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# OPERATIONAL GUIDANCE NOTE

## ZIMBABWE

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## 1. Introduction

**1.1** This document provides UK Border Agency caseowners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Zimbabwe, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.

**1.2** Caseowners must not base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseowners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the UK Border Agency website at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

**1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account

must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

## **2. Country assessment**

- 2.1** Caseowners should refer the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

- 2.2** An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://fcohrdreport.com/wp-content/uploads/2011/02/Cm-8339.pdf>

## **2.3 Actors of protection**

- 2.3.1** Case owners must refer to the Asylum Policy Instruction on 'considering the protection (asylum) claim' and 'assessing credibility'. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 2.3.2** The police force is an armed, quasi-military organisation modelled more along the lines of a military gendarmerie than a civilian police force. It has approximately 20,000 full-time members and is deployed throughout the country. Its presence is most evident in cities and towns, but thinly spread in rural areas.<sup>1</sup>
- 2.3.3** Police were ill equipped, underpaid, and poorly trained, particularly at the lower levels. Although prison authorities had sufficient fuel, police did not, and the lack of fuel and other resources further reduced police effectiveness. Poor working conditions, low salaries, and high rates of dismissal in the Zimbabwe Republic Police (ZRP) resulted in corruption and high turnover. De facto assurances of

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<sup>1</sup> COIS Zimbabwe Country Report July 2012 (para 8.06)  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

impunity and a culture of disregard for human rights contributed to police use of excessive force in apprehending and detaining criminal suspects.<sup>2</sup>

- 2.3.4** Corruption occurred at every level of the police force but took different forms depending on position, rank, or location. At the lower levels, corrupt officers extorted nominal to exorbitant fines from the public for varying claimed offenses to augment their low salaries. Armed police routinely erected roadblocks, claiming to be looking for criminals, smuggled goods, and food. In many cases police arbitrarily seized goods for their own consumption or extracted bribes from commuters.<sup>3</sup> However, numerous reports of corrupt police officials being investigated and arrested for criminal activity appeared throughout the year.<sup>4</sup>
- 2.3.5** The continued politicisation of the ZRP's upper echelons, mostly composed of war veterans loyal to ZANU-PF, made it difficult for lower ranking police to remain politically impartial or to show support for non-ZANU-PF parties. Police and army personnel suspected of being sympathetic to the MDC or other political parties were threatened with demotion, suspension, incarceration, or transfer to remote areas. Most low-ranking personnel lived in ZRP-provided housing, which allowed the monitoring of their votes during election years in certain districts.<sup>5</sup> The International Crisis Group reported in November 2011 that "the police appear unwilling or unable to provide effective deterrence or remedy" in relation to the issues of violence and repression.<sup>6</sup>
- 2.3.6** The Zimbabwe National Army and Air Force, under the Ministry of Defence, are responsible for external security, but the government sometimes used them for domestic operations. The Central Intelligence Organisation (CIO), under the Ministry of State for National Security, is responsible for internal and external security.<sup>7</sup>
- 2.3.7** Experts say the most powerful arm of Zimbabwe's security apparatus is the CIO and it is deeply feared by Zimbabweans inside and outside the country. There is no public record of the CIO's size, but it is thought to have thousands of operatives. Many Zimbabweans think the organisation has a network of informers that extends into the Zimbabwean diaspora. Organisations such as Human Rights Watch have documented systematic acts of violence and intimidation committed by the CIO and the police against opposition members or individuals suspected of allegiance to the opposition.<sup>8</sup>
- 2.3.8** In its 2012 World Report, Human Rights Watch stated that "State security agents, police, and ZANU-PF supporters have been implicated in beatings, arbitrary arrests,

<sup>2</sup> US State Department Human Rights Report 2011; Zimbabwe, section 1d

[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>3</sup> US State Department Human Rights Report 2011; Zimbabwe, section 4

[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>4</sup> US State Department Human Rights Report 2011; Zimbabwe, section 1d

[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>5</sup> US State Department Human Rights Report 2011; Zimbabwe, section 1d

[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>6</sup> International Crisis Group, Resistance and Denial: Zimbabwe's Stalled Reform Agenda, 16/11/2011

<http://www.crisisgroup.org/~media/Files/africa/southern-africa/zimbabwe/B82%20Resistance%20and%20Denial%20-%20Zimbabwe%20Stalled%20Reform%20Agenda.pdf>

<sup>7</sup> US State Department Human Rights Report 2011; Zimbabwe, section 1d

[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>8</sup> COIS Zimbabwe Country Report July 2012 (para 8.26)

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

and harassment of members of the MDC, cabinet ministers, human rights activists, and journalists, deepening the pervasive climate of fear in the country”.<sup>9</sup> In January 2012, Amnesty International also noted that “impunity for violations of civil and political rights by Zimbabwe’s security forces and supporters of ZANU-PF persists”.<sup>10</sup>

**2.3.9** The constitution provides for an independent judiciary, but the judiciary lacked independence and was under intense pressure to conform to government policies. The government repeatedly refused to abide by judicial decisions and routinely delayed payment of court costs or judgments awarded against it in civil cases. Judicial corruption was widespread.<sup>11</sup>

**2.3.10** Magistrates heard the vast majority of cases. In June 2010 the Judicial Services Act (JSA) went into effect. The JSA transfers authority over judicial magistrates and their support staffs from the Public Service Commission to the Judicial Services Commission (JSC), provides that the JSC determine remuneration and other conditions of service for magistrates, and provides for greater independence of magistrates. Legal experts claimed that defendants in politically sensitive cases were more likely to receive a fair hearing in magistrates’ courts than in higher courts, where justices were more likely to make political decisions. In practice, however, the JSA’s impact was limited during the year, particularly in rural areas. ZANU-PF sympathisers continued to successfully use threats and intimidation to force magistrates, particularly rural magistrates, to rule in the government’s favour. Some urban-based junior magistrates, however, demonstrated a greater degree of independence and granted MDC and civil society activists bail against the government’s wishes. Other judicial officers not covered by the JSA, such as prosecutors and private attorneys, also faced political pressure in politically charged cases, including harassment and intimidation.<sup>12</sup>

## **2.4 Internal relocation.**

**2.4.1** Caseowners must refer to the Asylum Policy Instructions on both internal relocation and Gender Issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems,

<sup>9</sup> Human Rights Watch, World Report 2012, <http://www.hrw.org/world-report-2012/world-report-2012-zimbabwe-0>

<sup>10</sup> Amnesty International, Zimbabwean authorities must stop abusing the law to curtail the work of human rights activists, 26/01/2012. <http://www.amnesty.org/en/library/asset/AFR46/001/2012/en/7683de3d-2290-4d02-a4fa-a12d91797081/afr460012012en.html>

<sup>11</sup> US State Department Human Rights Report 2011; Zimbabwe, section 1e [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>12</sup> US State Department Human Rights Report 2011; Zimbabwe, section 1e [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

does not prevent internal relocation from being applied.

- 2.4.2** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.
- 2.4.3** The 2010 Zimbabwe Fact Finding Mission (FFM) sources stated that there were no legal requirements or restrictions when moving and settling in other parts of Zimbabwe. While in theory resettlement to another part of the country was possible, most organisations agreed that relocation to rural areas would be difficult for a number of reasons. Several organisations noted that where this happened, local chiefs (who are usually associated with ZANU-PF) would need to be informed, and would have responsibility for deciding whether land should be allocated to new arrivals.<sup>13</sup>
- 2.4.4** Most organisations stated that relocation to urban areas posed few problems – the main constraint being economic. However, relocation to smaller urban areas may be more problematic for non-economic reasons. A major NGO stated that those who had attracted the adverse attention of the main political parties would find it difficult to relocate even in urban areas. However, the Zimbabwe Human Rights NGO Forum believed that MDC supporters would be relatively safe if relocating within MDC dominated areas, noting that the MDC is “quite well organised” and can “protect” those at risk of violence.<sup>14</sup>
- 2.4.5** Case owners should ensure that they obtain the latest information about the situation, remembering that the question is simply whether taking all relevant material into account, internal relocation would both avoid the risk and would not be unduly harsh.

## **2.5 Caselaw**

### **[Supreme Court. RT \(Zimbabwe\) & others v Secretary of State for the Home Department \[2012\] UKSC 38 \(25 July 2012\)](#)**

The Supreme Court ruled that the rationale of the decision in HJ (Iran) applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

The judgment is based on the situation in Zimbabwe as disclosed by RN (see below) which was at that time exceptional and the country guidance held that

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<sup>13</sup> COIS Zimbabwe Report of Fact Finding Mission to Zimbabwe Harare 9–17 August 2010 (para 4.1) <http://www.unhcr.org/refworld/country,,,FACTFINDING,ZWE,,4c9c92752,0.html>

<sup>14</sup> COIS Zimbabwe Report of Fact Finding Mission to Zimbabwe Harare 9–17 August 2010 (para 4.1) <http://www.unhcr.org/refworld/country,,,FACTFINDING,ZWE,,4c9c92752,0.html>

generally those who were unable to demonstrate their loyalty to the regime were at risk of persecution. Thus, those with no political beliefs could not be required to profess their loyalty to the regime to avoid persecution and were entitled to refugee status.

As the appellate court, the Supreme Court was concerned only with the question of whether the Tribunal determinations under appeal had correctly applied the law and country guidance at the time that the determinations were promulgated. The Supreme Court was therefore required to consider RN because it was the country guidance case in force at the time that the determinations under appeal were promulgated by the Tribunal. The Supreme Court heard no evidence as to what the current country situation in Zimbabwe was as at the date of hearing. Consequently, the statement of Lord Dyson that the cases under consideration by the Supreme Court fell to be decided in light of the “latest country guidance for Zimbabwe” was no more than a reference to the requirement mentioned above and, following the quashing of [EM and Others \(Returnees\) Zimbabwe CG \[2011\] UKUT 98\(IAC\)](#), a statement of fact as to the most recently promulgated country guidance case. The case should not be read as authority for the proposition that RN reflects the current country situation in Zimbabwe.

However for the reasons set out in section 3.6 below the position which was set out in RN is no longer reflective of the current country situation in Zimbabwe.

**[LZ \(homosexuals\) Zimbabwe CG \[2011\] UKUT 487 \(IAC\) \(26 January 2012\)](#)**

The Tribunal found:

- (i) There has been much public expression of extreme homophobia at the highest levels in recent years.
- (ii) Male homosexual behaviour is criminalised, but prosecutions are very rare. Lesbianism is not criminalised.
- (iii) Some homosexuals suffer discrimination, harassment and blackmail from the general public and the police. Attempted extortion, false complaints and unjustified detentions are not so prevalent as to pose a general risk. There are no records of any murders with a homophobic element. “Corrective rape” is rare, and does not represent a general risk.
- (iv) There is a “gay scene,” within limitations.
- (v) Lesbians, living on their own or together, may face greater difficulties than gay men.
- (vi) GALZ (Gays and Lesbians of Zimbabwe) takes a realistic view: Zimbabwe is “not the worst place in the world to be gay or lesbian even though the President, government officials and church leaders have whipped up a climate of hysterical homophobia.”
- (vii) Applying HJ & HT [2010] UKSC 31, [2010] Imm AR 729, there is no general risk to gays or lesbians. Personal circumstances place some gays and lesbians at risk. Although not decisive on its own, being openly gay may increase risk. A positive HIV/AIDS diagnosis may be a risk factor. Connections with the elite do not increase risk.
- (viii) The police and other state agents do not provide protection.
- (ix) A homosexual at risk in his or her community can move elsewhere, either in the same city or to another part of the country. He or she might choose to relocate to where there is greater tolerance, such as Bulawayo, but the choice of a new area is not restricted. The option is excluded only if personal circumstances present risk throughout the country.

**EM and Others (Returnees) Zimbabwe CG [2011] UKUT 98(IAC).**

Caseowners should note that they should not rely on the case of EM and others in decision making. EM and others was quashed at the Court of Appeal on 13 June 2012 (in the hearing of JG & CLM) and remitted to the Upper Tribunal for a further hearing. The consequence is that the previous country guidance caselaw in dealing with failed asylum seekers from Zimbabwe (RN Zimbabwe CG (Returnees) [2008] UKAIT 00083) (see below) is reinstated.

However, the EM and others determination does summarise a considerable volume of country information which UK Border Agency accepts as reflecting the current country situation. Caseowners may therefore find it helpful to refer to the country information contained in the determination even though the judgment itself cannot be relied on.

**RS and Others (Zimbabwe – AIDS) Zimbabwe CG [2010] UKUT 363 (IAC)**

The Tribunal considered the availability of treatment for HIV/AIDS and found that:

- (i) There is a conflict in the evidence as to the availability of various ART drugs both within the public sector and the private sector. There are also various sources of ARVs.(para 207-209):
- (ii) There are a significant number of people receiving treatment for HIV and the Tribunal did not consider that waiting times are excessive (para 210).
- (iii) The Tribunal were not satisfied that there was a reasonable degree of likelihood that the appellants would be confronted with the need to display political affiliation or political loyalty in order to obtain ARVs. It is something that happens, but not generally. The Tribunal did not consider that that amounts to a real risk and accordingly their assessment of the evidence is that it has not been shown that access to ARVs is dictated by political affiliation or that the appellants would experience any real problems in that regard. Specifically, it has not been shown that any of them would face discriminatory access in their home areas, to which they would return (para 214).
- (iv) It has not been shown that there is a real risk that any of the appellants would be denied food aid on grounds of political opinion. Certainly there is evidence of discriminatory denial of access to food, but that was no more than sporadic instances and certainly not endemic. There is no real risk of harm to any of the appellants on the cumulative basis of access to medication and access to food (para 220).
- (v) The Tribunal also concluded that it did have jurisdiction to hear the appellants argument that removal would breach the UK's obligations under the Disability Discrimination Act 1995 (DDA) in that in the case of Zimbabweans with HIV/AIDS, a "reasonable adjustment" as required under the legislation would be to grant them leave to remain in the UK. The Tribunal specifically considered in detail all arguments made by the parties and concluded that there was no failure to "act in accordance with the law" in respect of duties arising under section 21 of the DDA (para 262 – 276).

**RN (Returnees) Zimbabwe CG [2008] UKAIT 00083**

1. Those at risk on return to Zimbabwe on account of imputed political opinion are no longer restricted to those who are perceived to be members or supporters of the MDC but include anyone who is unable to demonstrate support for or loyalty to the regime or Zanu-PF. To that extent the country guidance in HS is no longer to be followed. But a bare assertion that such is the case will not suffice, especially in the case of an appellant who has been found not credible in his account of experiences in Zimbabwe.
2. There is clear evidence that teachers in Zimbabwe have, once again, become targets for persecution. As many teachers have fled to avoid retribution, the fact of being a teacher or having been a teacher in the past again is capable of raising an enhanced risk, whether or not a person was a polling officer, because when encountered it will not be known what a particular teacher did or did not do in another area.
3. It is the CIO, and not the undisciplined militias, that remain responsible for monitoring returns to Harare airport. In respect of those returning to the airport there is no evidence that the state authorities have abandoned any attempt to distinguish between those actively involved in support of the MDC or otherwise of adverse interest and those who simply have not demonstrated positive support for or loyalty to Zanu-PF. There is no reason to depart from the assessment made in HS of those who would be identified at the airport of being of sufficient interest to merit further interrogation and so to be at real risk of harm such as to infringe either Convention.
4. Although a power sharing agreement has been signed between Mr Mugabe on behalf of Zanu-PF and Mr Tsvangirai on behalf of the MDC, the evidence presented does not demonstrate that the agreement as such has removed the real risk of serious harm we have identified for anyone now returned to Zimbabwe who is not able to demonstrate allegiance to or association with the Zimbabwean regime.
5. General country conditions and living conditions for many Zimbabwean nationals have continued to deteriorate since the summer of 2007. Some may be subjected to a complete deprivation of the basic necessities of life, for example access to food aid, shelter and safe water, the cumulative effect of which is capable of enabling a claim to succeed under article 3 of the ECHR. But that will not always be the case and each claim must be determined upon its own facts.

**HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094**

1. Failed asylum seekers do not, as such, face a risk of being subjected, on return to Zimbabwe, to persecution or serious ill-treatment. That will be the case whether the return is voluntary or involuntary, escorted or not.
2. The findings in respect of risk categories in SM and Others (MDC – Internal flight – risk categories) Zimbabwe CG [2005] UKIAT 00100, as adopted, affirmed and supplemented in AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061 are adopted and reaffirmed. The Tribunal identifies one further risk category, being those seen to be active in association with human rights or civil society organisations where evidence suggests that the particular organisation has been identified by the authorities as a critic or opponent of the Zimbabwean regime.
3. The process of screening returning passengers is an intelligence led process and the CIO will generally have identified from the passenger manifest in advance, based upon such intelligence, those passengers in whom there is any

possible interest. The fact of having made an asylum claim abroad is not something that in itself will give rise to adverse interest on return.

4. The Tribunal adopts and reaffirms the findings in AA in respect of the general absence of real risk associated with any monitoring of returnees that might take place after such persons have passed through the airport and returned to their home area or re-established themselves in a new area.
5. Country conditions have continued to deteriorate but are not generally such as to bring about an infringement of Convention rights for returnees or to require the grant of humanitarian protection.

#### AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061

1. A failed asylum seeker returned involuntarily to Zimbabwe does not face on return a real risk of being subjected to persecution or serious ill-treatment on that account alone.
2. SM and Others (MDC – internal flight- risk categories) CG [2005] UKIAT 00100 is reaffirmed. Two further risk categories are identified: those whose military history discloses issues that will lead to further investigation by the security services upon return to Harare Airport and those in respect of whom there are outstanding and unresolved criminal issues.
3. A deportee from the United Kingdom who, having been subjected to the first stage interview at the airport, is allowed to pass through the airport is likely to be the subject of some monitoring in his home area by the local police or the CIO but the evidence does not indicate a real risk of persecutory ill-treatment for those who are being monitored solely because of their return from the United Kingdom.
4. The general country conditions are extremely difficult but those difficulties will not generally be sufficiently severe to enable an appellant to rely upon article 3 to resist removal.

#### SM, TM, MH (MDC - Internal flight - Risk categories) Zimbabwe CG [2005] UKIAT 00100 (11 May 2005)

1. There does continue to be a real risk of persecution for those who are or are perceived to be politically active in opposition to and for this reason of serious adverse interest to the present regime. This can potentially include the categories identified in paragraph 43 but none of these factors by itself is determinative. Each case must be looked at on its own individual facts. Some categories are more likely to be at risk than others such as MDC activists and campaigners rather than supporters but we do not exclude the possibility that in exceptional cases those with very limited political involvement could in their particular circumstances find themselves at real risk.
2. The risk to political opponents is increased both before and immediately after elections but this fact is of limited importance and is only likely to have any material bearing in borderline cases.
3. There does continue to be a risk for teachers with an actual or perceived political profile of support for the MDC.
4. Records are kept by various groups and authorities including the CIO, local

police and Zanu-PF party organisations and the war veterans but the existence of these records does not materially add to the assessment of the risk of persecution in an individual case which depends on the applicant's profile and background. It seems to us unlikely that someone who has been caught up in random and intimidatory violence would without more be regarded as of continuing interest to the authorities. However, the fact that these records exist may indicate that an applicant found to be at risk is unlikely to be able to relocate in safety. In this context it will also be important to take into account whether the risk is from the authorities or from a local branch of Zanu-PF or locally based war veterans.

5. The current atmosphere of hostility to the return of failed asylum seekers does not of itself put at risk those who would otherwise not be at real risk but does serve to reinforce the fact that asylum claims must be considered with care and where there is any uncertainty, any doubts must be resolved in the applicant's favour.
6. The fact of being a white Zimbabwean does not of itself put an applicant in danger.
7. Where an applicant is at risk in his home area, the assessment of internal relocation must take into account the fact that there is a network of information available to the authorities, ZANU PF and war veterans. An applicant who is regarded as an active political opponent in his home area may not be able to relocate in safety but this is a question of fact to be assessed in the circumstances of each case.

### **3. Main categories of claims**

- 3.1** This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Zimbabwe. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in Karanakaran should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction on 'considering the protection (Asylum) claim' and 'assessing credibility').
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the

particular categories detailed in Section 4 or on their individual circumstances.

- 3.4** All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

### **3.5 Credibility**

- 3.5.1** This guidance is not designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see 'establishing the facts of the claim (material and non-material facts)' in the Asylum Instruction 'considering the protection (asylum) claim' and 'assessing credibility'. Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to anon-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

### **3.6 MDC supporters, human rights defenders and other perceived opponents of ZANU-PF**

- 3.6.1** Applicants may claim asylum based on a fear of violence at the hands of state agents, war veterans or other supporters of ZANU-PF, because of their involvement with the Movement for Democratic Change (MDC) or the Zimbabwe African People's Union (ZAPU), or their involvement with human rights or humanitarian organisations; or because they are otherwise perceived to be opposed to ZANU-PF.
- 3.6.2 Treatment.** President Mugabe and ZANU(PF)'s monopoly on power was not seriously challenged until the formation of the Movement for Democratic Change (MDC) in 1999. The MDC split in 2005 - the larger faction, MDC-T, led by Prime Minister Morgan Tsvangirai and the smaller, MDC-M, led by Deputy Prime Minister Prof Arthur Mutambara. Mutambara was replaced as leader by his party's Secretary-General, Welshman Ncube, in January 2011. In March 2008, for the first time since Independence, ZANU(PF) lost its Parliamentary majority and Mugabe lost in the first round of Presidential elections to Tsvangirai (by 47.9% to 43.2%). However, Tsvangirai did not pass the 50% threshold required for outright victory. The run up to the second round of voting held in June 2008 was marred by widespread and orchestrated violence against MDC supporters, leading Tsvangirai to withdraw and leaving Mugabe to stand unopposed. In Parliament, MDC-T became the largest party in the House of Assembly, winning 100 of the 210 seats to ZANU(PF)'s 99. In the Senate (Upper House), ZANU(PF) hold a majority. Given the parliamentary stalemate and the disputed presidential election, the SADC mandated Thabo Mbeki, the then President of South Africa, to broker a power-sharing agreement - the Global Political Agreement (GPA) - between ZANU(PF) and the two MDC parties. The GPA was signed in September 2008 and created a coalition government - the Inclusive Government. Tsvangirai was sworn in as Prime Minister - a newly created post - in February 2009, with Mutambara as one of his Deputies and an expanded portfolio of Ministerial positions divided between the

parties.<sup>15</sup>

- 3.6.3** The Inclusive Government is a transitional arrangement. Under the GPA, a cross-party parliamentary committee was established to organise public consultations with a view to drafting a new Constitution that would reflect the wishes of the majority of Zimbabweans and take into account the views of civil society. The process on constitutional reform has been very much delayed by political wrangling and logistical concerns but public outreach eventually started in June 2010. Drafting of the new Constitution began in December 2011. Once this draft has been accepted by the three main political parties, there will be a second All-Stakeholder conference and a referendum. No date has been set yet for elections, which are scheduled to be held after a new constitution has been agreed.<sup>16</sup> Constitutional Outreach meetings were marked by increasing violence and intimidation, mainly by ZANU-PF supporters and war veterans allied to ZANU-PF<sup>17</sup> and some public meetings being abandoned in the capital, Harare, and Mutare because of violence blamed on ZANU-PF youths.<sup>18</sup>
- 3.6.4** The 2010 Fact Finding Mission (FFM) to Zimbabwe reported sources stated that there were no legal requirements or restrictions when moving and settling in other parts of Zimbabwe. While in theory resettlement to another part of the country was possible, most organisations agreed that relocation to rural areas would be difficult for a number of reasons. Several organisations noted that where this happened, local chiefs (who are usually associated with ZANU-PF) would need to be informed, and would have responsibility for deciding whether land should be allocated to new arrivals. Most organisations stated that relocation to urban areas posed few problems – the main constraint being economic. However, relocation to smaller urban areas may be more problematic for non-economic reasons.<sup>19</sup>
- 3.6.5** Those returning from overseas to rural areas will, in general, not face problems if they still have family members living there. People are more concerned with current activity rather than past events, and although questions are asked about returnees in rural areas, there is usually no sinister basis for this and those who do not participate in political activity on return will not have any additional problems when compared with other residents.<sup>20</sup>
- 3.6.6** The FFM went on to state that a major NGO stated that those who had attracted the adverse attention of the main political parties would find it difficult to relocate even in urban areas. However, the Zimbabwe Human Rights NGO Forum believed that MDC supporters would be relatively safe if relocating within MDC dominated areas, noting that the MDC is “quite well organised” and can “protect” those at risk of violence.<sup>21</sup> It is difficult for ZANU-PF supporters to harm MDC supporters in MDC

<sup>15</sup> FCO Country Profile; Zimbabwe April 2012 <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/sub-saharan-africa/zimbabwe?profile=all>

<sup>16</sup> FCO Country Profile; Zimbabwe April 2012 <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/sub-saharan-africa/zimbabwe?profile=all>

<sup>17</sup> COIS Zimbabwe Country Report July 2012 (para 3.42) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>18</sup> COIS Zimbabwe Country Report July 2012 (para 3.41) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>19</sup> COIS Zimbabwe Report of Fact Finding Mission to Zimbabwe Harare 9–17 August 2010 (para 4.1) <http://www.unhcr.org/refworld/country,,,FACTFINDING,ZWE,,4c9c92752,0.html>

<sup>20</sup> COIS Zimbabwe Report of Fact Finding Mission to Zimbabwe Harare 9–17 August 2010 (para 4.3) <http://www.unhcr.org/refworld/country,,,FACTFINDING,ZWE,,4c9c92752,0.html>

<sup>21</sup> COIS Zimbabwe Report of Fact Finding Mission to Zimbabwe Harare 9–17 August 2010 (para 4.1) <http://www.unhcr.org/refworld/country,,,FACTFINDING,ZWE,,4c9c92752,0.html>

dominated areas because the MDC tend to be quite well organised in those areas and can protect those who might otherwise be at risk of political violence by the threat of retribution. The Forum has not come across any cases of returnees from the UK being mistreated and would expect to know of any such cases because its member organisations are represented across the country. It works closely with the Zimbabwe Association in London and is alerted where there are concerns a returnee might be at risk but has not come across any cases where that is happened. They are unable to say that there have been no such cases but if there have been they have been isolated examples.<sup>22</sup>

- 3.6.7** A Human Rights activist interviewed during the Zimbabwe FFM stated that movement between two rural areas would be very difficult as many questions would be asked about anyone moving. Moving from a rural area to an urban area, such as Bulawayo, would not cause any problems from an ethnic or safety point of view. Similarly, there would be no such problem when moving between two urban areas.<sup>23</sup>
- 3.6.8** The geographic spread of political violence and intimidation, and the likely hotspots for escalation in future, remain the same rural areas as experienced the worst violence in 2008. Matabeleland is very safe, with very little political violence there even in 2008. This is because ZANU-PF knows it will never win an election there so doesn't waste its time. High density urban areas can be considered as 'quasi rural' in the sense that the people who live there have the same capacity to upset the status quo as those in rural areas, largely because they have little to lose. That is why they are subject to more concerted efforts at political control than those in other parts of the cities.<sup>24</sup>
- 3.6.9** The Zimbabwe Peace Project (ZPP) publishes monthly statistics of human rights violations including murder, rape, kidnapping/abduction, assault, theft/looting, discrimination, MDP (malicious damage to property), unlawful detention, harassment/intimidation and displacement for each province.<sup>25</sup> Reports continued to show a year-on-year decrease in human rights abuses since 2008. Figures from the Zimbabwe Peace Project indicated there were 23,757 incidents reports in 2008, which fell to 14,725 in 2009, 10,691 in 2010, 11,935 in 2011 and 1,767 for January to April 2012.<sup>26</sup>
- 3.6.10** In April 2011 SW Radio Africa news reported that the Southern African Development Community (SADC) Troika summit in Zambia at the end of March 2011 demanded an end to "violence, intimidation, hate speech, harassment, and any other form of action that contradicts the letter and spirit of the GPA." But that rebuke did not discourage ZANU PF militants, who continue targeting MDC supporters in different parts of the country.<sup>27</sup>

<sup>22</sup> COIS Zimbabwe Report of Fact Finding Mission to Zimbabwe Harare 9–17 August 2010 (para 4.6) <http://www.unhcr.org/refworld/country,,,FACTFINDING,ZWE,,4c9c92752,0.html>

<sup>23</sup> COIS Zimbabwe Report of Fact Finding Mission to Zimbabwe Harare 9–17 August 2010 (page 94) <http://www.unhcr.org/refworld/country,,,FACTFINDING,ZWE,,4c9c92752,0.html>

<sup>24</sup> COIS Zimbabwe Report of Fact Finding Mission to Zimbabwe Harare 9–17 August 2010 (page 89) <http://www.unhcr.org/refworld/country,,,FACTFINDING,ZWE,,4c9c92752,0.html>

<sup>25</sup> Zimbabwe Peace Project report archive [http://www.kubatana.net/html/archive/archorg\\_index.asp?orgcode=zim028](http://www.kubatana.net/html/archive/archorg_index.asp?orgcode=zim028)

<sup>26</sup> Zimbabwe country report July 2012 (para 14.47) <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/zimbabwe/zimbabwe-coi-july12.pdf?view=Binary>

<sup>27</sup> SW Radio Africa news, 'ZANU PF violence continues despite SADC rebuke' 20 April 2011 <http://www.swradioafrica.com/news200411/zpfviolence200411.htm>

- 3.6.11** In June 2011 Human Rights Watch has documented numerous incidents of politically motivated violence by ZANU-PF and its allies against real or perceived MDC supporters throughout the country. In the preceding six months, ZANU-PF-controlled police have arbitrarily arrested scores of civil society activists and routinely threatened and harassed MDC members and supporters.<sup>28</sup> The Crisis in Zimbabwe Coalition reported that throughout 2011 “Journalists, civil society representatives and perceived opponents of ZANU PF were arrested and intimidated by ZANU PF and its functionaries”.<sup>29</sup> In 2012, Human Right Watch noted that during the last year “Tensions flared between the ZANU-PF and the MDC as a result of the anticipated elections. The main perpetrators of the violence have been ZANU-PF supporters and youth who have attacked scores of people, mainly MDC supporters and members, in the high-density neighbourhoods of Harare, the capital, as well as outside of Harare.”<sup>30</sup>
- 3.6.12** In August 2011 The Zimbabwean reported that the Parliamentary Committee on Defence, Security and Home Affairs put on hold plans to conduct public hearings on political violence and police corruption following threats of violence by ZANU-PF militants. Committee chairperson, Paul Madzore, told The Zimbabwean that the legislators had decided not to hold the planned meetings as there was no guarantee of police protection for both MPs and the public. The system of public hearings, considered vital in the formulation of legislation, was thrown into confusion in July when a ZANU-PF mob raided Parliament and assaulted MPs, journalists and officials just before a public meeting. The ZANU-PF militants were bussed in to disrupt consultations on the contentious Zimbabwe Human Rights Commission Bill, which President Robert Mugabe's party opposes. No-one was arrested.<sup>31</sup>
- 3.6.13** In January 2012 Zimbabwean President Robert Mugabe promoted controversial army officer Brig Douglas Nyikayaramba to the rank of major-general, a move observers warn strengthens the position of the ZANU-PF party ahead of crucial elections expected this year. The Movement for Democratic Change (MDC) party has cried foul over the promotion, and warned of Brig Nyikayaramba's history of "vote-rigging and violence". The MDC fears he could tip the scales against it in the next elections. MDC spokesman Douglas Mwonzora told Business Day Brig Nyikayaramba's promotion was part of a "grand plan" by ZANU-PF to unleash violence against the opposition. "He (Nyikayaramba) has been involved in elections before and inevitably the coming elections will be violent. His promotion is not based on merit, but it is a political appointment and a reward for his diatribe against (prime minister and MDC leader) Morgan Tsvangirai.”<sup>32</sup>
- 3.6.14** In 2012, Human Right Watch noted that “The Zimbabwean authorities continue to use repression and intimidation to silence human rights advocates and to prevent them from exposing abuses and promoting respect for human rights. Harassment and arbitrary arrests of human rights defenders have intensified since January

<sup>28</sup> Human Rights Watch, 'Zanu-PF: It's time to take decisive action' 13 June 2011

<http://www.hrw.org/news/2011/06/13/zanu-pf-its-time-take-decisive-action>

<sup>29</sup> Crisis in Zimbabwe Coalition, 2012 a year for key democratic reforms,

[http://www.kubatana.net/html/archive/demgg/120125ciz1.asp?sector=HR&year=0&range\\_start=1](http://www.kubatana.net/html/archive/demgg/120125ciz1.asp?sector=HR&year=0&range_start=1)

<sup>30</sup> Human Rights Watch, World Report 2012, <http://www.hrw.org/world-report-2012/world-report-2012-zimbabwe-0>

<sup>31</sup> The Zimbabwean, 'Zanu (PF) violence hinders committees' 26 August 2011

<http://www.thezimbabwean.co.uk/news/zimbabwe/52168/zanu-pf-violence-hinders-committees.html>

<sup>32</sup> Business Day, 'Mugabe's promotion of brigadier sparks fear of election violence' 5 January 2012

<http://www.businessday.co.za/articles/Content.aspx?id=162019>

2011”.<sup>33</sup> In January 2012, Amnesty International called on the Zimbabwean authorities to stop abusing the law to curtail the work of human rights activists, expressing concern over “the systematic abuse of Public Order and Security Act and politically motivated arrests and prosecutions in Zimbabwe”.<sup>34</sup>

**3.6.15** It is however important that case owners ensure that they obtain the latest information about the situation in the relevant province and take that into full account in reaching decisions on asylum claims made by Zimbabweans.

See also: [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)  
[Caselaw](#) (section 2.5 above)

**3.6.16 Conclusion.** The extant Upper Tribunal country guidance case of RN (see section 2.5 above) was heard 4 years ago against the backdrop of reports of widespread and indiscriminate political violence that marked the election period in 2008 and also before the formation of the Government of National Unity (GNU). In 2008 thousands of people were injured and several hundred killed for supporting or being thought to support the MDC, irrespective of how politically active they were. The evidence currently available shows that the political violence that now exists is both at a much lower level and is targeted for reasons other than a mere inability to demonstrate ZANU-PF loyalty or support. It is instead targeted against those who present a particular threat to the hardliners because they are active or high profile members of reformist political or civil society groups. And some of those most at risk in 2008 are now in government.

**3.6.17** In RN, the Tribunal noted that:

- 263 Although a power sharing agreement has been signed between Mr Mugabe on behalf of Zanu-PF and Mr Tsvangirai on behalf of the MDC, it is too early to say that will remove the real risk of serious harm we have identified for anyone now returned to Zimbabwe who is not able to demonstrate allegiance to or association with the Zimbabwean regime.
- 264 Further international intervention or some unforeseen upheaval inside Zimbabwe itself may change the position, for example, by giving the MDC real control of the police. In such an eventuality it will be for judicial fact finders to determine the extent to which the evidence before them differs from that which is before us, pending fresh country guidance: see Practice Direction 18.2.

**3.6.18** Since then the government of national unity was formed on 13 February 2009 after protracted talks facilitated by the Southern African Development Community (SADC) about the allocation of Cabinet positions particularly the Home Affairs Ministry (which includes oversight of the police) where it was agreed that the portfolio was initially to be co-managed by ZANU-PF and MDC-T.

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<sup>33</sup> Human Rights Watch, World Report 2012, <http://www.hrw.org/world-report-2012/world-report-2012-zimbabwe-0>

<sup>34</sup> Amnesty International, Zimbabwean authorities must stop abusing the law to curtail the work of human rights activists, 26/01/2012. <http://www.amnesty.org/en/library/asset/AFR46/001/2012/en/7683de3d-2290-4d02-a4fa-a12d91797081/afr460012012en.html>

- 3.6.19** The fresh country guidance case envisaged by the Upper Tribunal in para 264 of RN was heard by the Upper Tribunal in 2010 and replaced RN. That case (EM and others) has however since been quashed and remitted to the Upper Tribunal for a further hearing. As a consequence RN was re-instated as the extant country guidance on returnees to Zimbabwe. However as Lord Justice Carnwath (now Lord Carnwath) noted in [TK \(Tamils – LP updated\) Sri Lanka CG \[2009\] UKAIT 00049](#) “... country guidance is not inflexible; it must be applied by reference to new evidence as it emerges.” The situation in Zimbabwe has moved on since 2008 and caseowners should base their decisions on the current situation, not that which pertained in 2008 and was reflected in RN.
- 3.6.20** The country information shows that although since 2008 politically motivated human rights violations continue to be perpetrated against MDC activists and civil society activists they are at a relatively low level compared to previous years (2008 and 2009 especially). Monthly levels of political motivated violations generally declined between May 2011 and April 2012 with a large decrease in the number of incidents between November and December 2011. However, this was followed by a slight increase between December 2011 and April 2012 following President Mugabe’s declaration in December 2011 that elections would take place in 2012. As most recent reports of violence and intimidation were related to the uncertainty over the timing of fresh elections, it is not unexpected that the number of violations may continue to rise as speculation over the election timetable increases.
- 3.6.21** Caseowners should have regard to the up to date country information and where necessary set out in decision letters the reasons for departing from the RN caselaw which depended on country evidence which is no longer reflective of the current situation in Zimbabwe.
- 3.6.22** Assessing who may be at real risk from politically motivated violence is not simply a matter of the level of political activity in which the individual has engaged. Violence tends to be targeted at those with a political profile, not necessarily of a high level, and those perceived to be active in MDC politics or other opposition groups. The country evidence does not show that, as a general matter, the return of a failed asylum seeker from the UK, having no, or no significant MDC profile, would result in that person facing a real risk of having to demonstrate loyalty to the ZANU-PF.
- 3.6.23** The risks to a particular individual will also very much depend on the place to which he or she would return. There are differences between urban and rural areas (and the situation is not uniform across the rural areas). Matabeleland is very safe, with very little political violence there even in 2008.<sup>35</sup> It is also difficult for ZANU-PF supporters to harm MDC supporters in MDC dominated areas because the MDC tend to be quite well organised in those areas and can protect those who might otherwise be at risk of political violence by the threat of retribution<sup>36</sup>, so those returning to these MDC dominated rural areas would generally be highly unlikely to face significant difficulty from ZANU-PF elements, including the security forces. Those returning to other rural areas from the UK after a significant absence would face a real risk of persecution because of a continuing risk of being required to demonstrate loyalty to ZANU-PF (including those who may have no political opinion at all). However in such circumstances internal relocation to Harare or, in particular,

<sup>35</sup> COIS Zimbabwe Report of Fact Finding Mission to Zimbabwe Harare 9–17 August 2010 (page 89) <http://www.unhcr.org/refworld/country,,,FACTFINDING,ZWE,,4c9c92752,0.html>

<sup>36</sup> COIS Zimbabwe Report of Fact Finding Mission to Zimbabwe Harare 9–17 August 2010 (para 4.6) <http://www.unhcr.org/refworld/country,,,FACTFINDING,ZWE,,4c9c92752,0.html>

Bulawayo may be a viable option for a person facing risk of persecution in rural Zimbabwe subject of course to the requirements that such relocation should not be unduly harsh. If internal relocation is unreasonable or unduly harsh in the circumstances of the particular case then the principle established in RT applies with regard to those with no political opinion and such claimants, like those who do hold political views opposing ZANU-PF, will qualify to be recognised as refugees.

- 3.6.24** The Supreme Court held in RT (Zimbabwe) that the rationale of the decision in HJ (Iran) extends to the holding of political opinions. An individual should not be expected to modify or deny their political belief, or the lack of one, in order to avoid persecution.
- 3.6.25** As regards major urban areas, there is a distinction to be drawn between low density urban areas and high density urban areas. It has been reported that during 2011 ZANU-PF youths continued to attack people, mainly MDC supporters, in the high-density neighbourhoods of Harare, as well as in areas outside the capital such as Chitungwiza, Mbare, and Bikita.<sup>37</sup> However as was noted in RN (para 229) the evidence even at that time suggests that those living in the more affluent low density urban areas or suburbs are likely to avoid such difficulties, the relative security of their homes and their personal security arrangements being sufficient to keep out speculative visits. Many of those with the means to occupy such residences are in general likely to be associated with ZANU-PF and so not a target on the basis of doubted loyalty. Others may enjoy such a lifestyle as a result of a more circumspect relationship with ZANU-PF falling short of actual association, but which is, nevertheless, such as to give the appearance of loyalty.
- 3.6.26** MDC supporters, human rights defenders and other perceived opponents of ZANU-PF who are able to establish that their political opinions or perceived activities in MDC politics in Zimbabwe and/or the UK mean that they are at real risk of persecution or serious harm from ZANU-PF or its supporters and who cannot avoid that risk by internally relocating will have a well-founded fear of persecution.
- 3.7 Teachers**
- 3.7.1** Applicants may claim fear of discrimination or violence due to actual or imputed political sympathy with the opposition, their role as election officers/polling agents or the implication that their professional position will be used to influence students.
- 3.7.2 Treatment.** In recent years students, teachers and academics have been either beaten, arrested, tortured, threatened with murder or shot dead by state forces or state-backed forces in Zimbabwe. Teacher trade unionists were [and continue to be singled out for assassination, false imprisonment or torture in Zimbabwe.<sup>38</sup>
- 3.7.3** Around 45,000 teachers left Zimbabwe between 2004 and 2008 to escape the economic crisis or political violence. Many thousands more were reportedly afraid to leave their homes in 2008 due to the political violence, which halted education in most schools, particularly in the rural areas.<sup>39</sup> Teachers were specifically targeted

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<sup>37</sup> COIS Zimbabwe Country Report July 2012 (para 8.59)  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>38</sup> COIS Zimbabwe Country Report July 2012 (para 14.25)  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>39</sup> COIS Zimbabwe Country Report July 2012 (para 14.26)  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

in post-election violence and some schools were taken over as torture bases.<sup>40</sup>

- 3.7.3** Education International reported on 30 March 2011 that the prospect of forthcoming national elections has resulted in Zimbabwe's teachers 'experiencing increased political threats and serious violent attacks'. Since President Robert Mugabe announced elections [in November 2010] would take place in 2011 teachers, especially in rural areas, have been the victims of political violence and extortion by war veterans and ZANU-PF supporters with some reports of teachers being targeted to join ZANU-PF.<sup>41</sup>
- 3.7.4** The Zimbabwe Peace Project (ZPP) report, 'Summary on politically motivated human rights and food related violations: May 2011', published on 24 June 2011, noted that: "Harassment and intimidation of teachers was reported at Nyamandi Methodist School in Gutu District where the headmaster was threatened with unspecified action and accused of being an MDC-T activist.
- 3.7.5** Zimeye reported on 23 June 2011 that the PTUZ reported that its teachers had been "... harassed in some areas for taking part in the strike action that started Wednesday (22nd June 2011). PTUZ President, Takavafira Zhou, told SW Radio Africa that youth militia, intelligence agents and school heads aligned with ZANU-PF, are intimidating teachers and making threats.<sup>42</sup>
- 3.7.6** In August 2011 teachers at Gombakomba and Dangare schools in Zimunya district said that they were living in fear as they were being forced to buy ZANU-PF cards, as a way of showing allegiance to ZANU-PF, by war veterans (PF). A teacher at Gombakomba secondary school said that 'the situation is terrible here. We are on holiday but they are coming to our houses forcing us to buy the ZANU-PF cards. They also told us to assure them that ZANU-PF will not lose in the forthcoming elections'. 'They (war veterans) have all the names of teachers at our school and they have made sure that everyone has a ZANU-PF card,' said another teacher at Dangare primary school.<sup>43</sup>
- 3.7.7** In January 2012, soldiers were deployed in schools surrounding Masvingo town and threatened to beat anyone who did not participate in strike action.<sup>44</sup> The Zimbabwe Peace Project noted that in September 2011, "In Zvimba West Constituency, teachers from schools under Chief Chirau were reportedly forced to buy Zanu PF party cards. Those who declined and were suspected of belonging to the MDC-T were threatened with transfers". It also found in November 2011, that teachers in Masvingo province, continued to be the "target of political violence."<sup>45</sup> In October 2011, it was reported that rural schools in Manicaland were suffering harassment and intimidation from ZANU-PF militia, who were ordering teachers to vacate their

<sup>40</sup> FCO Annual Human Rights report 2008; Zimbabwe <http://www.fco.gov.uk/resources/en/pdf/pdf15/human-rights-2008>

<sup>41</sup> Education International, Teachers under fire in Zimbabwe, 30 March 2011 [http://www.ei-ie.org/en/news/news\\_details/1755](http://www.ei-ie.org/en/news/news_details/1755)

<sup>42</sup> COIS Zimbabwe Country Report July 2012 (para 14.34) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>43</sup> The Zimbabwean, 'Teachers forced to support' 26 August 2011 <http://www.thezimbabwean.co.uk/news/zimbabwe/52132/teachers-forced-to-support.html>

<sup>44</sup> Radio Vop, Soldiers Chase Teachers From Schools, 27/01/2012. <http://www.radiovop.com/index.php/national-news/8088-soldiers-chase-teachers-from-schools.html>

<sup>45</sup> Zimbabwe Peace Project, Summary on politically-motivated human rights and food-related violations - November 2011, 23/12/2011. [http://www.kubatana.net/docs/hr/zpp\\_summary\\_hr\\_food\\_violations\\_111223.pdf](http://www.kubatana.net/docs/hr/zpp_summary_hr_food_violations_111223.pdf)

schools, accusing them of supporting the MDC.<sup>46</sup>

See also: [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)  
[Caselaw](#) (section 2.5 above)

**3.7.8 Conclusion.** Being a teacher places a person at a heightened risk of ill treatment. Whether there is a real risk by virtue of the person being a teacher will still, however, need to be considered on a case by case basis, taking account of all the circumstances, including their previous employment, the accepted history of any adverse interest by the authorities and an assessment of the risk to them on return to Zimbabwe whether or not they seek to resume their career as a teacher.

**3.7.9** Teachers who are able to establish that their perceived political opinion or activities mean that they are at real risk of persecution or serious harm and who cannot avoid that risk by internally relocating will have a well-founded fear of persecution and should be granted asylum.

### **3.8 Gay men, lesbians, bisexual and transgender persons**

**3.8.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the state as gay men, lesbians, bisexual or transgender persons in Zimbabwe.

**3.8.2 Treatment.** The criminal code's definition of sodomy includes "any act involving physical contact between males that would be regarded by a reasonable person to be an indecent act." Sodomy carries a penalty of up to one year in prison or a fine up to £3185. There were no known cases of sodomy charges being used to prosecute consensual same-sex sexual activity. Common law prevents gay men, and to a lesser extent lesbians, from fully expressing their sexual orientation and, in some cases, criminalizes the display of affection between men.<sup>47</sup>

**3.8.3** Leadership in both ZANU-PF and MDC-T, including President Mugabe and Prime Minister Tsvangirai, publicly denounced the LGBT community and warned against the inclusion of LGBT rights in the constitution. Mugabe publicly blamed the LGBT community for Africa's ills and declared its members to be worse than "pigs and dogs."<sup>48</sup> However, in October 2011 Zimbabwe's Prime Minister Morgan Tsvangirai reversed his position on gay rights, saying he now wants them enshrined in a new constitution. He told the BBC that gay rights were a "human right" that conservative Zimbabweans should respect.<sup>49</sup> On 24 November, President Mugabe reportedly vowed to "punish severely" homosexuality that he said was un-Christian and un-African<sup>50</sup>. In January 2012, the New Zimbabwean published an article quoting a "key MP" sitting on the parliamentary committee in charge of the constitutional

<sup>46</sup> The Zimbabwean, Teachers flee rural schools: ZIMTA, 20/10/2011. <http://reliefweb.int/node/454092>

<sup>47</sup> US State Department Human Rights Report 2011; Zimbabwe, section 6  
[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>48</sup> US State Department Human Rights Report 2011; Zimbabwe, section 6  
[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>49</sup> BBC News, 'Zimbabwe's PM Morgan Tsvangirai in gay rights U-turn' 24 October 2011  
<http://www.bbc.co.uk/news/world-africa-15431142>

<sup>50</sup> Zim Online, We'll punish gay people: Mugabe, 24/11/2011  
<http://www.zimonline.co.za/Article.aspx?ArticleId=6863>

process as stating that there is “no chance in hell” that Zimbabwe’s new constitution will include gay rights”.<sup>51</sup>

**3.8.4** Members of the LGBT community reported widespread societal discrimination based on sexual orientation. In response to social pressure, some families reportedly subjected their LGBT members to “corrective” rape and forced marriages to encourage heterosexual conduct. Such crimes were rarely reported to police. Women, in particular, were subjected to rape by male members of their own families. LGBT members often left school at an early age due to discrimination and had higher rates of unemployment and homelessness. Many persons who identified with the LGBT community did not seek medical care for sexually transmitted diseases or other health issues due to fear that health providers would shun them.<sup>52</sup> Similarly, the Institute for the Democratic Alternative for South Africa, noted in May 2010, that: “Corrective rape against gay men and lesbians is on the rise. Victims are particularly vulnerable given the stigma attached to homosexuality in Zimbabwe which makes it difficult for them to report crimes or seek medical attention.”<sup>53</sup> However in the Tribunal case LZ (homosexuals) their assessment was that “corrective rape” is rare. The Tribunal accepted ‘that it does happen, and of its nature must often be a hidden crime, but it does not represent a real risk to homosexuals of either gender.’ (para 58 of Judgment [LZ \(homosexuals\) Zimbabwe CG \[2011\] UKUT 487 \(IAC\) \(26 January 2012\)](#))

**3.8.5** A February 2011 report from the International Gay and Lesbian Human Rights Commission noted that ‘in Zimbabwe the readiness of certain police officers to profit from a case of extortion that comes to their attention means that victims are reluctant to report the offence, as to do so significantly increases the likelihood of their own arrest and may compound the pressure on them to hand over even more money. In some cases, the police have actively sought out gay men and lesbians on their own initiative for the purpose of extortion.’<sup>54</sup> The organisation Zimbabwe Lawyers for Human Rights reported that lawyers representing two Mbare residents charged with committing sodomy were “intimidated, harassed and threatened” by ZANU PF supporters.<sup>55</sup>

**3.8.6** A Gays and Lesbians of Zimbabwe (GALZ) representative interviewed by the UKBA Fact Finding Mission stated “The situation is much more difficult for lesbians [than gay and bisexual men] and hasn’t really improved significantly. It is very difficult for lesbians to ‘come out’ and those that do risk harassment and worse, ranging from taunts such as ‘you just haven’t found a good man yet’ to rape. It has also been difficult for women to participate fully in GALZ in the past because it was dominated by men, although lesbians now command more respect within the organisation. All this has meant that the number of lesbians who are ‘out’ is much lower than the number of gay men. Most of the harassment and the cases of rape of which GALZ is aware have taken place in the high density areas. For women who have been

<sup>51</sup> New Zimbabwean, ‘No chance in hell’ for gay rights, 12/01/2012 <http://www.newzimbabwe.com/news-6920-No+chance+in+hell+for+gay+rights/news.aspx>

<sup>52</sup> US State Department Human Rights Report 2011; Zimbabwe, section 6 [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>53</sup> COIS Zimbabwe Country Report July 2012 (para 20.41) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>54</sup> International Gay and Lesbian Human Rights Commission, Nowhere to Turn: Blackmail and Extortion of LGBT People in Sub-Saharan Africa, February 2011 <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/484-1.pdf>

<sup>55</sup> Zimbabwe Lawyers for Human Rights, Justice Patel Suspends Sodomy Trial, 17/11/2011. [http://www.zlhr.org.zw/index.php?option=com\\_content&task=view&id=54&Itemid=122](http://www.zlhr.org.zw/index.php?option=com_content&task=view&id=54&Itemid=122)

raped, shame often prevents them from reporting the crime to the police and if they do, the police are often reluctant to act. This means that for lesbians who are raped, counselling may be the best that they can hope for. GALZ is not aware of any active police persecution of lesbians nor of any cases of lesbians being detained, but there is a lack of police protection.”<sup>56</sup>

- 3.8.7** A representative of the Gays and Lesbians of Zimbabwe (GALZ), interviewed as part of UKBA’s Fact Finding Mission in 2010 stated that: “Bulawayo is more open and tolerant and has a very different atmosphere from Harare. People in Bulawayo are more politically active and willing to push for their rights. There is a gay nightclub in the middle of town. GALZ thinks this different attitude may be related to proximity to South Africa”.<sup>57</sup> The International Gay guide, Spartacus 2009 edition, stated that there were still two gay friendly nightclubs in the Borrowdale area of Harare.<sup>58</sup>
- 3.8.8** The Gays and Lesbians of Zimbabwe (GALZ) website stated that “There is a growing tolerance of LGBT in Zimbabwe especially amongst younger people in urban areas who have grown up with the knowledge that gay and lesbian people exist within their midst. The problems facing lesbian and gay people are, by and large, the same as those facing Zimbabweans as a whole. The general lack of tolerance of sexual difference is just one more challenge that lesbian, gay, bisexual, transgender and intersex people have to face in Zimbabwe.”<sup>59</sup>
- 3.8.9** In the country guidance case of LZ (homosexuals) the Tribunal found that “There has been much public expression of extreme homophobia at the highest levels in recent years. Male homosexual behaviour is criminalised, but prosecutions are very rare. Lesbianism is not criminalised. Some homosexuals suffer discrimination, harassment and blackmail from the general public and the police. Attempted extortion, false complaints and unjustified detentions are not so prevalent as to pose a general risk. There are no records of any murders with a homophobic element. “Corrective rape” is rare, and does not represent a general risk (para 116 of Judgment).
- 3.8.10** The Tribunal found that there is a “gay scene,” within limitations. Lesbians, living on their own or together, may face greater difficulties than gay men. GALZ (Gays and Lesbians of Zimbabwe) takes a realistic view: Zimbabwe is “not the worst place in the world to be gay or lesbian even though the President, government officials and church leaders have whipped up a climate of hysterical homophobia.” (para 116 of Judgment).
- 3.8.11** In applying HJ & HT, the Tribunal found that there is no general risk to gays or lesbians. Personal circumstances place some gays and lesbians at risk. Although not decisive on its own, being openly gay may increase risk. A positive HIV/AIDS diagnosis may be a risk factor. Connections with the elite do not increase risk. The police and other state agents do not provide protection. A homosexual at risk in his or her community can move elsewhere, either in the same city or to another part of

<sup>56</sup> COIS Zimbabwe Country Report July 2012 (para 20.57)  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>57</sup> COIS Zimbabwe Country Report July 2012 (para 20.66)  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>58</sup> COIS Zimbabwe Country Report July 2012 (para 20.67)  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>59</sup> COIS Zimbabwe Country Report July 2012 (para 20.38)  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

the country. He or she might choose to relocate to where there is greater tolerance, such as Bulawayo, but the choice of a new area is not restricted. The option is excluded only if personal circumstances present risk throughout the country (para 116 of Judgment).

See also: [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)  
[Caselaw](#) (section 2.5 above)

**3.8.12 Conclusion.** Societal hostility, forced marriage and discrimination against LGBT persons exists in Zimbabwe. However the Tribunal in LZ (homosexuals) concluded that they were ‘unable to accept that homosexuals are being persecuted as a generality when concrete examples are few, and when that standpoint is not supported by the best placed local observers’ (para 109 of Judgement). The Tribunal also noted that personal circumstances do place some gays and lesbians at risk and, although not decisive on its own, being openly gay may increase risk (para 116). Given the continued anti-homosexual rhetoric and reality in Zimbabwe, case owners should ensure that they obtain the latest COI. Where gay men and lesbians do encounter local hostility they may be able to avoid this by moving elsewhere in Zimbabwe if it would not be unduly harsh to expect them to do so. Special attention should be placed on lesbian claimants as LZ (homosexuals) found that lesbians “on their own or together, may face greater difficulties than gay men” (para. 116 of Judgement). Each case must however be examined on its own merits. Where caseowners conclude that a claimant’s sexual orientation and personal circumstances places them at real risk of persecution in Zimbabwe then they should be granted asylum because gay men, lesbians, bisexuals and transgender persons in Zimbabwe may be considered to be members of a particular social group.

**3.8.13** If an individual chooses to live discreetly because he/she wants to avoid embarrassment or distress to her or his family and friends he/she will not be deemed to have a well founded fear of persecution and will not qualify for asylum. This is because he/she has adopted a lifestyle to cope with social pressures and not because he/she fears persecution due to her or his sexual orientation

**3.8.14** If an individual chooses to live discreetly because he/she fears persecution if he/she were to live as openly gay, lesbian or bisexual then he/she will have a well founded fear and should be granted asylum. It is important that gay, lesbian and bisexual people enjoy the right to live openly without fear of persecution. They should not be asked or be expected to live discreetly because of their well founded fear of persecution due to their sexual orientation.

### **3.9 General humanitarian situation**

**3.9.1** Some applicants may state that the general humanitarian situation in Zimbabwe is so poor that it would be a breach of Article 3 of ECHR to return them to Zimbabwe.

**3.9.2** Significant improvement is evident in areas of food security and basic social service delivery as a result of joint efforts by Government and aid partners. Led by the Government and with the support of the humanitarian community, major disease outbreaks have been prevented or responded to in an effective and timely manner, averting large-scale epidemics. Improved humanitarian access has led to better

targeted assistance, while the gains achieved through concerted humanitarian action in the last couple of years need to be consolidated by ensuring strong linkages to medium-term and long term programming. However, there are still significant humanitarian needs. One in every three children in Zimbabwe is chronically malnourished and malnutrition contributes to nearly 12,000 child deaths each year.<sup>60</sup>

- 3.9.3** Christian Aid reported that every year, millions of people rely on food aid in Zimbabwe. In 2011 the number reduced, but drought and erratic rainfall patterns, a ruined infrastructure and an economy in collapse, means millions of people still can't grow enough food to survive. Until food insecurity is properly addressed, outbreaks of diseases such as cholera, anthrax, TB and malaria will continue to claim lives.<sup>61</sup>
- 3.9.4** In November 2011 the United Nations World Food Program reported that more than a million Zimbabweans would require food assistance between November 2011 and March 2012, despite improvements in domestic grain production. The WFP said the warning is based on a recent study by the government, United Nations agencies and other donor organisations which found that 12 percent of the rural population won't be able to feed itself through the pre-harvest hunger season. Those most at risk are low-income families hit by failed harvests in the past year and households with orphans and other vulnerable children. Production of staple maize has recovered since Zimbabwe's national unity government was formed in early 2009, rising from less than 500,000 tonnes in the 2007-2008 season to 1.45 million tonnes in the 2010-2011 cropping season. But production remains below the required 2 million tonnes the country needs to be self-sufficient. "Although food is generally available in many rural areas, it is too expensive for those with limited resources," the WFP said in a statement.<sup>62</sup>
- 3.9.5** HIV infection can lead to malnutrition, while poor diet can in turn speed the infection's progress.<sup>63</sup> The country's economic collapse in the past decade has significantly strained the ability of poor HIV-positive Zimbabweans to feed themselves and their families when on ARVs.<sup>64</sup> In December 2011 the Zimbabwean reported that NGOs in Zimbabwe have embarked on a feeding programmes to benefit people living with HIV and AIDS in Marange and Bocha but have been affected by the politicisation. The villagers are meant to receive food hampers containing packets of beans, cooking oil, mealie meal, rice, soap and many other items, on a weekly basis. However, some ZANU-PF officials and war veterans in Marange have taken over the programme and are demanding that all beneficiaries join the party if they want to continue receiving the hampers. Some NGOs distributing food aid and medication in the district have suspended their operations following interference by ZANU-PF.<sup>65</sup> The Zimbabwe Peace Project (ZPP) publishes monthly statistics of food and other forms of aid related violations by province.<sup>66</sup>

<sup>60</sup> Civil Society Monitoring Mechanism, Annual review of the performance of the inclusive government of Zimbabwe

February 2010 - February 2011, (page 21)

[http://www.cisomm.org/index.php?option=com\\_docman&task=doc\\_download&gid=55&Itemid=5](http://www.cisomm.org/index.php?option=com_docman&task=doc_download&gid=55&Itemid=5)

<sup>61</sup> Christian Aid, Christian Aid in Zimbabwe, <http://www.christianaid.org.uk/whatwedo/africa/zimbabwe.aspx>

<sup>62</sup> Voice of America, One Million Zimbabweans to Need Food Aid Through March 2012 – WFP, 21 November 2011 <http://www.voanews.com/zimbabwe/news/WFP-Says-One-Million-Zimbabweans-Need-Food-Aid-Through-Early-2012-134269468.html>

<sup>63</sup> AVERT, HIV and Nutrition, <http://www.avert.org/hiv-nutrition.htm>

<sup>64</sup> IRIN, [Food voucher scheme benefits HIV-positive people](#), 20/10/2011.

<sup>65</sup> The Zimbabwean, Zanu blocks food aid, 7 December 2011, <http://www.thezimbabwean.co.uk/news/zimbabwe/55327/zanu-blocks-food-aid.html>

<sup>66</sup> Zimbabwe Peace Project report archive

(see also 4.4.5 for difficulties in accessing medical treatment).

- 3.9.6** An International Displacement Monitoring Centre report, dated 21 May 2010, noted that there were large differences across the country as to how people obtained their food, with many in the most fertile areas of the country relying on their “own production” of food, people in other areas, such as more arid and urban areas, relied upon purchasing food. The report noted that while “Diaspora remittances play[ed] a major role in supporting household food needs ...” very poor households, such as “... elderly-headed households, families hosting orphans or with disabled or chronically ill members, those with high levels of dependants, child-headed households and the destitute who lack any resources ...” were unable to “... purchase sufficient food, even at regulated prices ...” An earlier report by the Solidarity Peace Trust entitled *Gone to Egoli*, dated 30 June 2009, found that poorer rural families were less likely to receive remittances than the urban middle classes.<sup>67</sup>
- 3.9.7** According to the 2012 UNHCR Zimbabwe Consolidated Appeal, “the humanitarian situation in Zimbabwe continues to be stable but fragile due to many factors. The main humanitarian needs in Zimbabwe relate to food security, the continued threat of disease outbreaks, and requirements relating to specific needs of a wide range of highly vulnerable groups, such as child- or female-headed households, the chronically ill, internally displaced people (IDPs), returned migrants, and refugees and asylum-seekers.”<sup>68</sup> In February 2012 VOA reported that in recent months, hundreds of Zimbabweans in the country’s capital have contracted typhoid with as many as 50 new cases reported daily, Harare residents stated that the government’s response to the outbreak is inadequate.<sup>69</sup>

**See also:**    [Actors of protection](#) (section 2.3 above)  
                  [Internal relocation](#) (section 2.4 above)  
                  [Caselaw](#) (section 2.5 above)

- 3.9.8 Conclusion.** General country conditions are stable. There is sufficient food in the shops for those who can pay for it. Generally, poverty and lack of resources will not amount to a breach of Article 3 ECHR, however, each case should be considered on its individual merits taking into account factors including the age and state of health of the applicant.
- 3.9.9** Where the conditions on return will be so extreme that returning the applicant would, taking his or her individual characteristics and circumstances into account, give rise to a real risk of inhuman or degrading treatment, a grant of Discretionary Leave will be appropriate.

## **3.10 Prison conditions**

- 3.10.1** Applicants may claim that they cannot return to Zimbabwe due to the fact that there

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[http://www.kubatana.net/html/archive/archorg\\_index.asp?orgcode=zim028](http://www.kubatana.net/html/archive/archorg_index.asp?orgcode=zim028)

<sup>67</sup> COIS Zimbabwe Country Report July 2012 (para 26.15)

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>68</sup> UNOCHA, Zimbabwe 2012 Consolidated Appeal, undated (regularly updated).

<http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1298452>

<sup>69</sup> VOA, Zimbabweans Worry About Rise in Typhoid Cases, 2 February 2012

<http://www.voanews.com/english/news/africa/southern/Hundreds-Suffer-Typhoid-in-Zimbabwe-Capital-138560284.html>

is a serious risk that they will be imprisoned on return and that prison conditions in Zimbabwe are so poor as to amount to torture or inhuman treatment or punishment.

**3.10.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

**3.10.3 Consideration.** Conditions in the 46 main prisons and 22 satellite prisons were harsh, although there were some improvements during the year. Prison guards beat and abused prisoners. While prisons operated below capacity, NGOs reported that overcrowding continued due to dilapidated infrastructure, lengthy pretrial detentions, and prolonged trials. The occupation of cells in each prison by prison guards also contributed to overcrowding.<sup>70</sup>

**3.10.4** The government's 46 main and 22 satellite prisons were designed for a maximum of 17,000 prisoners. There are two remand prisons and one juvenile prison in the Zimbabwe Prison Service (ZPS). The ZPS estimated that there were between 13,500 and 14,000 prisoners in the system at year's end, a number confirmed by the International Committee of the Red Cross. This constituted a significant reduction from a 2008 NGO estimate of 35,000 and the 2008 government estimate of 22,000 to 24,000.<sup>71</sup>

**3.10.5** In March 2011, Human Rights Watch reported that "the use of torture by state agents is endemic in Zimbabwe"; that "torture and ill-treatment inflicted has included severe beatings on the back, buttocks and soles of the feet with blunt objects, forcing victims to seat or stand in uncomfortable positions for hours on end, as well as false executions and threats of death"; and that "the government has repeatedly refused to investigate allegations of torture by police and other state agents, despite court orders".<sup>72</sup> According to Human Rights Watch, torture is used both as an element of coercive interrogations and as a form of punishment.<sup>73</sup> The Civil Society Monitoring Mechanism also noted that "Those remanded in custody (i.e. suspects and not criminals) have been subjected to assault and torture, denial of their rights to receive legal and medical assistance, denial of access to justice and were kept in custody beyond the legal provision".<sup>74</sup> Poor sanitary conditions resulted in disease, including diarrhoea, measles, tuberculosis, and HIV/AIDS-related illnesses. Medical care, lighting, and ventilation were inadequate. There were insufficient mattresses, warm clothing, sanitary supplies, and hygiene products.<sup>75</sup>

**3.10.6** In marked improvement from previous years, however, prisoners received at least

<sup>70</sup> <sup>70</sup> US State Department Human Rights Report 2011; Zimbabwe, section 1c [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>71</sup> Human Rights Watch, Perpetual Fear; Impunity and Cycles of Violence in Zimbabwe, 08/03/2011, V. Failure to Investigate Torture by State Agents. <http://www.hrw.org/node/96946>

<sup>72</sup> Human Rights Watch, Perpetual Fear; Impunity and Cycles of Violence in Zimbabwe, 08/03/2011, V. Failure to Investigate Torture by State Agents. <http://www.hrw.org/node/96946>

<sup>73</sup> United Nations Human Rights Council, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1, 22/07/2011, para 23. [http://ap.ohchr.org/documents/dpage\\_e.aspx?c=207&su=196](http://ap.ohchr.org/documents/dpage_e.aspx?c=207&su=196)

<sup>74</sup> Civil Society Monitoring Mechanism CISOMM, February- March Bi-monthly Report 2011, 09/05/2011. [http://www.cisomm.org/index.php?option=com\\_docman&task=doc\\_download&gid=57&Itemid=5](http://www.cisomm.org/index.php?option=com_docman&task=doc_download&gid=57&Itemid=5)

<sup>75</sup> US State Department Human Rights Report 2011; Zimbabwe, section 1c [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

two meals a day as a result of the revitalisation of the country's 23 prison farms; prisoners received one daily meal the previous year. Like most citizens of the country, prisoners had no access to potable water. The sale of prison farm products allowed authorities to address some shortages, and each prisoner was provided with two uniforms during the year.<sup>76</sup>

**3.10.7** NGOs estimated that there were 412 women in prison, 250 of whom were convicted as of June 2010, and 72 children under the age of three lived with their incarcerated mothers. NGOs reported that female prisoners generally fared better than males. Female prisoners were held in separate wings of prisons and were guarded by female officials. Women generally received more food from their families than male prisoners. However, children living with their incarcerated mothers were required to share their mothers' food allocation. Prison officials also appeared to have prioritised food distribution to women. NGOs were unaware of women reporting rapes or physical abuse, which were common among the male population. NGOs suggested that female guards may have been more diligent about protecting female prisoners from abuse, and female prisoners may not have reported abuse. However, female prisoners continued to endure significant hardship. For example, prisons did not provide feminine sanitary supplies for women, resulting in frequent fungal infections, as female inmates were forced to reuse torn pieces of dirty blankets during their menstrual cycle. Pregnant and nursing mothers were not provided additional care or food rations. In addition, Amnesty International reported in June 2011 that it had documented several cases where "the lives or health of women human rights defenders and their young children have been put at risk while in police custody".<sup>77</sup> In September 2011, WOZA submitted a petition to Zimbabwe's highest court documenting that incarcerated women were being forced to take off their underwear and shoes, and that their cells have no light or sanitation.<sup>78</sup>

**3.10.8** There was one juvenile prison, but juveniles were also held in adult prisons throughout the country. Officials generally tried to place juvenile inmates in separate cells. Juveniles were generally sent to prison instead of to reformatory homes, as stipulated in the Children's Act. Juveniles were particularly vulnerable to abuse by prison officials and prisoners, and one church group confirmed two cases of abuse against juveniles by year's end. In both cases the Department of Social Services took over the investigation.<sup>79</sup>

**3.10.9 Conclusion** Prison conditions in Zimbabwe are harsh and taking into account the levels of poor sanitation, levels of abuse including torture and lack of food may reach the article 3 threshold in some cases but assessment must be done on a case by case basis. The individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention, the likely type of detention facility and the individual's age, gender and state of health. Where individual applicants are able to demonstrate a

<sup>76</sup> US State Department Human Rights Report 2011; Zimbabwe, section 1c  
[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>77</sup> Amnesty International, Briefing to the pre-session working-group of the UN Committee on the Elimination of Discrimination against Women - 51st session, 24/06/2011.  
<http://www.amnesty.org/en/library/asset/AFR46/014/2011/en/eefbe5b4-e952-41ba-8da1-beb5fe42da29/afr460142011en.pdf>

<sup>78</sup> Independent Online, Zim police cells 'inhumane', 27/09/2011. <http://www.iol.co.za/news/africa/zim-police-cells-inhumane-1.1145359>

<sup>79</sup> US State Department Human Rights Report 2011; Zimbabwe, section 1c  
[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

real risk of imprisonment on return to Zimbabwe (and exclusion is not justified), a grant of Humanitarian Protection may be appropriate.

#### **4. Discretionary Leave**

**4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

**4.2** With particular reference to Zimbabwe the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should not imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and the Asylum Instructions on Article 8 ECHR.

#### **4.3 Minors claiming in their own right**

**4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, support and care arrangements in place for minors with no family in Zimbabwe. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

#### **4.4 Medical treatment**

**4.4.1** Applicants may claim they cannot return to Zimbabwe due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

**4.4.2** People in Zimbabwe have improved access to health care; improved access to health care in Harare's suburbs was available in 12 polyclinics in the city which covered a catchment population of 1.2 million people.<sup>80</sup>

**4.4.3** Since the formation of the Government of National Unity improvements in the economy and assistance from international NGOs had meant that the public health system is starting to function again. Hospitals that only two years previously had been empty and understaffed are now operating successfully with good levels of staffing, service, and care. More complex testing and treatments, such as dialysis, CD4 counts, and bone marrow biopsies, are also being offered. There continued to be shortages of essential drugs.<sup>81</sup>

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<sup>80</sup> COIS Zimbabwe Country Report July 2012 (para 25.01)  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>81</sup> COIS Zimbabwe Country Report July 2012 (para 25.06)  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 4.4.4** The International Committee of the Red Cross (ICRC) began downsizing its support to the polyclinics in 2010, with donations covering 75% of the requirements for drugs, compared with nearly 100% in 2009; the remaining 25% was met by the National Pharmaceutical Company of Zimbabwe and UNICEF. In January 2010, the health authorities in two districts in Masvingo and Matabeleland North took over the supply of drugs and medical materials to 6 of the 11 rural health centres and 1 of the 2 referral hospitals supported by the ICRC since 2006. Following a final ICRC donation, they also started supplying the remaining six health facilities by the end of the month.<sup>82</sup> There have been major improvements in the health sector. People are getting drugs, many provided by humanitarian organisations. However, the cost of healthcare even in public hospitals puts it beyond the financial reach of many.<sup>83</sup>
- 4.4.5** In 2012, Human Rights Watch noted that despite “a decline in HIV prevalence over the past decade and the adoption of new guidelines on treatment in 2011, the number of HIV-positive Zimbabweans requiring but not receiving treatment remained high”.<sup>84</sup> In November 2011, Medecins Sans Frontieres reported that “most HIV/AIDS patients are now failing to get free ART due to high admission fees charged by government hospitals”, with some hospitals “charging as much as \$30 and most people, especially those in rural areas, cannot afford these fees”.<sup>85</sup> AIDSPortal reported that city health officials were “struggling to cope with ever-growing waiting lists of people in need of HIV treatment”,<sup>86</sup> Nurses in Harare reportedly told IRIN news that low wages had sometimes led staff to sell ARVs that were available for free to HIV-positive people.<sup>87</sup> The Zimbabwean reported that Tinotenda Mabvure had to pay \$50 to bribe the nurse to access ARVs at her local satellite clinic<sup>88</sup> and also that ZANU-PF supporters had prevented MDC supporters living with HIV and AIDS from accessing treatment.<sup>89</sup>
- 4.4.6** Persons with mental disabilities also suffered from inadequate medical care and general provision of health services. There were eight centralised mental health institutions in the country with a capacity of more than 1,300 patients, in addition to the three special institutions run by the ZPS for long-term patients and those considered to be dangerous to society. Inpatients in the eight centralised institutions received cursory screening, and most waited for at least one year for a full medical review. A shortage of drugs and adequately trained mental health professionals resulted in patients not being properly diagnosed and not receiving adequate therapy. There were fewer than 10 certified psychiatrists working in public and private clinics and teaching in the country. There was a 50 percent vacancy rate for

<sup>82</sup> COIS Zimbabwe Country Report July 2012 (para 25.01)

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>83</sup> COIS Zimbabwe Country Report July 2012 (para 25.05)

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>84</sup> Human Rights Watch, World Report 2012, 22/01/ 2012. <http://www.hrw.org/world-report-2012/world-report-2012-zimbabwe-0>

<sup>85</sup> SW Radio Africa, Hospital fees blocking access to free HIV treatment, 30/11/2011.

<http://www.swradioafrica.com/2011/11/30/hospital-fees-blocking-access-to-free-hiv-treatment/>

<sup>86</sup> AIDSPortal, Zimbabwe: Health sector battles ARV shortages, 19/02/2011

<http://www.aidsportal.org/web/guest/document?view=object&loc=/db/Domain/62756/Data/62776/Atom/UC-Contribute-62776-10113-20100630-120837&id=4e08ee01-e182-4086-a678-ccdcbcb8e984>

<sup>87</sup> Integrated Regional Information Networks News (IRIN), Zimbabwe: Low morale erodes public health gains, 03/12/2010. <http://www.irinnews.org/Report.aspx?ReportID=91283>

<sup>88</sup> The Zimbabwean, Zimbabwe: Health sector battles ARV shortages, 14/01/2011.

<http://www.thezimbabwean.co.uk/news/36706/health-sector-battles-arv-shortages.html>

<sup>89</sup> The Zimbabwean, MDC-T seeks to free Mbare, 05/08/2011.

<http://www.thezimbabwean.co.uk/news/zimbabwe/51515/mdc-t-seeks-to-free.html>

psychiatric-trained nurses. More than 90 percent of the available psychiatric services were provided at the mental institution in Bulawayo. NGOs reported patients subjected to deplorable living conditions due in part to shortages of food, water, clothing, and sanitation. Budgetary constraints and limited capacity at these institutions resulted in persons with mental disabilities being kept at home and cared for by family, normally in chains and without treatment.<sup>90</sup>

**See also:** [Caselaw](#) (section 2.5 above)

**4.4.7** The Article 3 threshold will not be reached in the large majority of medical cases and a grant of Discretionary Leave will therefore not usually be appropriate save in very exceptional cases. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

## **5. Returns**

**5.1** There is no policy which precludes the enforced return to Zimbabwe of failed asylum seekers who have no legal basis of stay in the United Kingdom.

**5.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules.

**5.3** Zimbabwean nationals may return voluntarily to any region of Zimbabwe at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.

**5.4** The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Zimbabwe. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Zimbabwean nationals wishing to avail themselves of this opportunity for assisted return to Zimbabwe should be put in contact with Refugee Action Details can be found on Refugee Action's web site at [www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx](http://www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx)

Country Specific Litigation Team  
Operational Policy & Rules Unit  
Strategy & Intelligence Group  
UK Border Agency  
August 2012

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<sup>90</sup> COIS Zimbabwe Country Report July 2012 (para 25.52)  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>