Having completed the English course he moved on to commence the Graduate Diploma in [type deleted: s.431(2)] in [location deleted: s.431(2)]. That is when he started experiencing real trouble with English. He said that his reading was good but his expression was poor. He said he studied seven days a week, day and night, however he failed the course because of not sufficiently understanding the English.
36. The applicant told the Tribunal that after he failed to successfully complete the [type deleted: s.431(2)] course [Company A] wrote to him and asked him to go in to their office in Guinea. He went in to the office as requested and was handed a letter telling him that because he did not successfully complete the [type deleted: s.431(2)] course the agreement to send him to Australia was over and [Company A] would no longer pay his travel or expenses to Australia. However, by this time [Company A] had already obtained a valid visa for the applicant to travel to and enter Australia. The applicant told the Tribunal that even though he knew that he could not attend the training course he nonetheless decided to travel to Australia because he knew the visa was still valid to enter Australia.
37. The Tribunal asked the applicant why he decided to travel to Australia even though he knew the course would not be open to him here. He replied that ever since [Company A] had made him the offer of the course, news of this travelled around his community and people began to respect him for this achievement. He said that other people would point to him as a role model for their children. He thought this opportunity would mean he could change things for the better, for himself and for his struggling family. His family could only afford to have one meal per day. He felt he could change their life. He decided that the opportunity to travel to Australia was too good to ignore. He spoke to someone who told him that [Company A] could not cancel the visa as only the government could cancel the visa. He said he decided he would borrow money to cover the costs so that he could seize the opportunity to come to Australia. He added that the decision to come to Australia in those circumstances was, with the benefit of hindsight, his biggest mistake.
38. The applicant told the Tribunal that he decided to borrow money to pay the costs of his travel to Australia and also to give some money to his family. He told the Tribunal that he borrowed US\$10,000 in total. He borrowed half of this amount from one moneylender (name provided) and half from another moneylender (name also provided). Asked who the moneylenders were, the applicant replied they were local business people. He said a friend introduced him to them. He said he approached them about mid April 2009. The moneylenders told the applicant they would lend him the money on two conditions. The first condition was that he must have a visa for a long-

term visit to Australia. They would not make a loan against a short-term visa because a short-term visa would not permit sufficient time for the borrower to get a job, earn money and repay the loan. The second condition for the loan was that the lenders insisted on knowing the applicant's family, his parents, and where they lived. The applicant explained the reason behind this second condition was to provide security for the repayment of the loan, in other words, the lenders could threaten harm to the borrower's family if they were not repaid. The applicant told the Tribunal he confirmed to the moneylenders that he had the Australian visa and gave them details about his family. The lenders thereafter handed over the money to him in cash.

39. The applicant told the Tribunal that of the US\$10,000 he gave US\$4,500 to his family and he used US\$3,000 (approximately) to pay for his air ticket and arrived in Australia with about US\$2,000 in his pockets.
40. As to the terms of the loan, the applicant said there was no specified monthly repayment. The lenders told him he could repay the total within 2 years. There was no written contract for the loan. He told the Tribunal that he has not repaid any of the loans yet. The repayments were to be made via Western Union money transfer.
41. The applicant told the Tribunal that he does not know if the moneylenders are connected to government or the ruling regime however, he added that if you wanted anything done in Guinea and if you have the money they can arrange things. He said that in Guinea often people with money do not rely on the justice system to get things done.
42. The applicant went on to explain that when he landed in Australia he asked people what he needed to do to find work. He was told he needed to obtain a tax file number and within three weeks he had obtained a tax file number. He said that on the back of the tax file number form were contact details for the Department in the case of temporary residents. He contacted the Department and spoke to an officer about his situation. He said he was told by that officer that he should try to find another sponsor
43. The applicant told the Tribunal that everyone in his country dreams to go to Australia. He said it is regarded as a paradise compared to Guinea. He said that before coming here he was confident that with his particular skills and his strong work ethic he would get a job.
44. The applicant told the Tribunal that after the Department told him that his visa did not permit him to stay in Australia, he contacted the moneylenders and told them that things did not work out in Australia as he had planned. He said he told them that he was going to be sent back to Guinea and that the consequence of that was that he would not be able to pay back the borrowed money as planned. In response the moneylenders told him he should tell his family to dig his grave if he returns to Guinea. He said that after receiving the news from him about his early return and inability to repay the loans, the moneylenders paid a visit to his family around July 2009 and told his mother that if he returns without their money they will kill him. He added that when he heard this and when he thought about what might happen to him and to his family at the hands of the moneylenders he thought about killing himself. He also told the Tribunal that he is worried that if he returns and if he is killed then the situation might escalate and his family will pursue a payback killing.

45. The applicant told the Tribunal that the Department granted him the right to work however he felt that he could not apply for work at the present time because he would be distracted from his job because of this pending migration appeal. The Tribunal asked whether the applicant had made any inquiries or attempts to borrow the money in Australia so he could pay back the loan to the moneylenders in Guinea. He said he has not made such attempts or inquiries and added he feels no one would lend him money in Australia.
46. The applicant told the Tribunal that he realises that he made the wrong decision in coming to Australia once he had been advised by [Company A] that the training course placement had been cancelled. He said he did not come to Australia to apply for a protection visa. He said however his circumstances have changed and the circumstances in Guinea are such that the police will not protect him from the moneylenders. He said that there is a breakdown of law and order in Guinea and it is common to see dead people in the street.
47. The Tribunal asked the applicant whether he had confidence that the police in Guinea could protect him from the moneylenders. He replied that there is no law or order in Guinea and he would not be able to get protection. He added that in his country he always has to look behind his back.
48. The applicant said that he had received the death threats from the moneylenders by telephone and also by text messages. He said that he has saved the text messages on his mobile phone and they are written in French. He said he could not afford to have them translated. He offered to show the Tribunal the messages.

Fear of return due to political persecution

49. The applicant told the Tribunal that he has a fear that he will be harmed if he returns to Guinea because of his particular ethnic group. He told the Tribunal that he is a member of the Foulah ethnic group and that the group is the most persecuted in Guinea. He said that because of this ethnicity he is regarded as politically in favour of the opposition. He added that Guinea had a stable President for 26 years however the President was shot and killed. He said that since the death of the President the situation is very unstable in Guinea and there are many business people trying to escape the country.
50. The applicant told the Tribunal that on 28 September 2009 a strike was held at a Stadium in Conakry. He told the Tribunal many died, including his brother who was shot and killed at the event.
51. The applicant told the Tribunal that his deceased brother used to be very active politically and that he was trying to encourage him to become more politically active however the applicant decided not to become politically active.
52. The applicant concluded by saying that the police in Guinea do not have the resources to investigate offences or to protect citizens. He said that any person who struggles for food must be considered a refugee.
53. In a statutory declaration sworn by the applicant [in] November 2009 and handed to the Tribunal at this hearing, the applicant states:

Like many of the Fullah community in Guinea, we support our leader CELLOU DALEIN DIALLO who is the head of the local political party called: the Union of Democratic Forces of Guinea (UDFG). My family is a member too.

On the 28 September 2009, all political parties called their members to attend a strike.....to tell the president and the CNDD do not represent himself to the next election, as he promised to the people when he took power in December last year after cancelling all government institutions (the constitution of the country, national assembly, high court, supreme court, political parties, etc..)...

The military forces waited until the stadium was full and they open fire to the people, raped women publicly inside and outside the stadium and some suburb.

There were many dead and wounded and many people until now not found. My brother [name] was one of the dead. Physically he was shot dead but the death certificate delivered by the hospital said "thoracic abdominal contusion with plurisostal fracture." That was ordered by the military forces in order to say the death wasn't by bullet...

From then, the military are patrolling the town to intimidate people, killing those they know are supporting the political parties...

Since these events my family is scared because there are people missing every day. Talking about these things are dangerous.

I'm scared and I'm scared for my family too because in the past when events like this happen they used to catch any Guinean who come back from overseas and put them in prison or killed them and say they are rebels.

Many our fellow citizens who own business are trying to escape the country. At the moment there is no security in the country because any soldiers are doing whatever he wants to do. Soldiers are saying they are in power and they can rule the country as they want.

How can the government protect who is supposed to protect you, can give the order to kill you?

My brother is killed because of his political views. My brother is killed because he believes in democracy. My brother is killed because he needs freedom. My brother is killed because he was hungry. He is killed because he wanted to have a better life.....

Since 1958 we are living with terror hunger, killing, rape and torture.

With all the danger I'm going to face there and knowing as soon I get there I will be killed without knowing how they will do it. I have thought to kill myself because I don't want to be killed in front of my family. I don't want to involve my family in this situation because if I'm killed there will be many dead. I don't want this to happen.....

Comment from applicant's representative

54. The applicant's representative asked the Tribunal to consider whether the moneylenders are above the law and whether they might have political support. He said that the situation in Guinea is going from bad to worse. He said that if the applicant returned to Guinea people who know he has been to Australia would assume he has returned with money and he might be targeted for looting or worse. He submitted that the Tribunal should take into account the circumstances relating to the applicant's brother's death.
55. The Applicant's representative told the Tribunal that the applicant's family is politically inclined. He went on to add that the applicant went into a politically dormant state before coming to Australia because he felt the Guinean government might cancel his passport if he had a political profile. He said his family were also counselling him not to have a political profile.

The hearing held [in] January 2010

56. At this hearing the applicant provided colour photocopies of documents being membership cards for *Union des Forces Democratiques De Guinee* (UFDG). The applicant explained that these are copies of his mother's and father's membership cards to the opposition political party. The applicant also provided a Travel Advice for Guinea printed on 18 January 2010 from the Australian Department of Foreign Affairs and Trade website.
57. The Tribunal asked the applicant whether he had any proof of his claim that the moneylenders have made death threats to him. He referred to having saved various text messages from the moneylenders. He offered to show the text messages however they were in French. The Tribunal asked the interpreter present to translate two of the messages. The interpreter told the Tribunal that one message when translated read "Dig your grave before you come back especially if you don't have my \$4,000". Another message when translated read "Is it true that you want to come back here? Where are you going to find my money? Remember our agreement? If you come back without my money I'll kill you." The applicant told the Tribunal that both of these messages were received [in] July 2009.
58. The applicant told the Tribunal that he has asked the Department give him more time to stay in Australia. He said that his hope was to be able to find work so he could pay the moneylenders back, however, he said the Department wanted him to leave. He said he went to see [Company A] in Perth and that he understood that [Company A] made a deal with the Department whereby they offered to pay his airfare to return to Guinea together with the cost of transport from the airport in Guinea to anywhere in Guinea. The applicant's representative suggested that this offer might have been made by [Company A] because the company sponsored his visa.
59. The Tribunal asked the applicant for an update on any relevant developments that had occurred since the first hearing [in] December 2009. He told the Tribunal that he has spoken to his family and they told him that the moneylenders have approached them again. He said that he had instructed his family to tell the moneylenders that they had not heard from him. He added that he has not received any further text messages from the moneylenders, he added that he had told them to wait and they may have concluded that as long as the applicant stays in Australia they know that there is a chance that he will be able to earn money to pay them back. He told the Tribunal that he continues to

look for work however prospective employers have told him he has to wait. He said he does not have a job yet but continues to look for work in factories or restaurants.

60. The Tribunal asked the applicant that it was concerned that based on the evidence provided, it did not appear that he held a well-founded fear of persecution for a Convention reason and that the fear he claims to have regarding the moneylenders does not appear to be a fear for a Convention reason. The applicant told the Tribunal that he comes from a country where you can fairly easily work out what is going to happen after the coup. He said the security in the country is deteriorating and the military patrols the streets and people go missing, the Constitution and the Parliament is suspended.
61. The Tribunal again asked what he feared would happen if he went back to which he replied that it is common knowledge that people who have been overseas and return to Guinea are considered by the governing authorities as possibly damaging the reputation of the country. The Tribunal asked the applicant why he in particular would be targeted for persecution. He told the Tribunal that when he was in Guinea he used to attend political meetings and he would also he would organise meeting and encourage others to attend the meetings as well. He told the Tribunal that between 1993 and 2007 he was a member of the UNR which then became the UFDG. He told the Tribunal that many people knew his role in the party. He told the Tribunal that he came from a poor family and has had a good opportunity with [Company A] and because of this, the authorities dislike him because they want to keep all the opportunities for themselves.
62. In concluding, the applicant told the Tribunal that he blames himself every day for what he did. He added that he did not do it intentionally to apply for a protection visa in Australia and also said he did not know about protection visas until recently advised. He said he was advised that the only option for him was to apply for a protection visa and that there are no temporary visa options available in his circumstances. He said he is worried about his family and what will happen if he is unable to pay the moneylenders. He said he swears on the Koran that he will be killed as soon as he goes back to Guinea. He said he does not know who will do it but that he will be killed. He said he cannot protect his family
63. The applicant's representative told the Tribunal that the applicant was politically active for 13 years before he became qualified in his profession and then became politically dormant. He told the Tribunal that the political situation in Guinea is unstable and that the authorities there would learn that the applicant lodged a protection visa application and on that basis may take the view that he has harmed the country's reputation in doing that. He added that the applicant is an intelligent and educated man who would be an asset to Australia.

Country of Origin Information

64. A search of the sources consulted did not locate information on the protections available and enforced to protect defaulting or tardy debtors from their creditors in Guinea.
65. In respect to the coup in Guinea in December 2008, the US Department of State report on human rights practices in Guinea for 2008 indicates that:

Guinea's constitution was suspended by a military junta that seized power in a coup on December 23, hours after the death of former President Lansana Conte. Before the coup, Guinea was a constitutional republic in which effective power was concentrated in a strong presidency. President Lansana Conte and his Party for Unity and Progress (PUP) ruled this country of approximately 9.9 million persons from 1984 to 2008, first as head of a military junta and, after 1994, as a civilian president. President Conte won reelection in 2003 in an election that the opposition boycotted and international observers criticized as neither free nor fair. Following a nationwide labor strike in January and February 2007 and a negotiated agreement, President Conte accepted the installation of a consensus government under Prime Minister Lansana Kouyate, whom he later dismissed and replaced with Ahmed Tidiane Souare on May 20. Following the December 23 coup, the Council for Democracy and Development (CNDD) assumed power and proclaimed Captain Moussa Dadis Camara as the country's new head of state. The CNDD dismissed the National Assembly leaving the country without a legislative institution. The CNDD later named a civilian prime minister, Kabine Komara. Technically, the prime minister serves as head of government while the president serves as head of state, although the divisions of power are unclear. The civilian authorities generally did not maintain effective control of the security forces (US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – Guinea*, February, Introduction).

66. An *Associated Press Newswires* article dated 24 December 2008 (Bakr, A. & Callimachi, R. 2008, 'Group declares Guinea coup after dictator's death', *Associated Press Newswires*, 24 December), and RRT research response dated 16 June 2009 (RRT Research & Information 2009, *Research Response GIN35039*, 16 June, (Question 1), and a Congressional Research Service report dated 30 September 2009 (Arieff, A. & Cook, N. 2009, 'Guinea's 2008 Military Coup and Relations with the United States', Congressional Research Service Report for Congress, Federation of American Scientists website, 30 September, pp. 9-12 - Accessed 30 November 2009)
67. The US Department of State report on human rights practices in Guinea for 2008 indicates that following the coup on 23 December 2009, "Guinea's constitution was suspended by a military junta that seized power". The Council for Democracy and Development (CNDD) which "assumed power and proclaimed Captain Moussa Dadis Camara as the country's new head of state... dismissed the National Assembly leaving the country without a legislative institution." The report also indicates that "[t]he constitution provides for the president of the National Assembly to assume power in the event of the president's death, with the requirement that a presidential election be organized within sixty days. On December 23, the military junta suspended this process when it seized power" (US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – Guinea*, February, Introduction & Section 3).
68. According to a Freedom House report on Guinea dated 16 July 2009, "[t]he December 2008 military coup suspended all civilian government institutions and the constitution." The report also indicates that "[t]he CNDD suspended the judiciary following the 2008 coup." Also, "[a]fter the 2008 coup, the CNDD banned all political and union activity; however, union and political party leaders continued to make public statements and met with the CNDD on several occasions. At least one human rights group and many nongovernmental organizations operated openly, both before and after the coup" (Freedom House 2009, 'Freedom in the World 2009 – Guinea', UNHCR Refworld website, 16 July, Accessed 30 November 2009).

69. A Human Rights Watch report dated 8 July 2009 refers to “a ban on all political and union activities” being reinstated pursuant to “[a] communiqué from Camara, read on Guinean public radio on June 26” (Human Rights Watch 2009, *Guinea: Coup Leaders Undermining Rights*, 8 July <http://www.hrw.org/en/news/2009/07/08/guinea-coup-leaders-undermining-rights> - Accessed 26 November 2009).
70. According to a US Department of State background note on Guinea dated August 2009, “[u]ntil the December 23, 2008 coup d’état, Guinea was a constitutional republic in which effective power was concentrated in a strong presidency... The government currently is run by a military junta and is operating without a legislative body.” The CNDD had “suspended the constitution, as well as political and union activity... The constitution remains suspended, but political and union activity is currently allowed. Guinea has more than 60 registered political parties, of which six were represented in the National Assembly before it was suspended in December 2008” (US Department of State 2009, *Background Note: Guinea*, August <http://www.state.gov/r/pa/ei/bgn/2824.htm> - Accessed 30 November 2009).
71. An article on Guinea dated 30 September 2009 by a senior West Africa researcher for Human Rights Watch refers to “bans on phone text-messaging and political activity” being imposed in Guinea, along with the outlawing of “all political content on popular radio phone-in shows. While some bans were later overturned, the message to journalists and opponents was clear: Camara was ready to silence them if he wanted to” (Dufka, C. 2009, ‘Guinea’s Depressingly Familiar Strongman’, Human Rights Watch website, 30 September <http://www.hrw.org/en/news/2009/09/30/guineas-depressingly-familiar-strongman> - Accessed 26 November 2009).
72. In relation to the judiciary, a Human Rights Watch report on Guinea dated 27 April 2009 includes an interview with a judge in Conakry who was working in court handing down a judicial decision in a civil case in February 2009. The report refers to Human Rights Watch documenting “several incidents of intimidation of the judiciary, during which small groups of soldiers interrupted judicial proceedings or threatened lawyers in an apparent attempt to influence the outcome of the proceedings” (Human Rights Watch 2009, *Guinea: Rein in Soldiers*, 27 April <http://www.unhcr.org/refworld/country,,,GIN,,49f969ac1e,0.html> – Accessed 30 November 2009).
73. The Congressional Research Service report dated 30 September 2009 indicates that:
 The CNDD has created several new agencies with undefined legal mandates, and has appeared to sideline the role of the judiciary in upholding the rule of law. The formation of a State Secretariat in Charge of Disputes sparked protests by human rights advocates and a strike by members of the Guinean bar association, which contended that “citizens and lawyers are regularly summoned to the military base ... where they appear before the Secretariat or before the president in person as part of ostensibly judicial procedures.” Bar members termed these proceedings “pseudo-trials.” The Secretariat was abolished in June, in apparent response to such criticisms.
74. The report also indicates that:
 Upon taking power, the CNDD immediately took steps to assert its authority, for instance by suspending civilian regional administrators and replacing them with military commanders. As the main public face of the CNDD, Dadis Camara has further sought to centralize power and neutralize potential opposition, both to the CNDD and to his dominant leadership within it.

The CNDD-appointed civilian prime minister, Kabiné Komara, is viewed as having little decision-making power, and CNDD members directly control key government functions. Komara's cabinet was named in January 2009 by presidential decree, with 10 of 29 cabinet posts held by military officers—most of them CNDD members, and many lacking experience in public affairs. The CNDD also created several new ministerial-level positions and appointed members of the military or close civilian associates to fill them. Several key ministries, including security, defense, and finance, and the governor of the Central Bank, have been attached to the presidency (Arieff, A. & Cook, N. 2009, 'Guinea's 2008 Military Coup and Relations with the United States', Congressional Research Service Report for Congress, Federation of American Scientists website, 30 September, pp. 11, 12 & 20 <http://www.fas.org/sgp/crs/row/R40703.pdf> - Accessed 30 November 2009).

75. The Congressional Research Service report dated 30 September 2009 includes the following comments on human rights and the rule of law in Guinea:

Upon Conté's death, one observer noted that "the army that General Conté has bequeathed his country knows little of the role and methods that it would need to employ in a democratic state respectful of its citizens' most basic rights." Since the coup, human rights advocates and members of the international community have expressed growing concern over violations of human rights and the rule of law, including arbitrary arrests and detentions. Military officers accused of plotting against the CNDD and officials accused of corruption or involvement in drug trafficking have been detained without charge. Security forces have been accused of looting private homes and businesses in Conakry, as well as other abuses of power. Human Rights Watch reported in April 2009 that "soldiers in groups numbering up to 20 have raided offices, shops, warehouses, medical clinics, and homes in broad daylight as well as at night... [and] have stolen cars, computers, generators, medicines, jewelry, cash, mobile phones, and large quantities of wholesale and retail merchandise, among other items." Victims reportedly include both Guineans and foreigners. In September, defense lawyers for individuals detained in connection with cocaine trafficking contended their clients were suffering "degrading and humane" treatment in prison.

In separate incidents, soldiers raided the homes of a political party leader, Cellou Dalein Diallo (in January 2009) and a prominent trade union activist, Rabiatou Sera Diallo (in March). In the former case, the CNDD claimed that the raid was carried out by rogue soldiers; in the second, the CNDD contended that the raid was carried out during a routine anti-drug operation. In May, in an apparent response to criticism by Human Rights Watch and others, Dadis Camara promised security sector reform and ordered hundreds of soldiers to publicly commit to ending criminal behaviour. However, it is unclear that these statements have had an impact on military behaviour. In August 2009, Human Rights Watch reported that opposition politicians and a human rights activist who had criticized Dadis Camara had been the target of threats and intimidation.

76. The report also refers to security forces firing on protestors in Conakry on 28 September 2009. It is stated in the report that:

On September 28, 2009, security forces opened fire with live ammunition on a crowd of some 50,000 civilian protesters who had gathered in and around an outdoor stadium near the center of Conakry. The demonstration was organized by opposition political parties to protest statements by Captain Moussa Dadis Camara—the head of the military junta that took power in December 2008, the National Council for Democracy and Development (CNDD)—indicating he might run for president in national elections scheduled for 2010. Several major political leaders were in the stadium and planned to address the crowd. Demonstrators reportedly chanted, "We want true democracy" and held signs reading "Down with the Army in Power." CNDD authorities had earlier attempted to ban the protest from taking place...

While state authorities reported 57 mortalities as a result of the confrontations, the Guinean Organization for Human Rights (OGDH) reported that at least 157 people were killed, many by bullets, while over 1,000 were wounded. The OGDH toll is based on a survey of hospitals, and many believe the death toll to be significantly higher. Several reports contended that CNDD commanders had ordered bodies to be taken to military camps rather than the morgue. Witnesses reported that soldiers—many wearing red berets and thought to be members of the Presidential Guard—directly fired on the stadium crowd, stabbed those fleeing with knives and bayonets, and molested and raped women openly in public. Military and police officers also reportedly carried out lootings and rapes in residential areas of Conakry during the melee. There also were reports that women were detained in police stations and military camps. Several local journalists were reportedly assaulted and had their equipment smashed by soldiers. Protesters set fire to a police station in apparent response to the crackdown.

By September 29, protesters had largely dispersed, and troops were said to be patrolling Conakry's main roads. However, looting by soldiers continued and sporadic confrontations were reported in several opposition strongholds in Conakry. Witnesses said at least three civilians were killed in such confrontations.

...At least six opposition leaders—Cellou Dalein Diallo and his deputy Amadou Bah Oury, François Lonsény Fall, Sidya Touré, Jean-Marie Doré, and Mouctar Diallo—were reportedly injured, and at least three were beaten by soldiers. Diallo, Touré, and Fall were reportedly then arrested and taken to the Alpha Yaya Diallo military camp, where the CNDD headquarters is based. They were eventually taken to a hospital, where they were temporarily barred from communicating with the media. The leaders' homes were reportedly looted by soldiers in their absence, and at least one was sprayed with machine gun fire (Arieff, A. & Cook, N. 2009, 'Guinea's 2008 Military Coup and Relations with the United States', Congressional Research Service Report for Congress, Federation of American Scientists website, 30 September, pp. 1-2 & 19-20 <http://www.fas.org/sgp/crs/row/R40703.pdf> - Accessed 30 November 2009).

77. An International Crisis Group report dated 16 October 2009 provides further information on the attack by the security forces on protestors in Conakry on 28 September 2009 and the reaction to the killings (International Crisis Group 2009, 'Guinea: Military Rule Must End', Africa Briefing No. 66, UNHCR Refworld website, 16 October <http://www.unhcr.org/refworld/country,,,GIN,,4ad889c52,0.html> – Accessed 27 November 2009).
78. A Human Rights Watch report dated 27 October 2009 indicates that:

An in-depth investigation into the September 28, 2009 killings and rapes at a peaceful rally in Conakry, Guinea, has uncovered new evidence that the massacre and widespread sexual violence were organized and were committed largely by the elite Presidential Guard, commonly known as the “red berets,” Human Rights Watch said today. Following a 10-day research mission in Guinea, Human Rights Watch also found that the armed forces attempted to hide evidence of the crimes by seizing bodies from the stadium and the city's morgues and burying them in mass graves (Human Rights Watch 2009, *Guinea: September 28 Massacre Was Premeditated*, 27 October, p. 1 <http://www.hrw.org/en/news/2009/10/27/guinea-september-28-massacre-was-premeditated> - Accessed 25 November 2009).
79. The earlier Human Rights Watch report dated 27 April 2009 provides information in relation to Guinean soldiers being “implicated in regular acts of theft and violence against businesspeople and ordinary citizens since a new government took power in a military coup in December 2008” (Human Rights Watch 2009, *Guinea: Rein in*

Soldiers, 27 April <http://www.unhcr.org/refworld/country,,,GIN,,49f969ac1e,0.html> – Accessed 30 November 2009).

80. The US Department of State report on human rights practices in Guinea for 2008 indicates that “[s]erious human rights abuses occurred during the year” and “[p]erpetrators of killings and abuse acted with impunity.” It is stated in the report that:

Serious human rights abuses occurred during the year. Security forces tortured and abused detainees to extract confessions, and killed, beat, and abused civilians. Prison conditions were inhumane and life threatening. Perpetrators of killings and abuse acted with impunity. There were arbitrary arrests, prolonged pretrial detention, and incommunicado detention. The judiciary was subject to corruption and outside influence. The government infringed on citizens’ privacy rights and restricted freedoms of speech, press, assembly, association, and freedom of movement although these restrictions were less evident than in previous years. Violence and societal discrimination against women, prostitution of young girls, and female genital mutilation (FGM) were problems. Trafficking in persons, ethnic discrimination, forced labor, including by children occurred.

81. The report continues:

The government or its agents did not commit any politically motivated killings; however, security forces killed a number of citizens. The government did not investigate any of these cases and took no legal or disciplinary action against security force members responsible for the killings.

...both civilian and military forces beat and otherwise abused civilians. There also were reports that security forces tortured and beat citizens to extract confessions and employed other forms of brutality. NGOs reported ongoing torture in Conakry’s main prison and police detention facilities. The government did not investigate any of these cases and took no legal or disciplinary action against security force members responsible for the abuses.

...The constitution and law prohibit arbitrary arrest and detention; however, security forces did not observe these prohibitions.

...The police force was inadequately staffed and lacked training. In addition, a number of police officers were part of a “volunteer” corps that did not receive a salary. Administrative controls over the police were ineffective, and security forces rarely followed the penal code. Corruption was widespread, and security forces generally were not held accountable for abuses of power or criminal activities. Many citizens viewed the security force as corrupt, ineffective, and dangerous. Police ignored legal procedures and extorted money from citizens at roadblocks. The government did not take any action to train or reform security forces, although several NGOs conducted training programs.

...Judicial inefficiency, corruption, and lack of political will contributed to high pretrial detention rates. Many detainees have remained in prison for more than 10 years without trial.

...The constitution and law provide for an independent judiciary, but judicial officials often deferred to executive authorities. The judicial system was endemically corrupt, and magistrates were civil servants with no assurance of tenure. Authorities routinely accepted bribes in exchange for specific outcomes. Budget shortfalls, a shortage of qualified lawyers and magistrates, and an outdated and restrictive penal code continued to limit the judiciary’s effectiveness.

...The constitution and law provide for the inviolability of the home and requires judicial search warrants; however, police and paramilitary police often ignored legal procedures in the pursuit of criminals or when it served personal interests.

...Police and security forces continued to detain persons at military roadblocks to extort money. There were fewer such reports than in previous years, but the practice escalated after the December 23 coup.

...The law provides criminal penalties for official corruption; however, the government did not implement the law effectively, and officials frequently engaged in corrupt practices with impunity (US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – Guinea*, February, Introduction & Sections 1(a), (c), (d), (e) & (f), 2(d) & 3).

82. According to the US Department of State country specific information on Guinea dated 16 September 2009, “[d]espite the police’s good intentions, they have been unable to prevent the rapid escalation of crime” in Guinea. “Police and military officials have also been known to make direct and indirect requests for bribes.” Guinea does not have the “emergency assistance... that is similar to the ‘911’ system in the United States.” The document also indicates that “[m]ost border crossings are controlled jointly by Guinean armed forces, gendarmes, police, and immigration officials. A long land frontier and the military’s lack of physical and monetary resources, however, mean that borders are lightly patrolled” (US Department of State 2009, *Guinea: Country Specific Information*, 16 September http://travel.state.gov/travel/cis_pa_tw/cis/cis_1132.html?css=print – Accessed 30 November 2009).
83. An article dated 17 June 2008 refers to police in Guinea starting a protest on 16 June 2008, “calling on the government to pay salary arrears, asking for a bigger monthly rice subsidy and for salaries to be improved” (‘Guinea: Police strikes turn bloody’ 2008, *Integrated Regional Information Networks (IRIN)*, 17 June <http://www.unhcr.org/refworld/country,,,GIN,,4858bfdd1e,0.html> – Accessed 30 November 2009).
84. With respect to the applicant’s claims that the Foulah community are mistreated in Guinea, the relevant sources indicate, by way of background, the Foulah ethnic group in Guinea is called by several names which are spelt in various ways:

The Fulani (also known as the Foulah, Peulh, Peul, Fulfulde, or Fulbe) are an ethnic group of sub-Saharan Africa who live in 17 states and number almost 30 million people. (Cerný, V; Hájek, M; Bromová, M; Cmejla, R; Et al, 2006, ‘*mtDNA of Fulani Nomads and their Genetic Relationships to Neighboring Sedentary Populations*’, *Human Biology*, Vol. 78, 1February.)

The Foulah of Guinea generally belong to the Islamic faith:

Muslims comprise a majority in all four major regions of the country. Christians are most numerous in Conakry, in the south, and in the eastern Forest Region. Christians also reside in all large towns except those in the Fouta Djallon region in the middle of the country, where Islam is deeply intertwined with Pular (or Fulani or Peuhl) culture and society. Indigenous religious beliefs are most prevalent in the Forest Region. (US Department of State 2009, *International Religious Freedom Report for 2009– Guinea*, October, Section 1. Religious Demography.)

85. The following historical analysis of 31 December 2008 states that there has been tribal friction and the Peul has been accused of plotting against the government Lansana Conté:

Après Touré et Conté voilà donc l'heure des Camara. Parce qu'en Guinée, ces noms signifient beaucoup de choses. Ils marquent les limites entre ethnies (Soussou, Malinké, Peul, Nalou etc.) Dès que le nom du nouveau putschiste est connu, tout un groupe issu de sa communauté se rallie à lui et se dit que son heure est arrivée. (After Touré and Conté, now it is Camara's hour. Because in Guinea, these names signify many things. They establish ethnic boundaries (Soussou, Malinké, Peul, Nalou etc.). As soon as the new coup leader's name is known, a group from his community will rally around him and believes that its hour has come.)

...

Pendant le règne de Lansana Conté, les Soussou ont reproduit le vieux schéma comme l'éternel « complot peul » pour éliminer tous les leaders et cadres de ce groupe. (During the reign of Lansana Conté, the Soussou reintroduced the old scheme against the eternal 'peul plot' so as to eliminate all leaders and cadres of this group.)('La Guinée entre espoir et déception - Un pays béni, un peuple maudit' 2008, *All Africa*, 31 December)

86. According to M Jalloh, a researcher with the International Crisis Group , there are concerns that following the assassination attempt on the Junta leader, Moussa Dadis Camara there will be further ethnic clashes:

The fear is that if there is a clash between Dadis and Sekouba[the two top military leaders], there will be a battle for Conakry, and in the Forest region, there will be an ethnic cleansing by Dadis's group of the Malinke and Fulani traders who are against Dadis," says Jalloh. (Blackwell, R. and Baldauf, S. 2009, 'Can Guinea avoid a violent power struggle?', *The Christian Science Monitor*, 14 December.)

87. A report of 10 March 2006 notes the conflict between the Susu and Foulah ethnic group:

Sacked Guinean prime minister, Cellou Dalein Diallo, refuted claims that he is under house arrest and told IRIN that his 11 years in government were a testament to his loyalty to the president.

...

Some of Diallo's supporters who had gathered at the former prime minister's home this week, told IRIN that they believed Diallo was the victim of an ethnic row. Diallo is from the Foulah ethnic group, while many of Conte's ministers are from his minority Susu ethnic group. "The president's men played the tribal card," said one Diallo supporter who declined to be named. "And on this occasion, they won." ('Guinea: Sacked prime minister speaks out' 2006, IRIN, 10 March)

88. In a report of 27 October 2009, Human Rights Watch stated that the massacre which took place on 28 September 2009 targeted the Peuhl (Foulah):

Ethnic Dimension

During interviews, many Guineans expressed shock at the apparent ethnic nature of the violence, which threatens to destabilize the situation in Guinea further. The vast majority of the victims were from the Peuhl ethnic group, which is almost exclusively Muslim, while most of the commanders at the stadium – and indeed key members of the ruling CNDD,

including Camara, the coup leader – belong to ethnic groups from the southeastern forest region, which are largely Christian or animist.

Witnesses said that many of the killers and rapists made ethnically biased comments during the attacks, insulting and appearing to target the Peuhl, the majority ethnicity of the opposition supporters, and claiming that the Peuhl wanted to seize power and needed to be “taught a lesson.” Human Rights Watch also spoke with witnesses to the military training of several thousand men from the southeast forest region at a base near the southwestern town of Forécariah, apparently to form a commando unit dominated by people from ethnic groups from the forest region.

Many of the Peuhl victims reported being threatened or abused on account of their ethnicity. For example, one woman who was gang raped by men in uniform wearing red berets described how her attackers referred repeatedly to her ethnicity: “Today, we’re going to teach you a lesson. Yes, we’re tired of your tricks... we’re going to finish all the Peuhl.” A young man detained for several days in the Koundara military camp described how a red beret put a pistol to his head and said, “You say you don’t want us, that you prefer Cellou [the leading Peuhl opposition candidate, Cellou Dalein Diallo]... we’re going to kill all of you. We will stay in power.” (Human Rights Watch 2009, *Guinea: September 28 Massacre Was Premeditated*, 27 October <http://www.hrw.org/en/news/2009/10/27/guinea-september-28-massacre-was-premeditated> - Accessed 25 November 2009)

89. The Human Rights in-depth investigation was published in December 2009 and made several references to harm being against the Peuhl:

During the sexual assaults against girls and women of Peuhl ethnicity, assailants frequently made ethnically biased comments, insulting and appearing to threaten the Peuhl in particular. (Massacre, Sexual Violence, and cover-up. p8)

...

The neighborhoods in which there were attacks, notably Dar-es-Salaam, Hamdalaye, Koloma, Bomboli, and Cosa, are widely considered opposition strongholds, and are dominated by residents who are of the Peuhl and Malinké ethnic groups. Numerous victims and witnesses to violence in these neighborhoods told Human Rights Watch how, in the course of the attacks, the soldiers and irregular militia killed, raped, vandalized, and stole from residents. They also repeatedly insulted and made threats against people of Peuhl ethnicity in particular. (Abuses after the stadium violence. p9)

...

Guinea, a country of just over 10 million people, has three major ethnic groups—the Peuhl, representing 40 percent of the population; the Malinké, 30 percent; and the Sousou, 20 percent. (1. Background. P17)

...

They beat me with wooden sticks for five minutes. One of them said, “If you think Guinea belongs to the Peuhl and the Malinké, today you will learn who the real bastards and the mad dogs are.” I couldn’t get up anymore, so I just stayed on the ground. There was a girl next to me, she was nearly naked, only in her underwear, she was crying and bleeding, so I gave her my T-shirt. Then I lost consciousness and woke up at Donka Hospital (Attack on rally participants by security forces inside the stadium. P30)

...

Of the victims interviewed, 20 were from the Peuhl ethnic group; five from the Malinké ethnic group, two from the Sousou ethnic group, and one Wolof. The majority of victims interviewed by Human Rights Watch believed that they were targeted at random, and that the greater number of Peuhl victims of sexual abuse resulted from the disproportionate presence of individuals from this ethnic group at the opposition rally. However, many Peuhl victims

said that their perpetrators made ethnically biased threatening comments during the attacks. (IV. Rape and other sexual assault by security forces. P47)

...

...they jabbed their guns into my stomach, telling me if I resisted they would kill me, kill all the Peuhl. (Abduction and rape. P58)

...

they jabbed their guns into my stomach, telling me if I resisted they would kill me, kill all the Peuhl. (Psychological impact of rape. P59)

During the sexual assaults against Peuhl girls and women, assailants frequently made ethnically biased comments, insulting and appearing to threaten the Peuhl in particular. One woman who was gang raped by members of the Presidential Guard described how her attackers referred repeatedly to her ethnicity: "Today, we're going to teach you a lesson. Yes, we're tired of your tricks ... we're going to finish all the Peuhl." Another woman, who described being held at a villa for four nights where she and others were raped and sexually assaulted, recalled that her assailants "...insulted me and said they were going to kill me, kill all of us Peuhl. They said to forget about our political leaders, that they were going to stay in power." Women who were raped and assaulted at the stadium reported similar ethnic-based comments. One woman who was raped by three Presidential Guard soldiers recalled that her attackers told her, "We're going to kill all of you, especially you Fullah [Peuhl] people ... we're going to finish all of you off." Another woman, who was raped on the stadium's field, and who saw another young woman being raped and then killed, recounted that some of the red berets were yelling, "We're going to kill you Peuhl ... you are all bastards!" One woman who was sexually assaulted by two members of the Presidential Guard was told, "You Peuhl women are racist ... it is you who are trying to ruin Dadis ... we're going to finish with you, you'll see." (Psychological impact of rape. P61)

...

The neighborhoods in which there were attacks, notably Dar-es-Salaam, Hamdalaye, Koloma, Bomboli, and Cosa, are widely considered to be opposition strongholds, and are dominated by residents of the Peuhl and Malinké ethnic groups. Numerous victims and witnesses to violence in these neighborhoods told Human Rights Watch how, in the course of the attacks, the soldiers and irregular militia killed, raped, vandalized, and stole from residents. The attackers also repeatedly insulted and made threats against Peuhls in particular. (VIII. Attacks on opposition neighbourhoods by military and civilian militia. P81)

...

The red berets cut off his clothes and told him that the "Peuhls were causing war," before beating him with the butts of their rifles and robbing him. (VIII. Attacks on opposition neighbourhoods by military and civilian militia. P83)

...

"The military kept threatening us, saying, 'We are going to kill you. You are Peuhl, we are going to eliminate you all.'" Another man detained in Camp Alpha Yaya described a soldier asking all detained men from the Malinké ethnic group to identify themselves, and then admonished them: "How dare you mingle with these Peuhl vermins, trying to burn the country down?" (IX. Arbitrary detentions and abuses in detention. P84)

...

The three former detainees who said that they were held by the gendarme unit commanded by Captain Tiégboro Camara described being subjected to frequent beatings for four, eight, and 11 days respectively. They said that all but three of the 70 detainees held with them were ethnic Peuhls. (Abuses at Camp Alpha Yaya Diallo) (Human Rights Watch 2009, *Bloody Monday. The September 28 Massacre and Rapes by Security Forces in Guinea*, December 2009 http://www.hrw.org/sites/default/files/reports/guinea1209webwcover_0.pdf - Accessed 7 January 2010)

90. The Montreal Press reported a fund-raising event in support of the Muslim Peuhl ethnic group in the wake of the September 2009 massacre:

Most of the victims of September's violence were from the mainly Muslim Peuhl ethnic group, while the military commanders are mostly Christian or belong to African traditional religions. (Scott, M. 2009, 'Show honours slaying victims in Guinea; at least 150 killed in rampage. Dozens of women gang-raped after armed forces attacked opposition rally' *The Gazette*, 28 November)

91. Following the attempt to assassinate Moussa Dadis Camara on 3 December 2009, acts of antagonism against the Foulah (Peul) continued as is reported in this article of 8 December 2009,

A la tête d'une bande de Bérets rouges, le très brutal capitaine Claude Pivi, dit "Coplan", ministre de la Sécurité présidentielle, a semé la terreur lundi dans la banlieue frondeuse de Cosa, peuplée pour l'essentiel de peuls. (On Monday [December 2009] Claude Pivi, the rogue captain called "Coplan", who is the Minister of Presidential Security, was causing terror in the rebellious suburb of Cosa, which is has a mainly Peul population) (Hugeux, V. 2009, 'En Guinée, l'heure de l'après-Dadis a sonné', *L'Express*, 8 December - http://www.lexpress.fr/actualite/monde/afrique/en-guinee-l-heure-de-l-apres-dadis-a-sonne_834410.html - Accessed 12 January 2010.)

92. In respect to the applicant's claim that his brother was one of the victims of the killings on 28 September 2009, a search of available resources with various permutations of this name has failed to confirm or deny that [name deleted: s.431(2)] was politically active in the opposition in Guinea or that he was killed during the events of 28 September 2009.

A report of 2001 from [Reference deleted: s.431(2)] provides an account of a person who presents similar circumstances as the applicant:

"I confessed I was [name], that I was from Guinea, and that I had fled because of persecution, and begged him not to send me back," [name] said.

...

He was born about 300 miles from Conakry, the capital of Guinea, in 1965. He was a member of the Fulani ethnic group, which accounts for about 30 percent of Guinea's population... He first became politically active in 1991, when he joined the Reassemblément du Peuple de Guinée (RPG), a group which opposed the government of General Lansan Conté.

...

The RPG is made up mostly of Fulani and Malinké - the minority groups of Guinea. As a member of the RPG, [name] campaigned under Alpha Condé, the group's leader and a major opposition figure in Guinea. [Name's] ability to speak Fulani, Malinké, and some French proved essential to reaching across ethnic lines and rallying support in the remote villages of Middle Guinea. [Reference deleted: s.431(2)]

At the second hearing with the applicant, the Tribunal asked the applicant whether the [name deleted: s.431(2)] referred to in this report was the applicant's brother. The applicant told the Tribunal that it was not.

FINDINGS AND REASONS

93. The applicant claims to be a national of Guinea and has presented documents, including a certified copy of his passport issued by the Republic of Guinea, to support his claim. Based on the evidence before it the Tribunal accepts that the applicant is a national of Guinea, and has assessed his claims against that country.
94. The Tribunal's impression of the applicant gained from the two hearings is that he is an articulate and well-qualified person having been successfully chosen from a large competitive field to participate in the training initially offered, but then withdrawn, by his employer. The Tribunal found his fear about the threats he fears from moneylenders was credible. However, the Tribunal was not convinced by his claims as to his fear of persecution on other grounds.
95. The Tribunal has carefully considered the evidence presented by the applicant, including the documents he provided and the oral evidence at the two separate hearings convened by the Tribunal. The Tribunal found the applicant to be genuine and candid in the evidence he provided relating to his fear of returning to Guinea due to the fear he has of what the moneylenders might do if he is unable to repay their loans. The Tribunal found the applicant to be genuinely fearful for his life and found he appears to be convinced the moneylenders will kill him if he returns without paying back the money in accordance with the terms of the loans. The Tribunal also accepts that the applicant is genuinely distressed by the shooting of his brother in Conakry in September 2009. The Tribunal also accepts the applicant's claims as to the poverty and desperation he and his family have experienced in Guinea. Based on the independent country information before it and extracted above, the Tribunal accepts the applicant's claims that the position in Guinea is unstable and indeed dangerous. However, the Tribunal's task is clear and is to determine, among other things, whether he is a refugee as defined by the Refugees Convention and whether therefore Australia has protection obligations to him.
96. The Tribunal finds the applicant has a genuine fear of returning to Guinea because he believes the moneylenders will kill him, and possibly also harm his family and that he believes this because he believes he will be unable to repay them the US\$10,000 he borrowed from them. The Tribunal observed some minor inconsistency in the applicant's evidence on this point insofar as he said at the first hearing that he decided not to work even though granted work rights in Australia. He claimed his work would be distracted by his appeal. The Tribunal notes the applicant said at the second interview that he was looking for work. The Tribunal considered that the applicant's approach towards working to be somewhat inconsistent for a person who claimed to fear the consequences of not repaying money borrowed. The Tribunal considered the applicant might have seized on opportunity to earn money to repay the debts and thereby remove the threats he claims flow from the moneylenders for non-payment. Notwithstanding this, the Tribunal decided to give the applicant the benefit of the doubt on this point and is satisfied on the evidence provided by the applicant that the harm he fears constitutes 'serious harm' for the purposes of the definition of a refugee under the Refugee Convention. The Tribunal is also prepared to give the applicant the benefit of the doubt whereby it would appear more logical for the moneylenders to ensure the preservation and safety of the applicant's life and thereby advance the possibility of him repaying their loans rather than killing him. Be that as it may, the Tribunal finds on all the evidence before it that it is not satisfied that the persecution which the

applicant fears from the moneylenders is due to one or more of the reasons enumerated in the Convention definition, that is, due to the applicant's race, religion, nationality, or political opinion. The Tribunal also considered whether the harm the applicant fears from the moneylenders might be attributable to a particular characteristic about the applicant that meant he is a member of a particular social group. The Tribunal finds that the harm he fears is due to a private and personal loan transaction and not because of his membership of any particular social group. Based on the Tribunal's finding of an absence of nexus between the harm feared from the moneylenders and Convention grounds, the Tribunal decided the applicant does not satisfy the Convention definition of a refugee and he is therefore not qualified for a protection visa on that basis.

97. The Tribunal considered, in light of the possibility that the applicant faces serious harm from the moneylenders, whether there might be a withholding of state protection from the applicant in Guinea because of a Convention ground. Failure of state protection can, in some circumstances, constitute persecution within the meaning of the Convention, where such failure is itself for a Convention reason. Section 91R(1)(c) of the Act refers to systematic and discriminatory conduct. Mere inaction would not suffice - however *discriminatory* inaction would not amount to mere inaction. This is also the position under the Convention as interpreted by Australian Courts. (per *MIMA v Khawar* (2000) 101 FCR 501 at [10], [129]. The High Court in *MIMA v Khawar* (2002) 210 CLR 1, upheld the Full Federal Court decision, confirming that the Convention test may be satisfied by the selective and discriminatory withholding of state protection for a Convention reason from serious harm that is not Convention related, in this case the serious harm from the money lenders. In the *Khawar* case the Chief Justice considered that it would not be sufficient to show maladministration, incompetence, or ineptitude, by the local police, but if an applicant could show state tolerance or condonation and systematic discriminatory implementation of the law, then persecution may be made out. After considering these principles, the Tribunal is not satisfied, based on the applicant's claims and based on the country information available to it, that the applicant would be denied state protection for a Convention reason. The Tribunal accepts the applicant's claim that the police system in Guinea may not be effective. The country information confirms the police force was inadequately staffed and lacked training, a number of police officers were part of a "volunteer" corps that did not receive a salary, administrative controls over the police were ineffective, and corruption was widespread (US Department of State 2009, Country Reports on Human Rights Practices for 2008 – Guinea, February, Section 1(d)). However, this is a different thing to the applicant's claim that he would be denied state protection because of one of the five Convention grounds. The Tribunal is not satisfied that the evidence in the country information points to the existence of a systematic or discriminatory implementation of the law in Guinea against people of the applicant's ethnicity or political opinion, or that there would be a systematic or discriminatory withholding of the services of the police directed at protecting the applicant from serious harm by the moneylenders. The Tribunal therefore finds that the applicant would not be denied state protection for a convention reason.

98. Having found the applicant is not a refugee based on his claims of fear of serious harm from the moneylenders, the Tribunal then considered the applicant's claim that he also fears persecution from the governing regime because of his political opinion. The Tribunal found his claim in this respect unconvincing. The Tribunal notes that the applicant's original claim for the protection visa lodged with the Department [in]

August 2009 clearly states his fear is for what he claims the moneylenders will do if he is unable to repay the loans. There is no reference in the application to a fear of persecution for reasons other than his claimed inability to repay the borrowed money to the moneylenders. The applicant subsequently added the claim that he would be persecuted because of his ethnicity and his political opinion and raised these claims at the hearings. The applicant provided copies of his mother and father's membership documents for the opposition party and also claims that he was a member for a number of years. He also claims to have been involved in arranging meetings for the opposition party in the past. He told the Tribunal that he has not been politically active in recent times. The Tribunal finds, on the evidence provided by the applicant, and in the context of the evidence of the country information which has been extracted and set out above, that it is not satisfied the applicant has a well founded fear of persecution or that there is a real chance of serious harm because of his political beliefs or because of his ethnicity. The Tribunal accepts that a subsequent claim can be genuinely added to an application for a protection visa; however, the Tribunal must be satisfied that a subsequent or amended claim is genuine and based on evidence before the Tribunal. In this case, the Tribunal finds the evidence provided by the applicant does not support his claim. The applicant's claim, supported by this representative, is that he consciously became "politically dormant" and despite the urging of his now deceased brother to become politically active, did not do so. The Tribunal is not satisfied that the applicant would be identified by the governing regime in Guinea for persecution for his actual or imputed political opinion. Taking all the evidence, that is, the applicant's claims and the country information available to the Tribunal, the Tribunal finds that there is not a real chance that the applicant would face serious harm for reasons of his actual or imputed political opinion.

99. The applicant also claimed that as he is a member of Foulah ethnic group he faces persecution at the hands of the governing regime because of this fact. The Tribunal therefore considered the applicant's claims of persecution based on his race (ethnicity). The Tribunal is not satisfied that the applicant has a well-founded fear of persecution or that there is a real chance of serious harm because of his Foulah ethnicity if he returns to Guinea now or in the reasonably foreseeable future. The applicant has been able to obtain a professional qualification in a highly competitive field despite his ethnicity and background of coming from a poor family. The Tribunal accepts the applicant's claim that many Guinean's face poverty and political unrest and other adverse conditions as highlighted by the country information set out above, however that alone, as serious as it is, is not sufficient for the applicant to be regarded as meeting the definition of a refugee under the Refugees Convention. The Tribunal notes the country information (Human Rights Watch 2009, *Bloody Monday. The September 28 Massacre and Rapes by Security Forces in Guinea*, December 2009) quoted above which suggests that the attacks of 28 September 2009 had an ethnic dimension where the Foulah were targeted. The Tribunal had regard to this report and while finding the events described in it appear typical of persecutory actions, the Tribunal finds the events described appear to be limited to the action by the authorities to control the demonstration and strike which occurred in Conakry in September 2009. The Tribunal is not satisfied that there is evidence to indicate further or ongoing actions against the applicant's ethnic group
100. The Tribunal has considered all the country information and the applicant's claims and concluded the applicant does not have a well founded fear of persecution, as contemplated under s.91R(1) of the Act, as a consequence of his political opinion, his

ethnicity or for any other Convention reason, if he were to return to Guinea now or in the reasonably foreseeable future. Once again, the applicant's fear is the harm he might face at the hands of moneylenders and that fear of harm is not one that is based on any Convention ground.

CONCLUSIONS

101. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

102. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*.

Sealing Officer: prrt44