



# OPERATIONAL GUIDANCE NOTE

## ZIMBABWE

### CONTENTS

<b>1. Introduction</b>	<b>1.1 – 1.3</b>
<b>2. Country assessment</b>	<b>2.1 – 2.2</b>
Actors of protection	2.3
Internal relocation	2.4
Country guidance caselaw	2.5
<b>3. Main categories of claims</b>	<b>3.1 – 3.4</b>
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
<b>4. Discretionary Leave</b>	<b>4.1 – 4.2</b>
Minors claiming in their own right	4.3
Medical treatment	4.4
<b>5. Returns</b>	<b>5.1 – 5.3</b>

#### **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 internet 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://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/accessible-hrd-report-2010>

### **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** The lower ranks of the police were poorly trained and underpaid. The entire force was ill-equipped in both operational and administrative resources. Severely depleted human and material resources, especially fuel, further reduced police effectiveness in both deterring and responding to criminal activity.<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 fees for varying offenses from the public in an effort to augment their low salaries. However, numerous reports of corrupt police officials being investigated and arrested for criminal activity appeared throughout the year.<sup>3</sup>

**2.3.5** It was difficult for rank-and-file police to remain impartial due to the continued politicisation of the force's upper echelons. Police and army personnel suspected of being sympathetic to the MDC and other political parties continued to be threatened with demotion, suspension, incarceration, or transfer to remote areas.<sup>4</sup> The International Crisis Group reported in November 2011 that "the police appear unwilling or unable to provide effective deterrence

---

<sup>1</sup> COIS Zimbabwe Country Report August 2011 (para 8.06)

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

<sup>2</sup> US State Department Human Rights Report 2010; Zimbabwe <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154377.htm>

<sup>3</sup> COIS Zimbabwe Country Report August 2011 (para 8.08)

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

<sup>4</sup> US State Department Human Rights Report 2010; Zimbabwe <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154377.htm>

or remedy” in relation to the issues of violence and repression.<sup>5</sup>

**2.3.6** The Zimbabwe National Army and Air Force, under the Defence Ministry, were responsible for external security; however, there were cases in which the government called upon 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>6</sup>

**2.3.7** Experts say the most powerful arm of Zimbabwe's security apparatus is the Central Intelligence Organisation (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>7</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, and harassment of members of the MDC, cabinet ministers, human rights activists, and journalists, deepening the pervasive climate of fear in the country”.<sup>8</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>9</sup>

**2.3.9** Civil judicial procedures allow for an independent and impartial judiciary. However, in practice the judiciary showed indications of being politically influenced or intimidated in cases involving high-ranking government officials, politically connected persons, or violations of human rights. There were systematic problems enforcing domestic court orders, as resources for the judiciary and police were severely strained.<sup>10</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, 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-

---

<sup>5</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-%20Zimbabwes%20Stalled%20Reform%20Agenda.pdf>

<sup>6</sup> US State Department Human Rights Report 2010; Zimbabwe <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154377.htm>

<sup>7</sup> COIS Zimbabwe Country Report August 2011 (para 8.18) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>8</sup> Human Rights Watch, World Report 2012, 22/01/2012. <http://www.hrw.org/world-report-2012/world-report-2012-zimbabwe-0>

<sup>9</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>10</sup> US State Department Human Rights Report 2010; Zimbabwe <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154377.htm>

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 found that “there are difficulties faced by those living in high density areas not faced by those living in other urban areas: there is a greater prevalence of criminal disorder and reduced personal security; where it is available at all accommodation will be very crowded and a lower standard; street traders working in the informal economy may be the subject of harassment from state officials; persons perceived to be active in MDC politics may face the risk of targeted reprisals” [paragraph 200 of judgement]. The Tribunal further concluded 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.” [para 204 of judgment] *“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.”* [para 204 of judgment]
- (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) “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. 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” [paragraph 267 (7) and (8).

**2.5.4** Further to 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 addition to others of the kind we have just described [the socio-economic circumstances in which persons are reasonably likely to find themselves in paragraph 223] ...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.

**2.5.5** 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 Country guidance caselaw**

[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\(IAC\)](#). 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.

The Tribunal also found the following: "The country guidance regarding risk at the airport accordingly continues to be as set out in HS (Returning asylum seekers) Zimbabwe [2007] UKAIT 00094, read with the findings on that issue in SM and Others (MDC – internal flight – risk categories) Zimbabwe CG [2005] UKIAT 00100 and AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061" (paragraphs 266 of the judgement).

[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).

[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](#)

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.

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.

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.

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 \(11 May 2005\)](#)

a) 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.

b) 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.

c) There does continue to be a risk for teachers with an actual or perceived political profile of support for the MDC.

d) 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.

e) 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.

f) The fact of being a white Zimbabwean does not of itself put an applicant in danger.

g) 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>11</sup>

---

<sup>11</sup> FCO Country Profile; Zimbabwe March 2011 <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/sub-saharan-africa/zimbabwe?profile=all>

- 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 was delayed by political wrangling and logistical concerns but public outreach eventually started in June 2010 and was completed in October 2010.<sup>12</sup> Constitutional Outreach meetings were marked by increasing violence and intimidation, mainly by ZANU-PF supporters and war veterans allied to ZANU-PF<sup>13</sup> and some public meetings being abandoned in the capital, Harare, and Mutare because of violence blamed on ZANU-PF youths.<sup>14</sup>
- 3.6.4** In the country guidance case of EM and Others the Tribunal found that “it is plain that (except in the case of certain rural areas) 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 RN” (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. They went on to note that: “The COPAC exercise has, however, served to underscore the difference in circumstances between those living in urban and rural areas respectively. In particular, in some instances at least, the combination of coercion to attend meetings and the nature of the threats made, appear to us to be capable of being persecutory, within the ambit of the Refugee Convention. We do not, however, consider as a general matter that everyone living in rural areas is currently suffering persecution. But the evidence regarding COPAC points to differences between urban and rural areas, and between rural areas themselves, which have relevance to the position of a person returning from the United Kingdom, and which require a detailed appraisal.” [para 173 of judgment].
- 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

<sup>12</sup> FCO Country Profile; Zimbabwe March 2011 <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/sub-saharan-africa/zimbabwe?profile=all>

<sup>13</sup> COIS Zimbabwe Country Report August 2011 (para 3.41) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>14</sup> COIS Zimbabwe Country Report August 2011 (para 3.40) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

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 found that “there are difficulties faced by those living in high density areas not faced by those living in other urban areas: there is a greater prevalence of criminal disorder and reduced personal security; where it is available at all accommodation will be very crowded and a lower standard; street traders working in the informal economy may be the subject of harassment from state officials; persons perceived to be active in MDC politics may face the risk of targeted reprisals [paragraph 200 of judgment]. The Tribunal further concluded 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 [para 204 of judgment].... *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.*” [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, MDP (malicious damage to property), unlawful detention, harassment/intimidation and displacement for each province.<sup>15</sup>
- 3.6.9** 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>16</sup>
- 3.6.10** 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>17</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>18</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 neighborhoods of Harare, the capital, as well as outside of Harare.”<sup>19</sup>

---

<sup>15</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>16</sup> SW Radio Africa news, ‘ZANU PF violence continues despite SADC rebuke’ 20 April 2011  
<http://www.swradioafrica.com/news200411/zpfviolence200411.htm>

<sup>17</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>18</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>19</sup> Human Rights Watch, World Report 2012, <http://www.hrw.org/world-report-2012/world-report-2012-zimbabwe-0>

- 3.6.11** 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>20</sup>
- 3.6.12** 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>21</sup>
- 3.6.13** 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 2011".<sup>22</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>23</sup>
- 3.6.14** 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)

- 3.6.15 Conclusion.** 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.
- 3.6.16** 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

---

<sup>20</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>21</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>

<sup>22</sup> Human Rights Watch, [World Report 2012](#), 22/01/2012.

<sup>23</sup> Amnesty International, [Zimbabwean authorities must stop abusing the law to curtail the work of human rights activists](#), 26/01/2012.

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 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. 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.

- 3.6.17** As regards major urban areas, a returnee to Harare will face difficulties living in high density areas not faced by those living in other urban areas and those persons perceived to be active in MDC politics may face the risk of targeted reprisals. However, 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. 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.
- 3.6.18** 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.* 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. Part of 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.<sup>24</sup> 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>25</sup> Teachers were specifically targeted in post-election violence and some schools were taken over as torture bases.<sup>26</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>27</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:

---

<sup>24</sup> COIS Zimbabwe Country Report August 2011 (para 14.29)

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

<sup>25</sup> COIS Zimbabwe Country Report August 2011 (para 14.28)

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

<sup>26</sup> COIS Zimbabwe Country Report August 2011 (para 14.30)

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

<sup>27</sup> COIS Zimbabwe Country Report August 2011 (para 14.32)

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

“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>28</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>29</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>30</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>31</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 schools, accusing them of supporting the MDC.<sup>32</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.** In EM and Others the Tribunal found that teachers remain in an enhanced or heightened risk category:

“226. At paragraph 261 of RN, the Tribunal in that case found that there was clear evidence that teachers in Zimbabwe had, during the period under review, once again become targets for persecution. The fact of being a teacher or having been one in the past was, it was found, again capable of raising an enhanced risk, whether or not the person concerned had been a polling officer, because when encountered it would not be known what a particular teacher did or did not do in another area.

227. In the present appeals, the respondent acknowledges that teachers remain in a category where there is a heightened or enhanced risk. That is plainly right. Various news reports submitted by the appellants demonstrate the fact that teachers can face problems from ZANU-PF. [...]”

- 3.7.9** Being a teacher places a person at a heightened risk of ill treatment. Whether there is a

<sup>28</sup> COIS Zimbabwe Country Report August 2011 (para 14.34)

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

<sup>29</sup> The Zimbabwean, ‘Teachers forced to support’ 26 August 2011

<http://www.thezimbabwean.co.uk/news/zimbabwe/52132/teachers-forced-to-support.html>

<sup>30</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>31</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)

<sup>32</sup> The Zimbabwean, Teachers flee rural schools: ZIMTA, 20/10/2011. <http://reliefweb.int/node/454092>

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.

**3.7.10** 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.*** Although there was no statutory law proscribing homosexual conduct, common law prevents gay men, and to a lesser extent, lesbians, from fully expressing their sexual orientation and, in some cases, criminalises the display of affection between men. The criminal code 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 approximately £3,200. There were no known cases of sodomy charges being used to prosecute consensual homosexual activity.<sup>33</sup>

**3.8.3** Leadership in both ZANU-PF and MDC, including President Mugabe and Prime Minister Tsvangirai, publically denounced the LGBT community and warned against the inclusion of LGBT rights in the constitution. Over a period of years, Mugabe publicly denounced the LGBT community, blaming it for Africa's ills and declaring its members to be worse than "pigs and dogs."<sup>34</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>35</sup> On 24 November, President Mugabe reportedly vowed to "punish severely" homosexuality that he said was un-Christian and un-African<sup>36</sup>. In January 2012, the New Zimbabwean published an article quoting a "key MP" sitting on the parliamentary committee in charge of the constitutional process as stating that there is "no chance in hell" that Zimbabwe's new constitution will include gay rights".<sup>37</sup>

**3.8.4** General homophobia and restrictive legislation made it difficult for the LGBT community to feel safe about being open about their sexuality in public. Because of significant social pressure, some families reportedly subjected men and women to "corrective" rape and forced marriages to encourage heterosexual conduct; the crimes were rarely reported to police. Women, in particular, were subjected to rape by male members of their own families.<sup>38</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

---

<sup>33</sup> US State Department Human Rights Report 2010; Zimbabwe (section 6)  
<http://www.state.gov/g/drl/rls/hrrpt/2010/af/154377.htm>

<sup>34</sup> US State Department Human Rights Report 2010; Zimbabwe (section 6)  
<http://www.state.gov/g/drl/rls/hrrpt/2010/af/154377.htm>

<sup>35</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>36</sup> Zim Online, We'll punish gay people: Mugabe, 24/11/2011 <http://www.zimonline.co.za/Article.aspx?ArticleId=6863>

<sup>37</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>38</sup> US State Department Human Rights Report 2010; Zimbabwe (section 6)  
<http://www.state.gov/g/drl/rls/hrrpt/2010/af/154377.htm>

makes it difficult for them to report crimes or seek medical attention.<sup>39</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>40</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>41</sup>
- 3.8.6** Members of the LGBT community reported widespread societal discrimination based on sexual orientation. 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. In the 2006-07 Presidential HIV/AIDS Strategic Plan, the government agreed to address HIV/AIDS among gay men. However, at the end of 2010, the government had not made any effort to address the health needs of this population. Many LGBT persons reported leaving school at an early age, decreasing their capacity for economic gain. Coupled with socioeconomic discrimination, higher rates of unemployment and homelessness among members of the LGBT community were reported.<sup>42</sup>
- 3.8.7** 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 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>43</sup>
- 3.8.8** 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>44</sup> The International Gay guide, Spartacus 2009 edition, stated that there were still two gay friendly nightclubs in the Borrowdale area of Harare. The GALZ website noted that another gay

<sup>39</sup> COIS Zimbabwe Country Report August 2011 (para 20.33)

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

<sup>40</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>41</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)

<sup>42</sup> US State Department Human Rights Report 2010; Zimbabwe (section 6)

<http://www.state.gov/g/drl/rls/hrrpt/2010/af/154377.htm>

<sup>43</sup> COIS Zimbabwe Country Report August 2011 (para 20.49)

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

<sup>44</sup> COIS Zimbabwe Country Report August 2011 (para 20.58)

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



friendly venue was The Book Café in Harare, which the BBC, in an article dated 7 August 2007, described as the "... epicentre of Harare's alternative culture."<sup>45</sup>

- 3.8.9** 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>46</sup>
- 3.8.10** 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).
- 3.8.11** 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).
- 3.8.12** 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 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)

- 3.8.13 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

---

<sup>45</sup> COIS Zimbabwe Country Report August 2011 (para 20.59)

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

<sup>46</sup> COIS Zimbabwe Country Report August 2011 (para 20.31)

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

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.

**3.8.14** 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

**3.8.15** 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>47</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>48</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>49</sup>

---

<sup>47</sup> COIS Zimbabwe Country Report August 2011 (para 26.01)

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

<sup>48</sup> Christian Aid, Christian Aid in Zimbabwe, <http://www.christianaid.org.uk/whatwedo/africa/zimbabwe.aspx>

<sup>49</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>

- 3.9.5** HIV infection can lead to malnutrition, while poor diet can in turn speed the infection's progress.<sup>50</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>51</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>52</sup> The Zimbabwe Peace Project (ZPP) publishes monthly statistics of food and other forms of aid related violations by province.<sup>53</sup> (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>54</sup>
- 3.9.7** 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].
- 3.9.8** 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>55</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 governments response to the outbreak is inadequate.<sup>56</sup>

**See also:** [Actors of protection](#) (section 2.3 above)

<sup>50</sup> AVERT, HIV and Nutrition, <http://www.avert.org/hiv-nutrition.htm>

<sup>51</sup> IRIN, [Food voucher scheme benefits HIV-positive people](#), 20/10/2011.

<sup>52</sup> The Zimbabwean, Zanu blocks food aid, 7 December 2011, <http://www.thezimbabwean.co.uk/news/zimbabwe/55327/zanu-blocks-food-aid.html>

<sup>53</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>54</sup> COIS Zimbabwe Country Report August 2011 (para 26.17) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>55</sup> UNOCHA, Zimbabwe 2012 Consolidated Appeal, undated (regularly updated). <http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1298452>

<sup>56</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>

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

- 3.9.9 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.
- 3.9.10** 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.
- 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 remained harsh and life threatening. 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. 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>57</sup> According to Human Rights Watch, torture is used both as an element of coercive interrogations and as a form of punishment.<sup>58</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>59</sup> Poor sanitary conditions due to dilapidated prison infrastructure and overcrowding persisted, which aggravated health conditions and outbreaks of diarrhoea, measles, tuberculosis, and HIV/AIDS-related illnesses.<sup>60</sup>
- 3.10.4** Lawyers, NGOs, and church officials familiar with prison conditions reported that, although the situation had improved since 2009, shortages of food, water, electricity, clothing, and soap continued. NGOs started working with the ZPS to revitalize 23 prison farms, which totalled approximately 35,830 acres of land, to ameliorate food shortages. NGOs reported

<sup>57</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>58</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>59</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>60</sup> US State Department Human Rights Report 2010; Zimbabwe <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154377.htm>

that prisoners were able to produce enough maize for consumption and that malnutrition was no longer an endemic problem at year's end. Malnutrition was largely eliminated by therapeutic feeding and food assistance. Prisoners were fed at least once daily; however, nutritional deficiencies remained a critical problem.<sup>61</sup>

- 3.10.5** 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>62</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>63</sup>
- 3.10.6** NGOs estimated that there were between 350 and 400 juveniles in prison facilities; the majority were being held in pretrial detention. There was one juvenile prison in the ZPS; however, juveniles also were held in adult prisons throughout the country. Although juveniles were not officially held separately from adults, officials generally tried to place juvenile inmates in cells separate from adults. It became more common for juveniles to be sent to prison instead of to reformatory homes, as stipulated in the Children's Act. Juveniles were particularly vulnerable to the effects of poor prison conditions, and local NGOs reported several complaints of physical and sexual abuse.<sup>64</sup>
- 3.10.7** NGOs reported the death rate among prisoners was lower than in 2009, although neither the ZPS nor NGOs provided information on the death rate during the year (2010). In 2009 NGOs estimated the death rate was 40 deaths per month, a reduction from the estimated 40 to 50 deaths per week during the height of the 2008 prison crisis. Most prison deaths between 2008 and 2009 were attributed to harsh conditions, hunger, and HIV/AIDS. NGOs continued to estimate that approximately 70 percent of prisoners were HIV-positive; the 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 suffered from routine medical conditions such as hypertension, tuberculosis, diabetes, asthma, and respiratory diseases. NGOs also reported cases of pellagra, a serious illness caused by protein deficiency, which causes severe diarrhoea, dermatitis, and dementia. Poor lighting and ventilation also aggravated the situation.<sup>65</sup>
- 3.10.8** The mentally disabled were the most affected by the collapsed medical infrastructure within the ZPS. Inmates with psychiatric conditions were examined by two doctors, who must both confirm a mental disability and recommend that a patient either be released or returned to a

<sup>61</sup> US State Department Human Rights Report 2010; Zimbabwe <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154377.htm>

<sup>62</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>63</sup> Independent Online, Zim police cells 'inhumane', 27/09/2011. <http://www.iol.co.za/news/africa/zim-police-cells-inhumane-1.1145359>

<sup>64</sup> US State Department Human Rights Report 2010; Zimbabwe <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154377.htm>

<sup>65</sup> US State Department Human Rights Report 2010; Zimbabwe <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154377.htm>

prison facility. However, prisoners with mental disabilities routinely faced long waiting periods, as much as three years, before being evaluated. It also became more common for prisoners with mental disabilities to be sent to prison instead of mental institutions.

**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 including torture and lack of food, are likely 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, gender 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 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>66</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>67</sup>

---

<sup>66</sup> COIS Zimbabwe Country Report August 2011 (para 25.01)

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

<sup>67</sup> COIS Zimbabwe Country Report August 2011 (para 25.07)

<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>68</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>69</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>70</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>71</sup> AIDSPortal reported that city health officials were “struggling to cope with ever-growing waiting lists of people in need of HIV treatment”,<sup>72</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>73</sup> The Zimbabwean reported that Tinotenda Mabvure had to pay \$50 to bribe the nurse to access ARVs at her local satellite clinic<sup>74</sup> and also that ZANU-PF supporters had prevented MDC supporters living with HIV and AIDS from accessing treatment.<sup>75</sup>
- 4.4.6** Persons with mental disabilities suffered from inadequate medical care and general provision of health services. There were eight centralised mental health institutions in the country with a holding capacity of more than 1,300 patients. The eight institutions were allocated approximately 1 percent of the Ministry of Health’s budget. Inpatients 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 psychiatric-trained nurses; more than 90 percent of the available psychiatric services were provided at the mental institution in Bulawayo. NGOs reported patients being subjected to deplorable living condition in terms of food, water, clothing, and sanitation. Budgetary constraints and low holding capacity at these institutions resulted in persons with mental disabilities being kept at home and cared for by family, normally under chains and without treatment. No social workers worked on the issue of reintegration for recovering patients.<sup>76</sup>

<sup>68</sup> COIS Zimbabwe Country Report August 2011 (para 25.01)

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

<sup>69</sup> COIS Zimbabwe Country Report August 2011 (para 25.04)

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

<sup>70</sup> Human Rights Watch, World Report 2012, 22/01/2012. <http://www.hrw.org/world-report-2012/world-report-2012-zimbabwe-0>

<sup>71</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>72</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>73</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>74</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>75</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>

<sup>76</sup> COIS Zimbabwe Country Report August 2011 (para 25.46)

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

**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  
Immigration Group  
UK Border Agency  
April 2012