

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	81
Land:	Zimbabwe
Kilde:	British Home Office
Titel:	Operational Guidance Note
Udgivet:	5. april 2011
Optaget på baggrundsmaterialet:	21. september 2011



OPERATIONAL GUIDANCE NOTE

ZIMBABWE

CONTENTS

1. Introduction	1.1 – 1.4
2. Country assessment	2.1 – 2.2
Actors of protection	2.3
Internal relocation	2.4
Country guidance caselaw (applicable to all categories of claim)	2.5
3. Main categories of claims	3.1 – 3.5
MDC supporters, human rights defenders and other perceived opponents of ZANU-PF	3.6
Teachers	3.7
Gay men, lesbians, bisexual and transgender persons	3.8
General humanitarian situation	3.9
Prison conditions	3.10
4. Discretionary Leave	4.1 – 4.2
Minors claiming in their own right	4.3
Medical treatment	4.4
5. Returns	5.1 – 5.7
6. List of source documents	

1. Introduction

- 1.1** This document provides UKBA 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. Case owners 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 internet at:

http://www.homeoffice.gov.uk/rds/country_reports.html

- 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 must refer to 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://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/human-rights-report-2009>

2.3 *Actors of protection*

- 2.3.1** Caseowners 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 Zimbabwean 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.¹ Police were poorly trained and equipped, underpaid, and corrupt. Severely depleted human and material resources, especially fuel, further reduced police effectiveness. Corruption continues in part due to low salaries. Security forces perpetrate government-sponsored politically motivated violence. Police routinely and violently disrupt public gatherings and demonstrations, and they torture opposition and civil society activists in their custody.²
- 2.3.3** Experts say the most powerful arm of Zimbabwe's security apparatus is the Central Intelligence Organization (CIO) and 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 organization 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.³
- 2.3.4** The performance of Zimbabwe's judiciary and magistracy is variable, due in part to political interference and the patronage system that characterises Zimbabwe.⁴ The accused are often denied access to counsel and a fair, timely trial, and the government has repeatedly refused to enforce court orders. It has also replaced senior judges or pressured them to resign by stating that it could not guarantee their security; judges have been subject to extensive physical harassment. The vacancy of nearly 60 magistrate posts has caused a backlog of some 60,000 cases.⁵

¹ COI Service Zimbabwe Country Report March 2011 Para 8.09)

² COI Service Zimbabwe Country Report March 2011 Para 8.10)

³ COI Service Zimbabwe Country Report March 2011 Para 8.18)

⁴ FCO Human Rights Report 2009

⁵ COI Service Zimbabwe Country Report March 2011 (Para 10.06)

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, 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** In the country guidance case of EM and Others (Returnees) Zimbabwe CG [2011] UKUT 98(IAC), the Tribunal found that:
- (i) As a general matter, Zimbabweans without Zanu-PF connections, returning from the UK after a significant absence to live in a rural part of Mashonaland West, Mashonaland central, Mashonaland East, Manicaland, Masvingo or Midlands province would face a real risk of persecution because of a continuing risk of being required to demonstrate loyalty to ZANU-PF [para 189 of judgment but note also the exceptions in paragraph 190].
 - (ii) In respect of Matabeleland, the Tribunal found that as a general matter, at the present time, a person returning from the UK to Matabeleland is highly unlikely to face any significant difficulty from ZANU-PF elements, including for this purpose members of the security forces. This would be so even if the person is a MDC member or supporter [para 197 of judgment].
 - (iii) In respect of Harare, the Tribunal concluded that at the present time a person having no significant MDC profile returning to a high-density area of Harare would not face a real risk of having to prove loyalty to ZANU-PF in order to avoid serious ill-treatment [para 204 of judgment] (albeit that they are likely to face more difficulties than someone returning to a low density area of Harare). A returnee to Harare will generally face no significant difficulties, if going to a low or medium density area.
 - (iv) The position in Bulawayo was been found to be better than that in Harare. The Tribunal concluded that a person returning to Bulawayo at the current time from the UK is not reasonably likely to face a "loyalty test" or otherwise to suffer the adverse attention of ZANU-PF (including the security forces). That is so even if he or she has a significant MDC profile [para 209 of judgment].
 - (v) Relocation to Harare or, in particular, Bulawayo may be an option for a person facing risk of persecution in rural Zimbabwe [paras 224 and 225 of judgment] subject of course to the requirements that such relocation not be unduly harsh. In general, it is unlikely that a person with a well-founded fear of persecution in a major urban centre such as Harare will have a viable internal relocation alternative to a rural area in the Eastern provinces. Relocation to Matabeleland (including Bulawayo) may be negated by discrimination, where the returnee is Shona.

- 2.4.4** On the question of internal relocation to Bulawayo, in paragraph 225 of EM and Others the Tribunal said “*we accept the evidence of the appellants that a Shona, without family or other significant contacts in Bulawayo, seeking to move to that city from outside Matabeleland, is likely to face social difficulties...in particular, he or she may face discrimination in relation to jobs and housing. It is, however, apparent from the evidence that in previous decades there was a significant pattern of migration of Shona to Bulawayo in search of work, and that, as a result, some 20% of the population of that city is Shona. It would, accordingly, not be necessary for the newcomer to speak Ndebele, in order to get by in Bulawayo, although linguistic problems may be relevant in determining the issue of whether it would be unreasonable or unduly harsh for such a person to live in that city*”. Therefore, although there may be some societal discrimination for Shona people in Bulawayo each case will need to be considered on its facts to determine whether it would be unreasonable or unduly harsh to expect them to relocate. There was no general finding in EM and Others that this discrimination amounts to persecution or a breach of Article 3.
- 2.4.5** As regards relocation to Harare, the Tribunal concluded [at paragraph 204 of EM and Others that, “*.. at the present time, although a person having no significant MDC profile, returning to a high-density area of Harare, is likely to face more difficulties than someone returning to a low-density area, he or she would not at present face a real risk of having to prove loyalty to ZANU-PF in order to avoid serious ill-treatment. So far as living conditions in high-density areas are concerned ... We do not conclude from this that anyone having to live in such a high density area would be exposed to inhuman or degrading treatment contrary to Article 3.Whether any individual having to live rough in shanty accommodation or other grossly overcrowded and insecure arrangements would be exposed to treatment of this level of severity would depend on an individual assessment of circumstances including age, gender, health, earning capacity, social assistance arrangements, the presence of young children and the like.*”
- 2.4.6** 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. The burden of proof is on the applicant to show that internal relocation within Zimbabwe would either not avoid the risk feared or would in their particular circumstances be unduly harsh. In considering the economic and humanitarian conditions which a returnee would face if he relocated internally, and whether these would be unduly harsh, caseowners should bear in mind the assistance that is available for voluntary returnees through the assisted voluntary returns (AVR) packages.

2.5 Country guidance caselaw (applicable to all categories of claims).

HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094 Failed asylum seekers do not, as such, face a risk of being subjected, on return to Zimbabwe, to persecution or serious ill-treatment at the airport. That will be the case whether the return is voluntary or involuntary, escorted or not. The process of screening returning passengers is an intelligence led process. The Central Intelligence Organisation (CIO) will generally only be interested in those they have identified in advance from the passenger manifest (para 265) because they fall into one of the accepted risk categories (para 266). The fact of having made an asylum claim abroad is not something that in itself will give rise to adverse interest on return.

EM and Others (Returnees) Zimbabwe CG [2011] UKUT 98(IAC). Evaluating the position as at the end of January 2011, the Tribunal replaced the previous country guidance in RN (Returnees) Zimbabwe CG [2008] UKAIT 00083, with the following:

- (1) As a general matter, there is significantly less politically motivated violence in Zimbabwe, compared with the situation considered by the AIT in RN. In particular, the evidence does not show that, as a general matter, the return of a failed asylum seeker from the United Kingdom, having no significant MDC profile, would result in that person facing a real risk of having to demonstrate loyalty to the ZANU-PF.
- (2) The position is, however, likely to be otherwise in the case of a person without ZANU-PF connections, returning from the United Kingdom after a significant absence to a rural area of Zimbabwe, other than Matabeleland North or Matabeleland South. Such a person may well find it difficult to avoid adverse attention, amounting to serious ill-treatment, from ZANU-PF authority

figures and those they control. The adverse attention may well involve a requirement to demonstrate loyalty to ZANU-PF, with the prospect of serious harm in the event of failure. Persons who have shown themselves not to be favourably disposed to ZANU-PF are entitled to international protection, whether or not they could and would do whatever might be necessary to demonstrate such loyalty (RT (Zimbabwe) [2010] EWCA Civ 1285).

- (3) The situation is not uniform across the relevant rural areas and there may be reasons why a particular individual, although at first sight appearing to fall within the category described in the preceding paragraph, in reality does not do so. For example, the evidence might disclose that, in the home village, ZANU-PF power structures or other means of coercion are weak or absent.
- (4) In general, a returnee from the United Kingdom to rural Matabeleland North or Matabeleland South is highly unlikely to face significant difficulty from ZANU-PF elements, including the security forces, even if the returnee is a MDC member or supporter. A person may, however, be able to show that his or her village or area is one that, unusually, is under the sway of a ZANU-PF chief, or the like.
- (5) A returnee to Harare will in general face no significant difficulties, if going to a low-density or medium-density area. Whilst the socio-economic situation in high-density areas is more challenging, in general a person without ZANU-PF connections will not face significant problems there (including a "loyalty test"), unless he or she has a significant MDC profile, which might cause him or her to feature on a list of those targeted for harassment, or would otherwise engage in political activities likely to attract the adverse attention of ZANU-PF.
- (6) A returnee to Bulawayo will in general not suffer the adverse attention of ZANU-PF, including the security forces, even if he or she has a significant MDC profile.
- (7) The issue of what is a person's home for the purposes of internal relocation is to be decided as a matter of fact and is not necessarily to be determined by reference to the place a person from Zimbabwe regards as his or her rural homeland. As a general matter, it is unlikely that a person with a well-founded fear of persecution in a major urban centre such as Harare will have a viable internal relocation alternative to a rural area in the Eastern provinces. Relocation to Matabeleland (including Bulawayo) may be negated by discrimination, where the returnee is Shona.
- (8) Internal relocation from a rural area to Harare or (subject to what we have just said) Bulawayo is, in general, more realistic; but the socio-economic circumstances in which persons are reasonably likely to find themselves will need to be considered, in order to determine whether it would be unreasonable or unduly harsh to expect them to relocate.
- (9) The economy of Zimbabwe has markedly improved since the period considered in RN. The replacement of the Zimbabwean currency by the US dollar and the South African rand has ended the recent hyperinflation. The availability of food and other goods in shops has likewise improved, as has the availability of utilities in Harare. Although these improvements are not being felt by everyone, with 15% of the population still requiring food aid, there has not been any deterioration in the humanitarian situation since late 2008. Zimbabwe has a large informal economy, ranging from street traders to home-based enterprises, which (depending on the circumstances) returnees may be expected to enter.
- (10) As was the position in RN, those who are or have been teachers require to have their cases determined on the basis that this fact places them in an enhanced or heightened risk category, the significance of which will need to be assessed on an individual basis.
- (11) In certain cases, persons found to be seriously lacking in credibility may properly be found as a result to have failed to show a reasonable likelihood (a) that they would not, in fact, be regarded, on return, as aligned with ZANU-PF and/or (b) that they would be returning to a socio-economic milieu in which problems with ZANU-PF will arise. This important point was identified in RN, and remains valid.

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. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. 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, torture, 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 asylum, Humanitarian Protection, sufficiency of protection and internal

relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of Zimbabwean 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, have a well-founded fear of 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 Policy 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 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 the Asylum Policy Instruction on 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 a non-biometric visa. Asylum applications matched 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. 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.⁶ In January 2011 the smaller faction of the MDC announced that it had elected Welshman Ncube as leader of the party. Ncube replaces Mutambara as leader of the faction, but Mutambara retains the post of Deputy Prime Minister.⁷

- 3.6.3** The Inclusive Government is a transitional arrangement. Under the GPA, a cross-party Constitutional Parliamentary Committee (COPAC) 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. New elections are scheduled to be held once a new constitution has been drafted and approved at referendum. The process on constitutional reform was delayed by political wrangling and logistical concerns but public outreach eventually started in June 2010 and was completed in October.⁸ Violence marred the Constitutional Outreach Programme process with a spate of attacks on human rights activists by supporters of ZANU-PF and some public meetings were abandoned in the capital, Harare, and Mutare because of violence blamed on ZANU-PF youths.⁹
- 3.6.4** In the country guidance case of EM and Others the Tribunal found that it is plain that there has been a material change in the risk or persecution or serious ill-treatment in Zimbabwe compared with the position analysed by the Tribunal in the previous country guidance case of RN (Returnees) Zimbabwe CG [2008] UKAIT 00083 [para 141 of judgment]. Importantly the Tribunal stated that it did not consider that the evidence shows that, as a general matter, the return of a failed asylum seeker from the United Kingdom, having no significant MDC profile, would result in that person facing at present a real risk of having to demonstrate loyalty to ZANU-PF [para 143 of judgment].
- 3.6.5** The Tribunal also found that the incidence of roadblocks has significantly diminished and that any risk to a person who is not an MDC activist being challenged to demonstrate allegiance whether at a roadblock or during a search of a high-density urban area for MDC activists is currently “sporadic and random” [para 153 of judgment]. Further, the Tribunal found as a general matter, the fact of having claimed asylum in the United Kingdom will not of itself be a factor of any particular significance in the assessment of risk. However, in some cases, such as that of a returnee to certain rural areas, it will be part of a package of attributes that may well give rise to a real risk [para 154 of judgment].
- 3.6.6** The Tribunal also considered evidence regarding incidents of violence and intimidation associated with the COPAC process. They concluded that the problems emanating from the COPAC exercise between June – October 2010 do not justify the view that there has been a significant deterioration in general country conditions. However, they have noted that in some instances the combination of coercion to attend meetings and the nature of threats made may be capable of being persecutory within the ambit of the Refugee Convention [para 173 of judgment]. Nevertheless, this did not mean that as a general matter everyone living in rural areas is suffering persecution.
- 3.6.7** The Tribunal found that there were differences in risks between urban and rural areas (and the situation is not uniform across the rural areas) as follows:
- (i) Zimbabweans without ZANU-PF connections, returning from the UK after a significant absence to live in Mashonaland West, Mashonaland central, Mashonaland East, Manicaland, Masvingo or Midlands province would face a real risk of persecution because of a continuing risk of being required to demonstrate loyalty to ZANU-PF [para 189 of judgment].
 - (ii) In respect of Matabeleland, the Tribunal found that as a general matter, at the present time, a person returning from the UK to Matabeleland is highly unlikely to face any significant difficulty from ZANU-PF elements, including for this purpose members of the

⁶ FCO Country Profile; Zimbabwe July 2010

⁷ COI Service Zimbabwe Country Report March 2011 Para 4.09)

⁸ FCO Country Profile; Zimbabwe July 2010.

⁹ COI Service Zimbabwe Country Report March 2011 Para 3.40 - 3.41)

security forces. This would be so even if the person is a MDC member or supporter [para 197 of judgment].

- (iii) In respect of Harare, the Tribunal concluded that at the present time a person having no significant MDC profile returning to a high-density area of Harare would not face a real risk of having to prove loyalty to ZANU-PF in order to avoid serious ill-treatment [para 204 of judgment].
- (iv) The position in Bulawayo has been found to be better than that in Harare. The Tribunal concluded that a person returning to Bulawayo at the current time from the UK is not reasonably likely to face a “loyalty test” or otherwise to suffer the adverse attention of ZANU-PF (including the security forces). That is so even if he or she has a significant MDC profile [para 209 of judgment].

3.6.8 The Zimbabwe Peace Project (ZPP) publishes monthly statistics of human rights violations (including murder, rape, kidnapping/abduction, assault, theft/looting, discrimination, malicious damage to property (MDP), unlawful detention, harassment/intimidation and displacement) in each province¹⁰. Since the IAC heard the case in EM & others there have been reports of an increase in some forms of violence in some areas of Zimbabwe, but the current underlying situation remains the same or similar to that considered by the Tribunal in EM & others. 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)

3.6.9 Conclusion. Each case must be decided on its individual facts to determine whether a particular applicant is at risk, and, if they are, whether internal relocation is available.

3.6.10 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, but there would be no interest in MDC supporters who were not active. Much will also depend on a person’s standing in society. In rural areas those considered influential (such as teachers, business people and professionals) might be at risk even for relatively low level political activity. In such cases, especially in rural areas, it could be sufficient for it simply to be known that the person concerned is an MDC supporter for them to attract adverse attention; the fact they have the potential to influence others may be sufficient – they need not be particularly active politically.

3.6.11 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). In general those returning to MDC dominated rural areas of Matabeleland North or Matabeleland South would generally be highly unlikely to face significant difficulty from ZANU-PF elements, including the security forces. Those returning to other rural areas are likely to face difficulties unless the individual concerned has connections with ZANU-PF. However in such circumstances internal relocation to Harare or, in particular, 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.

3.6.12 As regards major urban areas, a returnee to Harare will in general face no significant difficulties, if going to a low-density or medium-density area. In general returnees to a high-density areas of Harare will not face significant problems (including a loyalty test) unless he or she has a significant MDC profile, which might cause him or her to feature on a list of those targeted for harassment or would otherwise engage in political activities likely to attract the adverse attention of ZANU-PF. Returnees to Bulawayo will in general not suffer the adverse attention of ZANU-PF, including the security forces, even if he or she does have a significant MDC profile.

¹⁰ COI Service Zimbabwe Country Report March 2011 (Para 14.28)

- 3.6.13** MDC supporters, human rights defenders and other perceived opponents of ZANU-PF who are able to establish that their *activities* 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.*** For at least 10 years, teachers have been the victims of violent attacks by ZANU-PF supporters, especially around election time, with many teachers accused of supporting the opposition MDC.¹¹ The reason for much of the violence directed against teachers arose following the formation of the Movement for Democratic Change, when it identified teachers as the perfect messengers for the party, not least because of their work with voter education programmes.¹² Education was severely disrupted in 2008 with teachers being specifically targeted in post-election violence and some schools taken over as torture bases.¹³ 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.¹⁴ Reported attendance rates for teachers in October stood at just 40 per cent. During 2008 the Progressive Teachers' Union of Zimbabwe recorded the deaths of seven teachers affiliated to the union and the harassment, intimidation and even torture of more than 60 other members. None of the reported incidents of torture and ill-treatment of teachers that occurred in 2008 has been investigated and no one has been brought to justice.¹⁵
- 3.7.3** The education system in Zimbabwe is slowly being rebuilt and a \$50 million multi-donor educational transition fund which will provide textbooks and learning materials has been pledged. Private schools have started to open run by individuals, families and organisations. Conditions for teachers in Zimbabwe are financially difficult and at the beginning of 2010 many teachers went on strike due to poor pay and conditions, although some teachers received cash incentives from parents to prevent them from striking.¹⁶ There continue to be reports that teachers are victims of harassment and intimidation. It was reported in November 2010 that teachers in Zimbabwe continued to face "... serious political threats that have so far seen six being transferred at the orders of war veterans, ... Six teachers from Gwangwava Primary School in Rushinga [Mashonaland Central] were recently forcibly transferred to other schools [in Bindura, also in Mashonaland Central] ... after war veterans and ZANU-PF supporters said they did not want the teachers in their community." The six were said to have been transferred "...to ZANU-PF strongholds so that they could 'fix' them."¹⁷

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

- 3.7.4 *Conclusion.*** Being a teacher may lead to a person being 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.

¹¹ COI Service Zimbabwe Country Report March 2011 (Para 14.25)

¹² COI Service Zimbabwe Country Report March 2011 (Para 14.25)

¹³ COI Service Zimbabwe Country Report March 2011 (Para 14.26)

¹⁴ COI Service Zimbabwe Country Report March 2011 (Para 14.24)

¹⁵ UN Educational, Scientific and Cultural Organisation. [Education under attack - Zimbabwe](#). 10 Feb 2010.

¹⁶ Africa Files, Zimbabwe: Parent initiatives for teachers signal education decline, 11 March 2010: Zimbabwe journalists, Private schools sprout in Zimbabwe as public system struggles, 8 February 2010

¹⁷ COI Service Zimbabwe Country Report March 2011 (Para 14.27)

- 3.7.5** Teachers who are able to establish that their 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.*** There is an ingrained cultural, religious and political prejudice toward lesbians and gays in Zimbabwe. People who are openly gay or lesbian are often forced to endure degrading verbal assaults.¹⁸ Lesbian and bisexual women often face far more severe discrimination because of the traditional lower status of women in Zimbabwean society.¹⁹
- 3.8.3** The Zimbabwean government has a history of homophobia and Mugabe has in the past said of gays: *"What an abomination, a rottenness of culture, real decadence of culture. [Gay men and lesbians are] repugnant to my human conscience ... immoral and repulsive ... Lower than pigs and dogs ... Animals in the jungle are better than these people because at least they know that this is a man or a woman... I don't believe they have any rights at all."*²⁰
- 3.8.4** The Gays and Lesbians of Zimbabwe (GALZ) have however said that Zimbabwe is not the worst place in the world in which to be gay or lesbian even though the President, government officials and church leaders have whipped up a climate of hysterical homophobia. Nevertheless, there is 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.²¹
- 3.8.5** GALZ has also said that it is possible for a man to be openly gay in Zimbabwe. In high density areas openly gay men may face isolated violence, taunting and harassment and may also face discrimination in the provision of services on account of their sexuality. The situation is more permissive in middle class areas, where gay men enjoy respect as they are generally successful. Levels of tolerance of gay men and understanding of LGBT issues have generally increased among the public.²²
- 3.8.6** GALZ also noted that it is difficult for gay men to access health services including STI and HIV/AIDs treatment in public health facilities. This is believed to be because the service providers are intimidated by the attitudes of the President to homosexuality. This is not a problem for middle class gay men as the middle classes generally use private healthcare where there is no such discrimination.²³
- 3.8.7** Gay rights activists may be targeted by the police, CIO and CID. This will generally be in the form of harassment - these agencies will typically approach an activist and try to impart a sense of fear that what they are doing is wrong, is not acceptable and they shouldn't be encouraging others. There have been isolated cases of arbitrary arrest of gay men and gay rights activists and searches of their properties and person, often in an attempt to find such things as membership lists. Detention following such arrests tends not to be for very long - when it hears of such cases GALZ works with Zimbabwe Lawyers for Human Rights. The longest that a GALZ activist has been detained is for 6 days. Ordinary gay men are as far as GALZ is aware never detained for longer than 48 hours. GALZ is not aware of any incidents of official violence against gay men since the formation of the GNU.²⁴

¹⁸ COI Service Zimbabwe Country Report March 2011 (para 20.23)

¹⁹ COI Service Zimbabwe Country Report March 2011 (para 20.37)

²⁰ COI Service Zimbabwe Country Report March 2011 (para 20.17)

²¹ COI Service Zimbabwe Country Report March 2011 (para 20.18)

²² COI Service Zimbabwe Country Report March 2011 (para 20.31)

²³ COI Service Zimbabwe Country Report March 2011 (para 20.32)

²⁴ COI Service Zimbabwe Country Report March 2011 (para 20.13)

- 3.8.8** There were however reports of societal violence against gay men. For example a Press Institute article dated 4 December 2009 reported the case of a gay couple whose relationship was discovered by family members. The mother of one of the gay men reportedly arranged for the two men to be beaten unconscious. The resulting injuries "... required emergency medical attention ..." One of the men was reported to have lost his job and to have been shunned by the local community.²⁵
- 3.8.9** GALZ say that although general homophobia and restrictive legislation make it difficult for LGBT people in Zimbabwe to feel safe about being open about their sexuality in public spaces, the gay and lesbian social scene in Zimbabwe is "vibrant" and "flourishing" and other sources also point to two gay friendly nightclubs in the Borrowdale area of Harare; and that another gay friendly venue is The Book Café in Harare.²⁶ Bulawayo is said to be more open and tolerant and has a 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.²⁷
- 3.8.10** GALZ say that situation is much more difficult for lesbians and has not 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. This means that the number of lesbians who are open about their sexuality is much lower than the number of gay men. Most of the harassment and the cases of rape of which GALZ are aware have taken place in the high density areas. For women who have been 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 or of any cases of lesbians being detained, but there is a lack of police protection.²⁸
- 3.8.11** Human rights campaigners are fighting to have the rights of gay, lesbian and bisexual people protected in the new constitution, which would mean abolishing existing laws that make it a criminal offence for men to have sex with other men.²⁹
- 3.8.12** The laws on sodomy are set out in Section 73 of the Criminal Law (Codification and Reform) Act, which was effective from July 2006.³⁰ Sodomy carries a penalty of up to one year in prison or a fine up to US\$5,000. It has been reported that there have been no known cases of sodomy charges being used to prosecute consensual homosexual activity.³¹

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

3.8.13 Case law.

JD (Homosexual – MDC supporter – internal relocation) Zimbabwe [2004] UKIAT 00259: found that although there was societal discrimination against homosexuals there was no evidence of persecution on these grounds or ill-treatment reaching Article 3 standards. Furthermore, internal relocation was possible, even to another part of the applicant's home city.

Z A M [2002] EWCA Civ 952: The Court of Appeal found that each case had to be examined on its own merits although generally a claim based purely on homosexuality is unlikely to breach Articles 3 or 8. The mere existence of discriminatory legislation is insufficient to make out the case – consideration must be given to the possibility of prosecution.

Supreme Court. HJ & HT v SSHD [2010] UKSC 31 7 July 2010 In this case, the Supreme Court established the test which should be applied when assessing a claim based on fear of persecution because of an applicant's sexual orientation which is as follows:

²⁵ COI Service Zimbabwe Country Report March 2011 (para 20.33)

²⁶ COI Service Zimbabwe Country Report March 2011 (para 20.46)

²⁷ COI Service Zimbabwe Country Report March 2011 (para 20.45)

²⁸ COI Service Zimbabwe Country Report March 2011 (para 20.36)

²⁹ COI Service Zimbabwe Country Report March 2011 (para 20.15)

³⁰ COI Service Zimbabwe Country Report March 2011 (para 20.04)

³¹ COI Service Zimbabwe Country Report March 2011 (para 20.06)

- (i) Is the applicant gay or someone who would be treated as gay by potential persecutors in the country of origin?
- (ii) If yes, would gay people who live openly be liable to persecution in that country of origin?
- (iii) How would the applicant behave on return? If the applicant would live openly and be exposed to a real risk of persecution, he has a well-founded fear of persecution even if he could avoid the risk by living discreetly.
- (iv) If the applicant would live discreetly, why would he live discreetly? If the applicant would live discreetly because he wanted to do so, or because of social pressures (e.g. not wanting to distress his parents or embarrass his friends) then he is not a refugee. But if a material reason for living discreetly would be the fear of persecution that would follow if he lived openly, then he is a refugee.

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

3.8.14 Conclusion. Societal hostility and discrimination against LGBT persons exists in Zimbabwe, but the courts have found no evidence that there is, in general, persecution on these grounds or ill-treatment reaching Article 3 standards. Where gay men and lesbians do encounter local hostility they should be able to avoid this by moving elsewhere in Zimbabwe and it would not in most cases be unduly harsh to expect them to do so. It is therefore unlikely that a gay man or lesbian will be able to establish a claim to asylum or Humanitarian Protection on the basis of their sexuality alone.

3.8.15 Each case must however be examined on its own merits. Where caseowners conclude that a claimant is at real risk of persecution in Zimbabwe on account of their sexual orientation then they should be granted asylum because gay men, lesbians and bisexuals in Zimbabwe may be considered to be members of a particular social group.

3.8.16 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.

3.8.17 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 Treatment. In early 2009, over seven million Zimbabweans were receiving food aid. However the humanitarian situation stabilised in 2009 following a better harvest, the end of the cholera epidemic and sustained international aid. However, Zimbabwe continues to experience serious humanitarian challenges.³²

3.9.3 In 2008–09, Zimbabwe suffered its worst recorded outbreak of cholera. Official UN figures recorded nearly 100,000 cases of cholera and approximately 4,200 deaths. International assistance, including a £10 million package from the UK, played a critical role in tackling the epidemic.³³

3.9.4 The UK is the second largest bilateral donor after the US, giving £60 million in aid in 2009–10, the largest-ever UK aid programme to Zimbabwe. Our bilateral aid is channelled through the UN and NGOs, not the Zimbabwean government. It is both a response to immediate needs and an investment in Zimbabwe's future. It comprises essential food aid and healthcare, including support for the national response to HIV/AIDS, work in the water and sanitation

³² COI Service Zimbabwe Country Report March 2011 (Para 26.01)

³³ COI Service Zimbabwe Country Report March 2011 (Para 26.01)

sectors to reduce the risk of further cholera outbreaks, and the provision of seeds, fertilisers, technical assistance and school textbooks.³⁴

- 3.9.5** A report published by the United Nations Development Programme in October 2010 noted that: “Zimbabwe, once the food basket for southern African region, is now a net importer of food. The proportion of people living below the Food Poverty Line (FPL) increased from 29% in 1995 to 58% in 2003; this percentage has probably increased since then. In terms of the 2010 ZIMVAC [Zimbabwe Vulnerability Assessment Committee] Report, an estimated 1.3 million people will be food insecure at the peak of food insecurity (February and March 2011).”³⁵
- 3.9.6** 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 found that poorer rural families were less likely to receive remittances than the urban middle classes.³⁶
- 3.9.7** A report published by the Civil Society Monitoring Mechanism, covering events between March and April 2010, noted that there were no problems in the distribution of food aid, with the report noting that: “No cases were reported of NGOs operations being disrupted.”³⁷
- 3.9.8** In the country guidance case of EM and Others, the Tribunal did not consider that there had been any deterioration in the humanitarian situation in Zimbabwe, since the previous country guidance case of RN. The Tribunal concluded that “. Overall, there is no reason to doubt the British Embassy’s assessment of 6 September 2010, that “the quality of life for many Zimbabweans is now considerably better. Schools and hospitals are open. Cholera has been largely absent this year. Around 15% of the population now requires food aid. The shops are open and the shelves full. Most Harare residents are getting some water and electricity for the first time in years”. [para 218 of judgment]

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

- 3.9.9 Conclusion.** General country conditions are improving. 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.
- 3.9.10** Failed asylum seekers returning to Zimbabwe from the UK, particularly those who have taken advantage of the assistance available through the Voluntary Assistance Return and Reintegration Programme will generally have access to hard currency to pay for food. However, 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 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.

³⁴ COI Service Zimbabwe Country Report March 2011 (Para 26.01)

³⁵ COI Service Zimbabwe Country Report March 2011 (Para 26.12)

³⁶ COI Service Zimbabwe Country Report March 2011 (Para 26.15)

³⁷ COI Service Zimbabwe Country Report March 2011 (Para 26.17)

- 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.*** Prison conditions are harsh and, in some cases, life threatening. Zimbabwe's 42 prisons were designed for a maximum of 17,000 prisoners. Local NGOs and the International Committee of the Red Cross (ICRC) estimated that there were approximately 12,000 to 14,000 prisoners in the Zimbabwe Prison Service (ZPS) at the end of 2009 - a significant reduction from a 2008 NGO estimate of 35,000 and the 2008 government estimate of 22,000 to 24,000. Prison guards reportedly beat and abuse prisoners. Poor sanitary conditions and overcrowding persist, which aggravated outbreaks of cholera, diarrhoea, measles, tuberculosis, and HIV/AIDS-related illnesses.³⁸
- 3.10.4** Lawyers, NGOs, and church officials familiar with prison conditions have reported that although the situation had improved since 2008, shortages of food, water, electricity, clothing, and soap continue. In April 2009 an undercover film crew produced a documentary entitled '*Hellhole*' that depicted serious malnutrition and unsanitary conditions that directly contributed to severe cholera in prisons in late 2008 and early 2009. Local NGOs believed that the publicity from the documentary prompted the government to grant NGOs greater access to provide prisoners with food, clothing, and medical and legal services.³⁹
- 3.10.5** It has been reported that NGOs have estimated that the death rate was 40 deaths per month during 2009, a reduction from the estimated 40 to 50 deaths per week during the height of the 2008 prison crisis. Most observers attributed the dramatic decrease to the ICRC's feeding program, which was the direct result of efforts by MDC-T Deputy Minister of Justice Jessie Majome to permit the ICRC and NGOs increased access to the prisons. Most prison deaths were attributed to harsh conditions, hunger, and HIV/AIDS. NGOs continued to estimate that half of prisoners were HIV-positive; the Zimbabwe Prison Service (ZPS) did not routinely test prisoners for HIV. Due to inadequate facilities, outdated regulations, and the lack of medical personnel and medication, the majority of prisoners were consistently ill, and routine medical conditions such as hypertension, diabetes, and asthma became life threatening.⁴⁰
- 3.10.6** NGOs have estimated that there are about 500 women in prison; 43 children under the age of five lived with their incarcerated mothers. NGOs have reported that female prisoners generally fared better than males. Women generally received more food from their families than male prisoners, resulting in reduced rates of malnutrition. Prison officials also appear to have prioritised food distribution to women. NGOs were unaware of women reporting rapes or physical abuse, which were common among the male population, and suggested that female guards may have been more diligent about protecting female prisoners from abuse and that female prisoners may not have reported abuse. However, women prisoners continued to endure significant hardship. For example, prisons did not provide female 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. According to lawyers, female offenders also received sentences that were on average two to three years longer than male offenders for the same crime.⁴¹
- 3.10.7** NGOs and the Zimbabwe Prison Service (ZPS) estimated there were approximately 300 juveniles in prison facilities; the majority were being held in pre-trial detention. Although juveniles were not officially held separately from adults, officials in remand prisons generally tried to place juvenile inmates in cells separate from adults. However, an estimated 20 convicted juveniles were held in the same prison cells as adult offenders. Juveniles were

³⁸ COI Service Zimbabwe Country Report March 2011 (para 12.02)

³⁹ COI Service Zimbabwe Country Report March 2011 (para 12.02)

⁴⁰ COI Service Zimbabwe Country Report March 2011 (para 12.03)

⁴¹ COI Service Zimbabwe Country Report March 2011 (para 12.03)

particularly vulnerable to the effects of poor prison conditions, and local NGOs reported several complaints of physical and sexual abuse.⁴²

3.10.8 In October 2010 the International Committee of the Red Cross (ICRC) reported that the situation in Zimbabwe's prisons is now better than it was two years ago. The ICRC noted in particular that while still helping to improve the nutritional situation by supplementing the Zimbabwe prison Service diet, they are also upgrading prison kitchen facilities, supplying blankets and hygiene items, and enhancing prisoner's access to health care. In addition, it is improving water supply and sanitation, and reinforcing preparedness measures aimed at stemming outbreaks of diseases such as cholera. In addition the Zimbabwe Prison Service and the ICRC have organised training and workshops aimed at delivering better quality health care. The ICRC is also helping the prison service to ensure that basic equipment and essential drugs are available in prison clinics and that sick detainees receive suitable treatment.⁴³ In February 2011, the ICRC announced that in view of the improvements it would be gradually handing over full responsibility for meeting the nutritional needs of prison inmates to the Zimbabwe Prison Service.⁴⁴

3.10.9 Conclusion. Prison conditions in Zimbabwe are severe and taking into account the levels of poor sanitation, prevalence of disease, absence of medical facilities, levels of abuse and lack of food, have the potential to reach the Article 3 threshold in individual cases. 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 and state of health. Where individual applicants are able to demonstrate a 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 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 with; or (b) there are adequate reception and care arrangements. 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 on unaccompanied asylum seeking children and discretionary leave.

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.

⁴² COI Service Zimbabwe Country Report March 2011 (para 12.07)

⁴³ COI Service Zimbabwe Country Report March 2011 (para 12.04)

⁴⁴ New Zimbabwe. Red Cross to withdraw Zimbabwe prison food aid. 15 Feb 2011

- 4.4.2** The Zimbabwean healthcare system was once the envy of many African nations but had deteriorated significantly.⁴⁵ Between 1990 and 2006 life expectancy reduced from 62 to 43 years. This was mainly caused by many young adults who died of HIV-related diseases such as tuberculosis. The mortality of mothers in childbirth rose from 168 in 1990 to 725 per 100,000 births in 2007. The number of tuberculosis infections has quadrupled in that period.⁴⁶
- 4.4.3** During 2008 and into 2009 most of Zimbabwe's public health centres closed when employees went on strike protesting over poor salaries and working conditions during a severe cholera epidemic that began in August 2008 and claimed the lives of more than 4,200 people out of about 100,000 known cases. However public health facilities reopened in February 2009, when donors made money available for allowances that brought striking nurses and doctors back to work.⁴⁷
- 4.4.4** It has been reported that since the formation of the Government of National Unity in 2009 improvements in the economy and the assistance from international NGOs have resulted in improvements to the public health system. 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. It is reported that while there were no significant problems obtaining Anti Retrovirals for the treatment of HIV/AIDS, there continued to be shortages of other essential drugs.⁴⁸
- 4.4.5** It has been reported that there is some politicisation in healthcare provision. If a patient is a victim of a human rights violation they cannot get treatment without a police report, which the police will often decline to provide, thus effectively barring treatment in public hospitals. In rural areas the senior people in charge of healthcare facilities will usually be controlled by ZANU-PF supporters and there is concern that this may lead to denial of treatment for those who are known to be MDC supporters. However there have been no reports of this happening in practice and it is likely to apply only to those who have a known profile as a political or human rights activist. In the major cities, there is no political discrimination in the provision of healthcare and in fact most of the healthcare workers would probably be more inclined to discriminate against ZANU-PF supporters, but again in practice this does not happen, possibly because of higher literacy rates and political awareness.⁴⁹
- 4.4.6** In September 2010 it was reported that intensive care wards had re-opened at Harare's Central Hospital after having been closed for eight years and a new renal centre was also reported to have opened at the hospital.⁵⁰
- 4.4.7** Despite major improvements in the health sector, the cost of healthcare even in public hospitals puts it beyond the financial reach of many.⁵¹ According to existing policies and tariffs provided by the Ministry of Health, free services are provided for the following: all patients at rural clinics, children under five, pregnant mothers (although only those referred to a hospital can deliver there free), patients over sixty five, TB, epilepsy, psychiatric cases and chronic cases (consultation includes free drugs). In district/ general hospitals the cost of an adult consultation is US\$4 and a child over five years is US\$1, a medical examination is US\$ 4, prescribed medicines are available at a maximum cost of US\$2 per course, X rays and laboratory tests are available at a maximum cost of US\$2. However, it is clear that health care has not been free in many rural health centres in spite of this policy: many services available for free or at a minimal cost are not available at government hospitals, and have to be sourced through the private sector.⁵²

⁴⁵ COI Service Zimbabwe Country Report Sept 2010 (para 25.01)

⁴⁶ COI Service Zimbabwe Country Report March 2011 (para 25.05)

⁴⁷ COI Service Zimbabwe Country Report March 2011 (para 25.07)

⁴⁸ COI Service Zimbabwe Country Report March 2011 (para 25.08)

⁴⁹ COI Service Zimbabwe Country Report March 2011 (para 25.02)

⁵⁰ COI Service Zimbabwe Country Report March 2011 (para 25.09)

⁵¹ COI Service Zimbabwe Country Report March 2011 (para 25.02)

⁵² COI Service Zimbabwe Country Report Dec 2009 (para 25.09)

- 4.4.8** There are also a number of private medical facilities in Zimbabwe which maintain high standards but at a premium cost.⁵³ Facilities are clean and modern practices are used. Medication can be sourced from pharmacies that are found across the country.⁵⁴ Zimbabwe has a number of private hospitals. The two main hospitals in Harare are the Avenues Clinic and St Anne's Hospital. There is also the Baines Imaging Group which is able to provide a range of services including: radiology, ultrasound, CT scan and mammography. Combined, the Avenues Clinic and St Anne's Hospital provided the following treatments – (i) oncology (cancer diagnosis/treatment), (ii) general surgery (iii) urology (urinary tract, including kidneys), (iv) orthopaedic surgery (v) paediatrics, (vi) neurology and neurosurgery, (vii) radiology, (viii) gynaecology, (ix) cardio-thoracic surgery (heart and lungs), (x) ear, nose and throat surgery, (xi) pharmacy.⁵⁵
- 4.4.9** It was estimated that at the end of 2009, 1.1 million Zimbabweans were living with HIV and 1,090 people were dying weekly of AIDS related illness. It was reported that gains had however been made through intensive HIV awareness and behavioural change campaigns, leading to a decline in the prevalence rate from 18.1% to 13.7% in 2009 but still remaining one of the highest in the world.⁵⁶ It was reported that at the end of November 2009, more than 215,000 people were receiving Anti-Retro Viral Treatment (ART) in the public and private health care sectors; and that the government is planning to increase this to 250,000 state patients by the end of 2010 and to 350,000 by 2012.⁵⁷
- 4.4.10** The majority of ART (around 90%) is supplied by NGOs and international organisations. As a result, the availability of ART is not affected by economic and political conditions in the country. A number of NGOs and International Organisations provide their own transport to ensure drugs reach regional clinics and treatment centres.⁵⁸ A months' supply of ART in a public hospital or clinic ranges between US\$16-20. An outpatient appointment costs US\$10 (US\$5 for children) at a main hospital; lower fees are payable at provincial and district hospitals.⁵⁹

4.4.11 Case law

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

⁵³ COI Service Zimbabwe Country Report March 2011 (para 25.10)

⁵⁴ COI Service Zimbabwe Country Report March 2011 (para 25.11)

⁵⁵ COI Service Zimbabwe Country Report March 2011 (para 25.12)

⁵⁶ COI Service Zimbabwe Country Report March 2011 (para 25.27)

⁵⁶ COI Service Zimbabwe Country Report Sept 2010 (para 25.27)

⁵⁷ COI Service Zimbabwe Country Report March 2011 (para 25.28)

⁵⁸ COI Service Zimbabwe Country Report March 2011 (para 25.35)

⁵⁹ COI Service Zimbabwe Country Report Sept 2010 (para 25.37)

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)

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

4.4.12 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** The enforced return of failed asylum seekers to Zimbabwe was suspended in September 2006 pending the outcome of a country guidance case due to be heard by the courts at that time. The courts subsequently found on more than one occasion that that not all Zimbabweans are in need of international protection. The suspension of enforced returns was however extended for foreign policy reasons, and in particular HM Government's wish not to destabilise progress on implementation of the Global Political Agreement.
- 5.2** Ministers announced on 14 October 2010 that UK Border Agency would be resuming enforced returns of failed asylum seekers to Zimbabwe after the IAC had issued its judgment in the further country guidance case of *EM & others*. There is therefore no longer any policy which precludes the enforced return to Zimbabwe of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 5.3** 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. The person's case should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State prior to a removal decision being made under section 10, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.4** 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 Border Agency, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.
- 5.5** The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action and co-funded by the European Refugee Fund. Refugee Action 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

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

6. **List of source documents**

A full list of source documents cited in footnotes in this guidance is set out below:

- Home Office Country of Information Service (COIS) Zimbabwe Country of Origin Information Report. March 2011.
http://www.homeoffice.gov.uk/rds/country_reports.html
- FCO Country Profile; Zimbabwe July 2010
<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/sub-saharan-africa/zimbabwe?profile=all>
- UN Educational, Scientific and Cultural Organisation. Education under attack - Zimbabwe. 10 Feb 2010.
<http://unesdoc.unesco.org/images/0018/001868/186809e.pdf>
- Zimbabwe Journalists, Private schools sprout in Zimbabwe as public system struggles, 8 February 2010
http://www.zimbabwejournalists.com/story.php?art_id=6399&cat=3
- Africa Files, Parent initiatives for teachers signal education decline, 11 March 2010
<http://www.africafiles.org/article.asp?ID=23153>
- Voice of America News, Zimbabwean Human Rights Organization Warns of Resurgence in Political Violence, 18/10/2010
<http://www.voanews.com/zimbabwe/news/Watchgroup-Warns-Of-Violence-Creeping-In-Zimbabwe-105190074.html>
- New Zimbabwe. Red Cross to withdraw Zimbabwe prison food aid. 15 Feb 2011
<http://www.newzimbabwe.com/news-4483-Red+Cross+withdraws+prison+food+aid/news.aspx>

5 April 2011
Country Specific Litigation Team
UK Border Agency