



# OPERATIONAL GUIDANCE NOTE

## ZIMBABWE

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#### **1. Introduction**

- 1.1** This document provides UKBA caseowners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Zimbabwe including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Caseowners *must not* base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseowners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

[http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

## **2. Country assessment**

- 2.1** Caseowners 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/human-rights-report-2009>

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

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Zimbabwe. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing 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 Instructions on Considering the Asylum Claim).

- 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.ind.homeoffice.gov.uk/documents/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 para 11 of the Asylum Instructions on 'Considering the Asylum Claim' and 'Assessing Credibility in Asylum and Human Rights claims'. Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matched to visas should be investigated prior to

the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

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

- 3.6.1** Applicants may claim asylum based on a fear of violence at the hands of: state agents, war veterans or other supporters of ZANU-PF; involvement with the opposition party Movement for Democratic Change (MDC); involvement with human rights or humanitarian organisations; membership of ZAPU or because they are or have been in sensitive jobs. They may also, following RN, claim asylum because they cannot show support for or loyalty to Zanu-PF.
- 3.6.2 *Treatment.*** Since the party was formed in 1999, many MDC activists have been subjected to restrictions on their freedom of expression, political intimidation, assault, arbitrary arrest and detention, imprisonment, torture, kidnapping, rape and murder. This treatment has mostly been perpetrated by the Government, the security forces, ZANU-PF activists and youth and war veterans groups. Historically, such treatment has escalated around the time of general, presidential and by-elections.<sup>1</sup>
- 3.6.3** There was a dramatic increase in political violence and repression in March and April 2007 with hundreds of activists arrested and detained without charge following protests that culminated in Harare on 11 March. However, it was after Morgan Tsvangirai won the presidential poll on 29 March 2008, although according to official figures, without the 50% plus one vote he needed for outright victory that arguably the worst political persecution of recent times in Zimbabwe occurred. The result necessitated a run off which was scheduled for 27 June. ZANU-PF's response was to unleash a whirlwind of violence in which over 180 people, mostly those perceived to be MDC supporters, were killed, at least 9,000 injured from torture, beatings and other violations and at least 36,000 displaced. The violence continued after the election, particularly in rural areas, and even after a Memorandum of Understanding, which included a call for an end to the political violence, was signed by the parties to the talks on 21 July 2008.<sup>2</sup>
- 3.6.4** By 22 August 2008, the FCO was reporting that levels of political violence and intimidation had fallen relative to the peak period of electoral violence, with the groups of ZANU-PF youth previously prevalent in the wealthier northern suburbs of Harare having dispersed.<sup>3</sup> However, by the end of September there were reports that violence had flared up in the Mbare suburb of Harare when MDC supporters sought to reoccupy properties they had been evicted from during the height of the violence. According to the FCO, the situation also remained tense in parts of Mashonaland and Manicaland, where the ZANU-PF leadership was vicious. Access to the rural areas continued to be restricted by roadblocks, with groups of ZANU-PF youth still present in those areas and the main bases still in place. Attacks, abductions and arrests of perceived MDC activists were still occurring around the country, but at a lower level than April - June. The FCO concluded that while there was a downward trend in violence, the situation remained unpredictable and incidents of violence across the country continued, noting that it could deteriorate further without warning.<sup>4</sup>
- 3.6.5** The situation did deteriorate for a while, with incidents of political violence/human rights abuses against MDC supporters, human rights defenders and others perceived to oppose ZANU-PF increasing between October and December 2008 before falling back again in 2009 to levels broadly comparable to those which have existed in Zimbabwe for the past several years outside periods of heightened tension such as at election times.<sup>5</sup>

<sup>1</sup> COI Service Zimbabwe Country Report December 2009;

<sup>2</sup> COI Service Zimbabwe Country Report December 2009; BBC News, 'Crackdown on Zimbabwean activists' 20 March 2007; IRIN: Zimbabwe 'More arrests, tension rises' dated 12 March 2007; IRIN: Zimbabwe 'Opposition leaders picked up by police' 28 March 2007

<sup>3</sup> Letter from FCO 22 August 2008

<sup>4</sup> Letter from FCO 22 August 2008

<sup>5</sup> COI Service Country Situation Update 9 February 2009

- 3.6.6** In the October – December 2008 period there were around 30 abductions and prolonged detentions of both high profile and low level MDC activists and human rights defenders. Attempts to secure their release dominated the news through the early months of 2009. Only in March 2009 were most of those who had been detained released but some remained in custody. However, by mid 2009 all political prisoners had been released although some are only on bail. Also from October to December 2008, demonstrations by students, health workers, women, Zimbabwe Congress of Trade Unions, the National Constitutional Assembly and other human rights groups were brutally broken up. Human rights defenders and journalists experienced heightened levels of harassment. Violence and arrests intensified in the diamond mining area of Marange, Manicaland and sporadically, elsewhere in the country. In several cases, soldiers protested over pay, assaulting people and confiscating goods and money. In Victoria Falls, 120 households were forced to destroy their homes.<sup>6</sup>
- 3.6.7** From early 2009 there were increasing reports of retributory violence perpetrated by MDC supporters on ZANU-PF members. MDC supporters in Mashonaland Central province, a strong area of support for Mugabe and one of the areas that suffered the worst election-related violence, went on the rampage kidnapping alleged members of ZANU-PF and beating them. However the scope of this violence did not bear comparison to the widespread state sponsored violence seen during 2008.<sup>7</sup>
- 3.6.8** The Zimbabwe Human Rights NGO Forum (ZHRF) reported that during the period of 1 January 2009 to 30 June 2009 there were a total of 1,096 human rights violations of which 282 instances were due to political intimidation and victimisation, 240 instances were for unlawful arrest and detention and 203 instances were for a restriction in freedom of expression/movement (for a full breakdown please see link below).<sup>8</sup> For the same period in 2008, at the height of the election violence, there were 8,558 recorded human rights violations. The 2009 figures are also markedly lower than during the same period in 2007 when there were 5,307 recorded human rights violations. However, it should be noted that on 14 October 2009 the ZHRF announced that it was suspending the production of the Monthly Political Violence Reports because it continued to receive new cases from 2008 that were previously unrecorded. The Forum has therefore resolved to resume such production once the statistics have been reconciled.<sup>9</sup>
- 3.6.9** There are many reports that suggest that violence is periodically on the increase in Zimbabwe but there is no evidence to suggest that the violence has reached the scale of that witnessed after the 2008 election. The recent violence has also been directed at MDC and human rights activists and is not of the widespread random nature of previous years.<sup>10</sup> There have, however, also been reports that show that MDC rallies are taking place in Zimbabwe without any intimidation or harassment from those associated with ZANU-PF or the police. Furthermore, high profile MDC or human rights activists have been acquitted recently in the courts (Roy Bennett, Jestina Mukoko) or are now in government (Hebson

<sup>6</sup> COI Service Country Situation Update 9 February 2009; Zimbabwe Peace Project, Early warning report on Human Rights and food violations, December 2008; Human Rights NGO Forum, Political Violence Report, June 2009; BBC News, Victims Demand Justice, 17 September 2008; HRW, Free Activists Unlawfully Held, 15 January 2009; SW Radio Africa, High Court grants bail to eight MDC activists from Mbare, 3 March 2009; SW Radio Africa, 89 MDC supporters still in custody in Nyanga, 3 March 2009; Sokwanele.com Update on abductees from ZLHR, 4 March 2009; IRIN, Tit-for-tat violence flares up, 23 February 2009; VOA News, From bad to worse in Zimbabwe, 8 March 2009; BBC News, Zimbabwe cabinet nominee is freed 12 March 2009; FCO reporting

<sup>7</sup> COI Service Zimbabwe Country Report December 2009; FCO Country Profile 2009: Zimbabwe;

<sup>8</sup> Zimbabwe Human Rights NGO forum political violence report June 2009- [www.hrforumzim.com/frames/inside\\_frame\\_monthly.htm](http://www.hrforumzim.com/frames/inside_frame_monthly.htm).

<sup>9</sup> COI Service Zimbabwe Country Report December 2009

<sup>10</sup> The Zimbabwean, Intimidation stepped up, 17 March 2010; Zimbabwe Human Rights Forum, Statement on Political violence in Epworth, 26 February 2010; Human Rights Watch world report 2010: Zimbabwe chapter

Makuvise renounced his refugee status in the UK to become Zimbabwe's ambassador to Germany).<sup>11</sup>

**3.6.10** A recent UK Fact Finding-Mission (FFM) found that:

"...political violence or the threat of violence continued, though levels of violence were (relatively) low and less widespread (when compared to peaks, such as during elections). A representative of the International Committee of the Red Cross noted that a lack of reliable information made it difficult to gauge actual levels of violence and added that reports of violence may have been overstated. A major NGO stated that it was not aware of widespread violence and the Catholic Commission for Justice and Peace (Zimbabwe) (CCJPZ) observed that there was little political violence but both added that this might be because people feared further violence<sup>12</sup>.

**3.6.11** "The FFM went on to say:

"...There were a number of views expressed about the profile of those at risk of violence. The Counselling Services Unit stated that violence was targeted at those with a political profile, not necessarily of a high level, but there would be no interest in MDC supporters who were not active. An international NGO considered risk depended on the standing of the individual in society in addition to political activity. In rural areas those considered influential (such as teachers, business people and professionals) might be at risk even for relatively low level political activity. The Bulawayo Agenda reported that ordinary people were not threatened but there had been some threats made against "activists". The Research Advocacy Unit listed those it considered at risk included MDC activists, those suspected of being MDC members and members of NGOs. A couple of organisations stated that individuals who failed to identify with a political party were viewed with suspicion."<sup>13</sup>

**3.6.12** The FFM stated that:

"...Rural areas, specifically those provinces considered by ZANU-PF to be its heartlands (Mashonaland (Central, East, and West), Manicaland, Masvingo, and Midlands) were considered to be less open politically and more prone to violence than the main cities and towns.

"...Urban areas, specifically Bulawayo and Harare, were considered by most organisations to be relatively safe from violence, especially for ordinary MDC supporters. A major NGO noted that urban areas benefited from higher levels of scrutiny by the media, civil society and international organisation. However, several organisations noted that small urban centres such as Bindura, Chiredzi, and Buhera, along with some peri-urban areas, such as Epworth (south Harare), were also subject to the risk of sporadic violence."<sup>14</sup>

**3.6.13 *Actors of protection.*** Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. 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. Protection is generally provided when the authorities (or other

<sup>11</sup> The Guardian, Zimbabwe through a different prism, 28 March 2010; BBC Monitoring reports; FCO reporting

<sup>12</sup> UK Fact Finding Mission August 2010 (Section 3.1)

<sup>13</sup> UK Fact Finding Mission August 2010 (Section 3.1)

<sup>14</sup> UK Fact Finding Mission August 2010 (Section 3.45)

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.

- 3.6.14** As this category of applicants' fear is of ill-treatment or persecution by the state authorities or groups that are associated with and act with the acquiescence or encouragement of ZANU-PF controlled agents of the state, they cannot apply to the state for protection.
- 3.6.15 *Internal relocation.*** Caseowners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender 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 place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or 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.
- 3.6.16** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.
- 3.6.17** The findings of the AIT in the 'RN' country guidance case do not accurately reflect the current position on internal relocation and should not be relied upon in isolation. Urban areas generally, including Bulawayo, Harare and Chitungwiza, have a lower incidence of political intimidation and violence than some rural areas and may generally be considered to be safe areas of internal relocation for relatively low profile activists who have only a localised risk of persecution in their home areas. This finding has been borne out by the recent Fact-Finding Mission to Zimbabwe, which found:
- “...that there were no legal requirements or restrictions when moving and settling in other parts of Zimbabwe. While in theory resettlement to another part of the country was possible, most organisations agreed that relocation to rural areas would be difficult for a number of reasons. Several organisations noted that where this happened, local chiefs (who are usually associated with ZANU-PF) would need to be informed, and have responsibility for deciding whether land should be allocated to new arrivals.
- “Most organisations stated that relocation to urban areas posed few problems – the main constraint being economic. However, relocation to smaller urban areas may be more problematic for non-economic reasons.
- “A major NGO stated that those who had attracted the adverse attention of the main political parties would find it difficult to relocate even in urban areas. However, the Zimbabwe Human Rights NGO Forum believed that MDC supporters would be relatively safe if relocating within MDC dominated areas, noting that the MDC is “quite well organised” and can “protect” those at risk of violence.”<sup>15</sup>

<sup>15</sup> UK Fact Finding Mission, August 2010 (Section 4.1)

Higher profile figures who have a national profile and who are at risk of persecution by ZANU-PF or its supporters will not be able to significantly reduce that risk by internal relocation within Zimbabwe.

**3.6.18** 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, it would be unduly harsh to return the applicant. The burden of proof is on the applicant to show that internal relocation within Zimbabwe would not avoid the risk they fear or would be unduly harsh. In considering the economic and humanitarian conditions which a returnee would face if he relocated internally, and whether these would be unduly harsh, caseowners should bear in mind the availability of the assistance that is available for voluntary returnees through the assisted voluntary returns (AVR) packages administered by the IOM.

### **3.6.19 Case law.**

**HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094** Failed asylum seekers do not, as such, face a risk of being subjected, on return to Zimbabwe, to persecution or serious ill-treatment. That will be the case whether the return is voluntary or involuntary, escorted or not.

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.

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.

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.

**RN (Returnees) Zimbabwe CG [2008] UKAIT 00083** Those at risk on return to Zimbabwe on account of imputed political opinion are no longer restricted to those who are perceived to be members or supporters of the MDC but include anyone who is unable to demonstrate support for or loyalty to the regime or ZANU-PF. To that extent the country guidance in HS is no longer to be followed.

The fact of having lived in the United Kingdom for a significant period of time and of having made an unsuccessful asylum claim are both matters capable of giving rise to an enhanced risk because, subject to what we have said at paragraph 242 to 246 [reproduced below], such a person is in general reasonably likely to be assumed to be a supporter of the MDC and so, therefore, someone who is unlikely to vote for or support the ruling party, unless he is able to demonstrate the loyalty to ZANU-PF or other alignment with the regime that would negate such an assumption.

The attempt by the regime to identify and suppress its opponents has moved from the individual to the collective. Thus, a person who returns to a home in an area where the MDC made inroads into the ZANU-PF vote at this year's elections faces an enhanced risk as whole communities are being punished for the outcome in an attempt to change the political landscape for the future and to eliminate the MDC support base.

It is the CIO, and not the undisciplined militias, that remain responsible for monitoring returns to Harare airport. In respect of those returning to the airport there is no evidence that the state authorities have abandoned any attempt to distinguish between those actively involved in support of the MDC or otherwise of adverse interest and those who simply have not demonstrated positive support for or loyalty to ZANU-PF. There is no reason to depart from the assessment made in HS of those who would be identified at the airport of being of sufficient interest to merit further interrogation and so to be at real risk of harm such as to infringe either Convention.

Paras 241 – 246 of **RN** state:

**241.** But having passed through the airport without any real difficulty, as will be the case for very many deportees about whom there is nothing known to excite the interest of the CIO, we recognise that many returnees will experience very real difficulty upon return to the areas of residence or other relocation. That does not mean that a bare assertion of Zimbabwean nationality and the claimed inability to demonstrate ZANU-PF membership or loyalty to the regime will be sufficient to establish a right to be recognised as a refugee.

**242.** The evidence upon which this decision is based is mostly in the public domain and so is available to be placed before the authorities in other countries as well as in the United Kingdom. We are told that some four million Zimbabweans have left that country to live elsewhere. If a person is able to do so and now travels to the United Kingdom to claim asylum here he will need to explain why, if he is indeed a refugee, he did not seek international protection in the country to which he had fled initially: see section 8(4) Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. Similar issues may arise under section 8(5) or (6).

**243.** And it may be difficult to reconcile the nature and cost of the journey to the United Kingdom with the economic deprivations suffered by many Zimbabweans in their country of nationality or subsequent place of residence. That may raise questions as to whether such a claimant was in fact aligned with or otherwise viewed as loyal to the regime so as to be able to avoid the consequences of the chaotic disarray in the economy that other Zimbabweans have had to deal with, so as to preserve the means to finance such a journey. As can be seen from the discussion below, the economic conditions under which the majority of Zimbabweans other than those favoured by the regime are stark. Most ordinary Zimbabweans not prospering under the patronage of the regime have very little left in the way of resources or possessions.

**244.** What this means is that each case will turn on its own facts. We do not say that most Zimbabwean claimants will be unable to demonstrate the loyalty to the regime that will be necessary to avoid the persecutory ill-treatment meted out to those who cannot. The evidence indicates that there are large numbers of Zimbabweans who are members or supporters of Zanu-PF or who voted for that party at the elections, whether that was because of expedience or genuine support for the aims and objectives of the party.

**245.** Many such persons will no doubt have contemplated migration to escape the economic catastrophe of their country, even if because of their demonstrated support for the party they have had access to some services such as the food aid that has been denied to others. Whilst it is entirely understandable that in such dire circumstances many should seek economic opportunities abroad, that does not give rise to a sound claim to be in need of international protection.

**246.** So, this will be a question of fact to be resolved in each case. This may come down to a simple assessment of credibility. But immigration judges are well accustomed to making such judgements. An appellant who has been found not to be a witness of truth in respect of the factual basis of his claim will not be assumed to be truthful about his inability to demonstrate loyalty to the regime simply because he asserts that. The burden remains on the appellant throughout to establish the facts upon which he seeks to rely.

**3.6.20 Conclusion.** The AIT's findings in RN were based on exceptionally high levels of political violence in 2008. As Lord Justice Carnwath noted in TK (Sri Lanka) "*... country guidance is not inflexible; it must be applied by reference to new evidence as it emerges.*" The situation in Zimbabwe has moved on since 2008 and caseowners should base their decisions on the current situation, not that which pertained in 2008.

**3.6.21** Each case must be decided on its individual facts to determine whether a particular applicant is at risk, and, if they are, whether internal relocation is available. There is very little political violence in the major urban areas of Harare and Bulawayo, and it is possible for anyone except those with a high political profile (of any party or ethnicity) to relocate to either city. Case owners should give consideration to the UK FFM report when assessing the risk of political violence. The report notes:



“...Assessing who may be at real risk from politically motivated violence is not as straightforward as simply the level of political activity. Much will depend on a person’s standing in society. Someone walking around in an MDC t-shirt would be putting themselves at risk anywhere in Zimbabwe. But in the rural areas, those who are considered influential may be at risk as a consequence of even a relatively low level of political activity. Examples given were teachers, professionals, business people, and people with money. In such cases, especially in rural areas, it could be sufficient for it simply to be known that the person concerned is an MDC supporter for them to attract adverse attention; the fact they have the potential to influence others may be sufficient – they need not be particularly active politically.”<sup>16</sup>

**3.6.22** MDC supporters, human rights defenders and other perceived opponents of ZANU- PF who are able to establish that their *activities* in Zimbabwe and/or the UK mean that they are of serious adverse interest to ZANU-PF or its supporters and who cannot avoid that risk by internally relocating will have a well-founded fear of persecution. Applicants who fall outside of the categories stated above and applicants who do not fall into the following categories are unlikely to have a well-founded fear of persecution in Zimbabwe, unless they are otherwise prominent in their communities and therefore perceived to be influential in opposition to Zanu-PF.

**3.6.23** Such claims are likely to turn on the credibility of the applicant, which should be thoroughly tested. For guidance on credibility see the Asylum Instructions on ‘Considering the Asylum’ and ‘Assessing Credibility in Asylum and Human Rights Claims’.

### **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. Education was severely disrupted in 2008 with teachers being specifically targeted in post-election violence and some schools taken over as torture bases. Reported attendance rated for teachers in October stood at just 40 per cent. During 2008 the Progressive Teachers’ Union of Zimbabwe recorded the deaths of seven teachers affiliated to the union and the harassment, intimidation and even torture of more than 60 other members. None of the reported incidents of torture and ill-treatment of teachers that occurred in 2008 has been investigated and no one has been brought to justice.<sup>17</sup>

**3.7.3** 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. Many teachers fled Zimbabwe following the violence of 2008 and many more went on strike due to poor pay conditions in late 2008. Following the formation of the power sharing government, both President Mugabe and Prime Minister Tsvangirai called for teachers to return to Zimbabwe to help rebuild the country. David Coltard, the MDC Minister of Education quickly announced the payment of salary allowances in foreign currency and relaxed conditions for re-joining the education sector. Mr Coltard announced that as a result of these changes, there had been a “noticeable influx” of people seeking re-admission to the profession with ministry offices being inundated with people seeking readmission.<sup>18</sup>

<sup>16</sup> UK Fact Finding Mission, August 2010 (Section 3.9)

<sup>17</sup> COI Service Zimbabwe Country Report December 2009

<sup>18</sup> COI Service Zimbabwe Country Report December 2009; Zim Standard, Teachers Flee Terror In Rural Schools 10 May 2008; The Zimbabwe Times, Teachers go on strike over salaries 2 September 2008

- 3.7.4** The education system in Zimbabwe is slowly being rebuilt and a \$50 million multi-donor educational transition fund which will provide textbooks and learning materials has been pledged. Private schools have started to open run by individuals, families and organisations. Conditions for teachers in Zimbabwe are financially difficult and at the beginning of 2010 many teachers went on strike due to poor pay and conditions, although some teachers received cash incentives from parents to prevent them from striking. Whilst there continue to be reports that teachers are victims of harassment and intimidation it would appear that in more recent months intimidation perpetrated by ZANU-PF supporters has been as a result of teachers in some areas failing to go on strike, and not due to their suspected support of the MDC.<sup>19</sup>
- 3.7.5 *Actors of protection.*** Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. 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. 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.
- 3.7.6** As this category of applicants' fear is of ill-treatment or persecution by the state authorities or groups that are associated with and act with the acquiescence or encouragement of the state, they cannot apply to the state for protection.
- 3.7.7 *Internal relocation.*** Caseowners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 3390 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 place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or 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.
- 3.7.8** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.
- 3.7.9** The findings of the AIT in the 'RN' country guidance case do not accurately reflect the current position on internal relocation and should not be relied upon. Urban areas generally, including Bulawayo, Harare and Chitungwiza, have a lower incidence of political intimidation and violence than some rural areas and may generally be considered to be safe areas of internal relocation for teachers who have only a localised risk of persecution in their home areas.

<sup>19</sup> Africa Files, Zimbabwe: Parent initiatives for teachers signal education decline, 11 March 2010; Zimbabwe journalists, Private schools sprout in Zimbabwe as public system struggles, 8 February 2010; Zimbabwe VOA news, Zimbabwe Security Agency Reportedly Forcing Teachers to Join State Strike, 12 February 2010; Radionvop, Masvingo Teachers Forced To Join Strike At Gun Point 18 February 2010

Higher profile figures who have a national profile and who are at risk of persecution by ZANU-PF or its supporters will not be able to significantly reduce that risk by internal relocation within Zimbabwe.

**3.7.10** The UK Fact Finding Mission reported that:

“...in the rural areas, those who are considered influential may be at risk as a consequence of even a relatively low level of political activity. Examples given were teachers, professionals, business people, and people with money. In such cases, especially in rural areas, it could be sufficient for it simply to be known that the person concerned is an MDC supporter for them to attract adverse attention; the fact they have the potential to influence others may be sufficient – they need not be particularly active politically.”<sup>20</sup>

**3.7.11** The FFM also stated that:

“...Urban areas, specifically Bulawayo and Harare, were considered by most organisations to be relatively safe from violence, especially for ordinary MDC supporters. An international NGO noted that urban areas benefited from higher levels of scrutiny by the media, civil society and international organisation. However, several organisations noted that small urban centres such as Bindura, Chiredzi, and Buhera, along with some peri-urban areas, such as Epworth (south Harare), were also subject to the risk of sporadic violence.”<sup>21</sup>

**3.7.12** 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, it would be unduly harsh to return the applicant. In considering the economic and humanitarian conditions which a returnee would face if he relocated internally, and whether these would be unduly harsh, caseowners should bear in mind the availability of the assistance that is available for voluntary returnees through the assisted voluntary returns (AVR) packages administered by the IOM.

**3.7.13** *Case law.*

**SM and others (MDC- internal flight- risk categories) Zimbabwe CG [2005] UKIAT 00100 Notified 11/05/05.** The Tribunal found that there continues to be a risk for teachers with an actual or perceived political profile of support for the MDC.

The Tribunal accepted that local police, ZANU-PF party organisations and war veterans do maintain records, or ‘lists’ of MDC supporters, and that these are exchanged between different areas. Therefore, a claimant who has established that they are a political activist to the extent that they have come to the serious adverse attention of the authorities, the war veterans or ZANU-PF so that they are at risk in their home area may not be able safely to relocate to another part of Zimbabwe, although this is a question of fact to be assessed in the circumstances of each case.

**AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061. Promulgated 2/8/06.** The Tribunal reaffirmed the risk to teachers in SM (above).

**RN (Returnees) Zimbabwe CG [2008] UKAIT 00083** There is clear evidence that teachers in Zimbabwe have, once again, become targets for persecution in Zimbabwe. As many teachers have fled to avoid retribution, the fact of being a teacher or having been a teacher in the past is capable of raising an enhanced risk, whether or not a person was a polling officer, because when encountered it will not be known what a particular teacher did or did not do in another area.

**3.7.14 Conclusion.** Teachers are likely to continue to be an enhanced risk category. However, the situation in Zimbabwe has moved on since the AIT determined ‘RN’ in 2008 and

<sup>20</sup> UK Fact-Finding Mission, August 2010 (Section 3.1)

<sup>21</sup> UK Fact Finding Mission, August 2010, (Section 3.45)

caseowners should base their decisions on the current situation, not that which pertained in 2008.

- 3.7.15** Each case must be decided on its individual facts to determine whether a particular applicant is at risk, and, if they are, whether internal relocation is available. Teachers who are able to establish that their activities mean that they are of serious adverse interest to ZANU-PF or its supporters and who cannot avoid that risk by internally relocating will have a well-founded fear of persecution and should be granted asylum.
- 3.7.16** Such claims are likely to turn on the credibility of the applicant, which should be thoroughly tested. For guidance on credibility see the Asylum Instructions on 'Considering the Asylum' and 'Assessing Credibility in Asylum and Human Rights Claims'.

### **3.8 General country situation**

- 3.8.1** 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. See also 'Medical Treatment'.
- 3.8.2 *Treatment.*** The past decade has seen an economic decline in Zimbabwe that is unprecedented for a country in peacetime. By the end of 2008, average life expectancy fell to its lowest level in over thirty years; over half the population was dependent on food aid, formal-sector unemployment was estimated to be well over 90%, and in January 2009 inflation was estimated to stand at 65 followed by 107 (sic) zeros per cent per annum.<sup>22</sup> In February 2009, the Government of Zimbabwe finally bowed to the inevitable, suspended the use of Zimbabwean dollar and legalised the use of hard currency. One of the first acts of the Government of National Unity was to begin to pay public servants partially in US dollars. As a result, food supplies in the shops improved markedly and prices began to fall. By late 2009 inflation rates were in negative figures.<sup>23</sup>
- 3.8.3** Reports from early 2010 show that inflation is beginning to rise, and expected to average 7%-8.5% for 2010-11 but still remains far from the hyperinflation levels witnessed at the beginning of 2009. Shops shelves are full and prices for food are now being quoted in stable currencies. The cost of food is rising and at the beginning of February reports suggested that the average cost of food for a family rose by 10% per annum. However, imported food is becoming more available and in some instances is cheaper than food produced in Zimbabwe suggesting that we will not witness the spiralling food prices that were seen during 2008/2009.<sup>24</sup>
- 3.8.4** There was an improved harvest in 2009 and food is more widely available. However the UN estimates around 2 million people will require food assistance in 2010. This compares with around 7 million in 2009. The supply of food has eased with the stabilisation of the economy through the legalised use of foreign currency.<sup>25</sup>
- 3.8.5** Between August 2008 and June 2009 well over 4,000 people died from cholera in an epidemic that resulted in over 100,000 people being directly infected. Cholera was reported in all 10

<sup>22</sup> COI Service Zimbabwe Country Report December 2009

<sup>23</sup> IRIN, Zimbabwe' food security eases, 2 March 2009; IWPR, Break on food inflation eases hardships, 9 March 2009; IRIN, inflation at 6.5 quidecillion novemdecillion percent 21 January 2009; All Africa, Zimbabwe: year on year inflation rises to 0.7 percent 24 March 2010; The Economist Intelligence Unit Report for April 2010

<sup>24</sup> VOAnews, Zimbabwe inflation rising as disinflationary effect of hard-currency move fades, 18 February 2010; The Herald, Latest food price hikes absurd, 4 February 2010; Sokwanele, Shopping in January 2010, 15 January 2010; The Economist Intelligence Unit Report for April 2010

<sup>25</sup> COI Service Zimbabwe Country Report December 2009; IRIN, Zimbabwe's food security eases, 2 March 2009; IWPR, Break on food inflation eases hardships, 9 March 2009; IRIN, Inflation at 6.5 quidecillion novemdecillion percent, 21 January 2009; DFID press lines

provinces in Zimbabwe and in 55 out of 62 districts.<sup>26</sup> By August 2009 the cholera epidemic was under control and in 2010 only around 200 cases and fewer than 10 deaths have been reported. In addition, Zimbabwe is suffering as a result of HIV and AIDS, an estimated 1.3 million Zimbabweans are living with HIV and AIDS, over 140,000 people die from AIDS related illnesses every year.<sup>27</sup>

**3.8.6** The recent UK Fact Finding Mission stated:

“...Urban areas were reported to be relatively open, with the distribution of aid less open to political manipulation. However, most rural areas were more tightly controlled by ZANU-PF, with politically appointed districts administrators holding a large measure of influence. Rural areas considered by ZANU-PF to be its party ‘heartlands’, were more difficult to access, especially for organisations that distributed food and who were involved in projects that were perceived to have a political angle. The distribution of medicine and medical care was reported to be relatively free from interference.”<sup>28</sup>

**3.8.7** The FFM Report went on to say:

“All organisations interviewed reported that they were able to operate relatively freely in most areas of the country - political interference was reported to have decreased since the formation of the Government of National Unity.

“Urban areas were reported to be relatively open, with the distribution of aid less open to political manipulation. However, most rural areas were more tightly controlled by ZANU-PF, with politically-appointed district administrators holding a large measure of influence. Rural areas considered by ZANU-PF to be its ‘heartlands’ were more difficult to access, especially for organisations that distributed food and which were involved in projects that were perceived to have a political angle. The distribution of medicine and medical care was reported to be relatively free from interference.”<sup>29</sup>

“There were some cases of work and meetings being disrupted, threats being made to some NGOs, and some cases of malicious prosecution. The potential for future disruption remained, but most organisations reported that instances of interference had decreased since the formation of the Government of National Unity.

“Several organisations noted that some projects perceived to have a political angle (such as investigation of violence, post trauma assessment, and community empowerment) were more difficult to operate than others (such as health care) and they faced some opposition from ZANU-PF appointed district administrators”.<sup>30</sup>

**3.8.8 *Actors of protection.*** In light of the nature of this category of claims, the availability of sufficient protection from the state authorities is not relevant.

**3.8.9 *Internal relocation.*** Caseowners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 3390 of the

<sup>26</sup> COI Service Zimbabwe Country Report December 2009; IRIN, 30 strains of cholera as death toll approaches 4,000, 3 March 2009

<sup>27</sup> Human Rights Watch world report 2010: Zimbabwe Chapter; COI Service Zimbabwe Country Report December 2009; DFID Press lines

<sup>28</sup> UK Fact Finding Mission, August 2010 (Executive Summary)

<sup>29</sup> UK Fact Finding Mission, August 2010 (Executive Summary)

<sup>30</sup> UK Fact Finding Mission, August 2010 (Section 1.1)

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 place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or 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.

- 3.8.10** The humanitarian situation in Zimbabwe can change quickly and not all areas are equally affected. If it is found that the applicant would face inhuman or degrading treatment on return to their home area, case owners should consider whether an applicant who would not otherwise be at risk on relocation could reasonably be expected to relocate to a different part of the country where conditions are less severe, taking account of the latest country information. The UK Fact Finding Mission stated:

“...there were no legal requirements or restrictions when moving and settling in other parts of Zimbabwe. While in theory resettlement to another part of the country was possible, most organisations agreed that relocation to rural areas would be difficult for a number of reasons. Several organisations noted that where this happened, local chiefs (who are usually associated with ZANU-PF) would need to be informed, and would have responsibility for deciding whether land should be allocated to new arrivals.

“Most organisations stated that relocation to urban areas posed few problems – the main constraint being economic. However, relocation to smaller urban areas may be more problematic for non-economic reasons.<sup>31</sup>

- 3.8.11** 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 it would be unduly harsh to return the applicant. In considering the economic and humanitarian conditions which a returnee would face if he relocated internally, and whether these would be unduly harsh, caseowners should bear in mind the availability of the assistance that is available for voluntary returnees through the assisted voluntary returns (AVR) packages administered by the IOM.

### **3.8.12 *Caselaw.***

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

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

255. Each case will fall to be decided on its own facts. In some cases we can see that it will not be difficult for an appellant to succeed on this basis [of Article 3]. The fresh evidence now before the Tribunal demonstrates that the state is responsible for the displacement of large numbers of people so as to render them homeless and, unless the misgivings expressed in the evidence before us about the very recent lifting of the ban on the distribution of food aid prove to be unfounded, the evidence demonstrates also that there has been a discriminatory deprivation of access to food aid which, plainly, is a deliberate policy decision of the state acting through its chosen agents. But the more recent evidence indicates that those agencies involved with the distribution of food aid, separate from that available to only some from the government, have once again been able to recommence operations, although subject to registration requirements.

256. On the other hand there will be many appellants who will be unable to make out such a case. Where a family has a home and access to some food provision, either from the state or an NGO or other agency, those harsh living conditions are unlikely to establish an infringement of article 3.

<sup>31</sup> UK Fact Finding Mission, August 2010 (Section 4.1)

Many Zimbabweans have relatives living abroad to whom they can look for support. Professor Ranger told us that money transfers were now difficult to arrange. In view of the collapsed economy and the damage to the banking system on account of hyperinflation, we do not find that difficult to accept. But he confirmed also in his oral evidence that there was no reason to believe that the process by which friends or relatives living abroad were able to arrange for groceries and other provisions to be ordered and paid for in neighbouring countries and delivered to homes in Zimbabwe had been disrupted.

257. Some Zimbabweans, especially those living close to the border, will be able to travel freely across into some neighbouring countries to trade, possibly seek employment, or to buy food and provisions. Some will be able to sustain themselves adequately on the basis of food aid and other relief from agencies able and willing to provide it. Thus, the position remains that each claim must be assessed on its own facts

**3.8.13 Conclusion.** General country conditions are improving. There is sufficient food in the shops for those who can pay for it. Generally, poverty and lack of resources will not amount to a breach of Article 3 ECHR, however, each case should be considered on its individual merits taking into account factors including the age and state of health of the applicant.

**3.8.14** Such claims are likely to turn on the credibility of the applicant, which should be thoroughly tested. For guidance on credibility see the Asylum Instructions on 'Considering the Asylum' and 'Assessing Credibility in Asylum and Human Rights Claims'. In particular, failed asylum seekers returning to Zimbabwe from the UK, particularly those who have taken advantage of the assistance available through the Voluntary Assistance Return and Reintegration Programme will generally have access to hard currency to pay for food. However, where the conditions on return will be so extreme that returning the applicant would, taking his or her individual characteristics and circumstances into account, give rise to a real risk of inhuman or degrading treatment, a grant of Discretionary Leave will be appropriate. Where the inhumane or degrading humanitarian conditions that the applicant faces on return have been exacerbated by politically discriminatory policies of the Zimbabwean government but the applicant is not facing denial of aid because of his or her individual (perceived) political opinion, a grant of Humanitarian Protection, as opposed to Discretionary Leave, will be appropriate.

### **3.9 Prison conditions**

**3.9.1** 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.

**3.9.2** 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 claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

**3.9.3 Consideration.** Prison conditions remain harsh and life threatening. The government's 42 prisons were designed for a maximum of 17,000 prisoners. Local NGOs and the International Committee of the Red Cross (ICRC) estimated that there were approximately 12,000 to 14,000 prisoners in the Zimbabwe Prison System (ZPS) at year's end, a significant reduction from a 2008 NGO estimate of 35,000 and the 2008 government estimate of 22,000 to 24,000. Prison guards beat and abuse prisoners. Poor sanitary conditions and overcrowding persisted, which aggravate outbreaks of cholera, diarrhoea, measles, tuberculosis and HIV/AIDS-related illnesses. Lawyers, NGOs, and church officials familiar with prison conditions reported that although the situation had improved since 2008, shortages of food, water, electricity, clothing, and soap continued. NGOs reported that the death rate decreased significantly during the year; however, the ZPS did not keep statistics on prisons deaths. NGOs estimated that the death rate was 40 deaths per month during the year, a reduction from the estimated 40 to 50 deaths per week during

the height of the 2008 prison crisis. Most observers attributed the dramatic decrease to the ICRC's feeding program, which was the direct result of efforts by MDC-T Deputy Minister of Justice Jessie Majome to permit the ICRC and NGOs increased access to the prisons. Most prison deaths were attributed to harsh conditions, hunger, and HIV/AIDS. NGOs continued to estimate that half of prisoners were HIV-positive; the ZPS did not routinely test prisoners for HIV. Due to inadequate facilities, outdated regulations, and the lack of medical personnel and medication, the majority of prisoners were consistently ill, and routine medical conditions such as hypertension, diabetes, and asthma were life threatening.<sup>32</sup>

**3.9.4** NGOs and the ZPS estimated there were approximately 300 juveniles in prison facilities; the majority were being held in pretrial detention. Although juveniles were not officially held separately from adults, officials in remand prisons generally tried to place juvenile inmates in cells separate from adults. However, an estimated 20 convicted juveniles were held in the same prison cells as adult offenders. Juveniles were particularly vulnerable to the effects of poor prison conditions, and local NGOs reported several complaints of physical and sexual abuse.<sup>33</sup>

**3.9.5** NGOs estimated that there were 500 women in prison; 43 children under the age of five lived with their incarcerated mothers. NGOs reported that female prisoners generally fared better than males. Women generally received more food from their families than male prisoners, resulting in reduced rates of malnutrition. Prison officials also appeared to have prioritized food distribution to women. NGOs were unaware of women reporting rapes or physical abuse, which were common among the male population, and suggested that female guards may have been more diligent about protecting female prisoners from abuse and that female prisoners may not have reported abuse. However, women prisoners continued to endure significant hardship. For example, prisons did not provide feminine sanitary supplies for women and pregnant and nursing mothers were not provided additional care or food rations. According to lawyers, female offenders also received sentences that were on average two to three years longer than male offenders for the same crime.<sup>34</sup>

**3.9.6 Conclusion.** Prison conditions in Zimbabwe are severe and taking into account the levels of poor sanitation, prevalence of disease, absence of medical facilities, levels of abuse and lack of food, have the potential to reach the Article 3 threshold in individual cases. The individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where individual applicants are able to demonstrate a real risk of imprisonment on return to Zimbabwe (and exclusion is not justified), a grant of Humanitarian Protection may be appropriate.

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

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

**4.2** With particular reference to Zimbabwe the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific

<sup>32</sup> US Department of State 2009 Human Rights Report: Zimbabwe

<sup>33</sup> US Department of State 2009 Human Rights Report: Zimbabwe

<sup>34</sup> US Department of State 2009 Human Rights Report: Zimbabwe



circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.

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

- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

### **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** Zimbabwe's indicators for access to health care have fallen dramatically during the last few years, impacting on life expectancy, maternal and child mortality rates, and prevalence of preventable diseases. People have a lack of access to health care and, as a result, avoidable deaths from conditions where people are unable to source essential drugs for blood pressure, diabetes, asthma and other common and controllable illnesses, have increased. Average life expectancy has dropped from 65 in 1990 to 43 in 2006. Under-five mortality has increased from 76 per 1000 live births in 1990 to 82 in 2006. HIV/AIDS has fuelled a rapid growth in the number of orphans and vulnerable children, which have now reached over 1.3 million.<sup>35</sup>
- 4.4.3** According to existing policies and tariffs provided by the Ministry of Health, free services are provided for the following: all patients at rural clinics, children under five, pregnant mothers (although only those referred to a hospital can deliver there free), patients over sixty five, TB, epilepsy, psychiatric cases and chronic cases (consultation includes free drugs). In district/ general hospitals the cost of an adult consultation is USD4 and a child over five years is USD 1, a medical examination is USD 4, prescribed medicines are available at a maximum cost of USD 2 per course, X rays and laboratory tests are available at a maximum cost of USD 2. However, it is clear that health care has not been free in many rural health centres in spite of this policy: many services available for free or at a minimal cost are not available at government hospitals, and have to be sourced through the private sector at huge expense. For a time hospital wards across the country closed but in February 2009 facilities re-opened and they remain almost fully functional although there is a shortage of health care workers across Zimbabwe. There are also a number of private medical facilities in Zimbabwe which maintain high standards but at a premium cost.<sup>36</sup>
- 4.4.4** Between August 2008 and June 2009 well over 4,000 people died from cholera in an epidemic that resulted in over 100,000 people directly infected. Cholera was reported in all 10 provinces in Zimbabwe and in 55 out of 62 districts. More than \$70m was donated by international partners to respond to the epidemic and by the end of August 2009 the cholera epidemic was under control. Only around 200 cases and fewer than 10 deaths have been reported in the 2009-10 rainy season.<sup>37</sup>
- 4.4.5** An estimated 1.3 million Zimbabweans are living with HIV and AIDS. ;This figure represents a reduction in the prevalence rate which is now believed to be around 15.6 per cent of the total population, although some critics have suggested that increased deaths have had a

<sup>35</sup> COI Service Zimbabwe Country Report December 2009

<sup>36</sup> COI Service Zimbabwe Country Report December 2009; Letter from the FCO 11 February 2010

<sup>37</sup> COI Service Zimbabwe Country Report December 2009; IRIN, 30 strains of cholera as death toll approaches 4,000, 3 March 2009; Human Rights Watch world report 2010:Zimbabwe Chapter; DFID press lines

large impact on the decline of HIV and AIDS prevalence rates. Over 140,000 people die from AIDS related illnesses every year. There is currently 1 Anti-Retroviral Treatment (ART) clinic in each of the 62 districts in Zimbabwe but some patients have difficulty finding money to pay for the travel to the clinics. The government does, however, have a number of outreach teams to address this. The government is also currently de-centralising HIV care and ART clinics will be located closer to where most people live. New arrivals in Zimbabwe have access to public treatment and those already on treatment will be prioritised. The majority of drugs used for ART in Zimbabwe are supplied by NGO's and International organisations and the drugs are delivered to the regions every month. The variety of drugs is limited but by using cheaper varieties more people are able to be treated. Some Antiretroviral Drugs (ARV's) are not found in the public sector but where this is the case they can [generally] be found in the private pharmacies. Private pharmacies also appear to stock most drugs, even the most expensive combinations, and [most if not all] ARV's are easily available through the private health care system.<sup>38</sup>

#### 4.4.6 The recent UK Fact Finding Mission to Zimbabwe reported that:

"All organisations interviewed reported that they were able to operate relatively freely in most areas of the country - political interference was reported to have decreased since the formation of the Government of National Unity.

"Urban areas were reported to be relatively open, with the distribution of aid less open to political manipulation. However, most rural areas were more tightly controlled by ZANU-PF, with politically-appointed district administrators holding a large measure of influence. Rural areas considered by ZANU-PF to be its 'heartlands' were more difficult to access, especially for organisations that distributed food and which were involved in projects that were perceived to have a political angle. The distribution of medicine and medical care was reported to be relatively free from interference."<sup>39</sup>

#### 4.4.7 The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. 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 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, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

### 5.2 Case law.

**HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094** Failed asylum seekers do not, as such, face a risk of being subjected, on return to Zimbabwe, to persecution or serious ill-treatment. That will be the case whether the return is voluntary or involuntary, escorted or not.

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

<sup>38</sup> COI Service Zimbabwe Country Report December 2009; Letter from the FCO, 11 February 2010

<sup>39</sup> UK Fact Finding Mission, August 2010 (Executive Summary)

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.

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.

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.

**RN (Returnees) Zimbabwe CG [2008] UKAIT 00083** It is the CIO, and not the undisciplined militias, that remain responsible for monitoring returns to Harare airport. In respect of those returning to the airport there is no evidence that the state authorities have abandoned any attempt to distinguish between those actively involved in support of the MDC or otherwise of adverse interest and those who simply have not demonstrated positive support for or loyalty to Zanu-PF. There is no reason to depart from the assessment made in HS of those who would be identified at the airport of being of sufficient interest to merit further interrogation and so to be at real risk of harm such as to infringe either Convention.

The Tribunal found in HS that the well resourced, professional and sophisticated intelligence service that is the CIO would distinguish, when dealing with those returning as deportees from the United Kingdom, between those deportees in whom there was some reason to have interest and those who were of no adverse interest simply on that account. This was an intelligence led process informed by record keeping in Zimbabwe and information from operatives sent to the United Kingdom to infiltrate MDC groups active there. The risk categories were clearly identified and there was evidence that those not falling into such were able, generally, to pass through the airport without real difficulty.

### 5.3 The UK Fact Finding Mission to Zimbabwe interviewed seven returnees from the UK, and reported that:

“None of the returnees reported any significant problems upon arrival at Harare airport. Three returnees were either questioned and/or had their bags searched. One returnee (interview number 4) was required to pay a US\$20 bribe to security staff at Harare airport. While one returnee (3) stated that he was concerned that he would face problems at Harare airport, these concerns proved unfounded. Another returnee (5) believed that airport staff would think that he was a failed asylum seeker because he was travelling under an ETD. However, the returnee stated that apart from being questioned about why he was travelling on the ETD no significant problems were encountered.

“Most returnees reported that they were aware of others who had returned to Zimbabwe (sometimes on the same flight) without any problems. While most were unable to comment in detail, a couple of returnees noted that they were still in contact with a small number of returnees who appear to be free of harassment from state officials.

“Most returnees stated that they had received assistance from the International Organisation for Migration (IOM) on arrival in Zimbabwe.

“All returnees stated that they had re-settled either in Harare (4 returnees), or Bulawayo (3 returnees), and that they had not experienced any problems since re-settling in the country. All returnees stated that they had not experienced any problems in obtaining accommodation.”<sup>40</sup>

<sup>40</sup> UK Fact Finding Mission, August 2010, (Section 5.1)

- 5.4** Zimbabwean nationals may return voluntarily to any region of Zimbabwe at any time in one of three ways; 1) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, 2) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, 3) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes. The Voluntary Assisted Return and Reintegration Programme (VARRP) is one avenue of return and is implemented on behalf of the UK Border Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. To date, since 2008, a total of 514 applicants (asylum and non asylum) have returned to Zimbabwe. The IOM 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. Zimbabwe nationals wishing to avail themselves of this opportunity for assisted return to Zimbabwe should be put in contact with the IOM offices in London on 0800 783 2332 or [www.iomlondon.org](http://www.iomlondon.org).

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**24 September 2010**  
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