



OPERATIONAL GUIDANCE NOTE

ZIMBABWE

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1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Zimbabwe and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners and caseworkers must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service Zimbabwe Country of Origin Information at: http://www.homeoffice.gov.uk/rds/country_reports.html
- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instructions on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners and caseworkers 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** The Republic of Zimbabwe gained independence from Britain in April 1980. For seven years following independence Robert Mugabe ruled the country as an executive Prime Minister. In 1987, following tensions within Zimbabwe, the Mugabe led Zimbabwe African National Union entered into a union with Zimbabwe African People's Union, creating the Zimbabwe African

National Union – Popular Front (ZANU-PF) and Mugabe was made executive President.¹

- 2.2** Despite holding periodic elections, no credible opposition to ZANU-PF emerged until the creation of the Movement for Democratic Change (MDC) in September 1999, led by the former head of the Zimbabwe Congress of Trade Unions (ZCTU), Morgan Tsvangirai.²
- 2.3** Parliamentary elections in March 2005 saw Mugabe's ZANU-PF returned to power with an increased majority. Political violence was not at the very high levels seen in the 2002 elections, but there was widespread intimidation, vote-rigging and the use of food to buy votes. Following the March 2005 parliamentary elections, tensions in the leadership of the MDC resulted in the party splitting into two rival factions, led by Morgan Tsvangirai and Arthur Mutambara.³
- 2.4** In synchronised parliamentary, senatorial, local government and presidential elections on 29 March 2008, Zanu-PF lost its majority in parliament for the first time in 28 years. After a long delay releasing the results it was finally announced that Robert Mugabe had also lost the Presidential election. But Morgan Tsvangirai, according to the Zimbabwe Electoral Commission, had not obtained the 50% plus one vote needed to win outright and a run-off presidential election was scheduled for 27 June 2008. The run-up to the run-off was characterised by widespread and vicious intimidation and violence against perceived opposition supporters, and even non MDC supporters were caught up in the violence. NGOs were prevented from carrying out field activities, which had serious humanitarian consequences. As a result of all this on 23 June 2008 Morgan Tsvangirai withdrew from the race on the grounds that a free and fair election was not possible. As the only remaining candidate Mugabe therefore 'won' the election.⁴
- 2.5** The MDC, together with human rights monitors, reported that political violence continued after polling day with ZANU-PF forces continuing to target the MDC, particularly its officials. Meanwhile, increasing numbers of people fled Zimbabwe, with many showing signs of beating or torture.⁵
- 2.6** Following the run-off, Robert Mugabe faced growing international condemnation, with even previously sympathetic neighbouring governments declaring the election to be illegitimate because of the blatant violence and vote rigging. This, combined with an economy in freefall, left Mugabe with little choice but to talk to Morgan Tsvangirai, and under the mediation of South African President Thabo Mbeki, Mugabe and Tsvangirai agreed to start talks aimed at resolving the crisis.⁶
- 2.7** Negotiations continued on and off through July and August and on 15 September 2008 a power sharing deal was signed between Mugabe, Tsvangirai and the Arthur Mutambara, head of the smaller MDC faction. After several months during which it was unclear whether the Power Sharing Agreement would ever be implemented, in February 2009 a Government of National Unity was finally formed, with Robert Mugabe as President and Morgan Tsvangirai Prime Minister. Ministries were divided between ZANU-PF and the two MDC factions with the crucial Home Affairs ministry which controls the domestic security apparatus shared between ZANU-PF and the MDC. The international community has expressed serious doubts whether this represents a real sharing of power and it is clear that Mugabe continues to have the whip hand. However, there are also some signs of improvement and the MDC continues to try to achieve real change from within the government.⁷

¹ COIS Country Report 2008 (Background Information: History) & FCO Country Profile: Zimbabwe 2008

² COIS Zimbabwe Country Report 2008 (Background Information: History)

³ COIS Zimbabwe Country Report 2008 (Background Information: Electoral History) & FCO Country Profile: Zimbabwe 2008

⁴ COIS Country Report 2008 (Background Information: History)

⁵ COIS Country Report 2008 (Background Information: History)

⁶ COIS Country Report 2008 (Background Information: History)

⁷ BBC News: Timeline Zimbabwe 13/2/09; COI Service Country Situation Update 9/2/09

- 2.8** Zimbabwe's human rights record under Robert Mugabe has been vigorously criticised by the international community including the European Union, the Commonwealth, the United Nations, and the Africa Commission for Human and Peoples' Rights, as well as by the United States and other countries. The security forces have been used to suppress political opposition, torture has been regularly used, peaceful protests are suppressed, independent media has been stifled, and legislation limiting freedom of political association, education and discussion has been introduced. ZANU-PF organised youth and war veteran groups have been used to intimidate the opposition. ZANU-PF officials were accused by the MDC and civil society organisations of withholding food from localities which support the opposition.⁸
- 2.9** More than 150 people, mainly MDC supporters, were killed in the violence that attended the 2008 elections, and more than 5,000 were injured. At least 36,000 people were displaced. The violence continued during the post-election negotiations, particularly in rural areas, even after a Memorandum of Understanding (MOU) that included a call for an end to the political violence was signed by the parties to the talks on 21 July 2008. Shortly after the MOU was signed, ZANU-PF reportedly dismantled some of the bases that 'war veterans' had used to launch attacks on MDC supporters after the MOU was signed but some remained, particularly in Mashonaland West, East and Central provinces. Human Rights Defenders continued to be harassed.⁹
- 2.10** By 22 August 2008, the Foreign and Commonwealth Office (FCO) was reporting that levels of political violence and intimidation had fallen compared with the peak period of electoral violence, with the groups of ZANU-PF youth previously prevalent in the northern, wealthier suburbs of Harare having dispersed. The situation remained tense however, particularly in parts of Mashonaland and Manicaland, where the ZANU-PF leadership is exceptionally 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.¹⁰
- 2.11** The situation did deteriorate, with incidents of political violence/human rights abuses against MDC supporters, human rights defenders and others perceived to oppose the Mugabe government increasing significantly 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.¹¹
- 2.12** 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. 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 also 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.¹²

⁸ FCO Country Profile 2008: Zimbabwe

⁹ COIS Country Report 2008 (Background Information: History); COI Service Country Situation Update 9/2/09

¹⁰ Letter from FCO dated 22 August 2008

¹¹ COI Service Country Situation Update 9/2/09

¹² COI Service Country Situation Update 9/2/09; Zimbabwe Peace Project, Dec 2008; Human Rights NGO Forum, Political Violence Report, January 2009, 27/2/09; BBC, Victims Demand Justice, 17/9/08; Human Rights Watch (HRW), Free Activists Unlawfully Detained, 15/1/09; SW Radio Africa, High Court grants bail to eight MDC activists from Mbare, 3/3/09; SW Radio Africa, 89 MDC supporters still in custody in Nyanga,

- 2.13** From early 2009 there were increasing reports of retributory violence perpetrated by MDC supporters on ZANU-PF supporters who had allegedly been responsible for human rights abuses around the time of the presidential elections and of attempts by these MDC supporters to reclaim their looted property. As a result, more than 160 MDC supporters from around the country were arrested, detained and charged. February and March 2009 have also seen the arrest of the new Deputy Minister for Agriculture, Roy Bennett, an intensification of the campaign against white farmers, with arrests and farm invasions on the increase, some involving violence. Reports of political violence have continued, if not on the scale of April – June 2008, and suppression of peaceful protests is still the normal pattern. Teachers have experienced intimidation and harassment on attempting to return to work.¹³
- 2.14** Although the constitution provides for an independent judiciary, under Mugabe's regime judges, magistrates and lawyers faced intense pressure from the executive, having been threatened, intimidated, harassed and arrested, or bribed, and encountered persistent refusal on the part of the executive to abide by judicial decisions.¹⁴ The Government of National Unity divides leadership of the Ministry of Home Affairs between ZANU-PF and MDC-T ministers. It is too soon to know how this will work in practice, but so far the existing Attorney General has remained in Post. Police have repeatedly ignored judicial orders to release MDC activists even post the implementation of the GNU, and the magistrate who ordered the release on bail of MDC ministerial nominee Roy Bennett was himself arrested. Roy Bennett was released on 12 March, but the charges against him were not dropped, and other MDC activists remained in custody. A slightly more encouraging sign was the sentencing on 5 March 2009 of three ZANU-PF base commanders who were implicated in the election related violence in the summer of 2008 to 30 months in jail with hard labour.¹⁵
- 2.15** 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; more than half the population was receiving food aid, formal-sector unemployment was estimated to be well over 80%, and in December 2008 inflation was estimated to stand at 65 followed by 107 (sic) zeros per cent per annum.¹⁶ In February 2009, the Government of Zimbabwe finally bowed to the inevitable and legalised the use of hard currency, and 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 of these and other factors, food supplies in the shops improved markedly and prices began to fall as competition increased. Goods are only available to those who have access to hard currency to pay for them.¹⁷
- 2.16** For many others who do not have access to hard currency, the food crisis continues and it was estimated that around 7 million Zimbabweans would require food aid ahead of the April 2009 harvest. The anticipated low harvest yield is expected to be reasonably good where seeds were planted but limited in distribution as a result of a lack of inputs. The importation of around 750,000 tonnes of cereal in early 2009 has eased the situation but food aid will be necessary

3/3/09; Sokwanele.com, Update on abductees from ZLHR, 4/3/09; IRIN, Tit-for-tat violence flares up, 23/2/09; VOA News, From bad to worse in Zimbabwe, 8/3/09; BBC News: Zimbabwe cabinet nominee is freed 12/3/09

¹³ COI Service Country Situation Update 9/2/09; Zimbabwe Peace Project, Dec 2008; Human Rights NGO Forum, Political Violence Report, January 2009, 27/2/09; BBC, Victims Demand Justice, 17/9/08; HRW, Free Activists Unlawfully Detained, 15/1/09; SW Radio Africa, High Court grants bail to eight MDC activists from Mbare, 3/3/09; SW Radio Africa, 89 MDC supporters still in custody in Nyanga, 3/3/09; Sokwanele.com, Update on abductees from ZLHR, 4/3/09; IRIN, Tit-for-tat violence flares up, 23/2/09; VOA News, From bad to worse in Zimbabwe, 8/3/09; BBC News: Zimbabwe cabinet nominee is freed 12/3/09

¹⁴ COIS Country Report 2008 (Background Information: History)

¹⁵ Radiovop, Violent ZANU commanders get jail sentences, 8/3/09; COI Service Country Situation Update 9/2/09; SWRADIOAfrica: Zimbabwe Supreme Court grants Bennett bail 11/3/09

¹⁶ COIS Country Report 2008 (Background Information: History)

¹⁷ IRIN, Zimbabwe's food security eases, 2/3/09; VOA News, Food availability improves in Zimbabwe – for those with hard currency, 5/3/09; IWPR, Break on food inflation eases hardships, 9/3/09; IRIN, Inflation at 6.5 quindeillion novemdecillion percent, 21/1/09.

through the next year and into 2010.¹⁸

- 2.17** Between August 2008 and 1 March 2009 nearly 4,000 people died from Cholera in an epidemic that resulted in over 90,000 people directly infected. Cholera was reported in all 10 provinces in Zimbabwe and in 55 out of 62 districts.¹⁹

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 guidance 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 Asylum Claim).

3.3 If the applicant does not qualify for asylum, consideration must be given 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 the individual circumstances.

3.4 This guidance is **not** designed to cover issues of credibility. Case owners and caseworkers will need to consider credibility issues based on all the information available to them. For guidance on credibility see the Asylum Instructions on “Considering the Asylum Claim” and “Assessing Credibility in Asylum and Human Rights Claims”.

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

<http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/>

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

3.6.1 Applicants may claim asylum based on fear of violence at the hands of state agents, war veterans, or other supporters of ZANU-PF because of involvement with the opposition Movement for Democratic Change (MDC), because of their involvement with human rights or humanitarian organisations, 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

¹⁸ IRIN, Zimbabwe’s food security eases, 2/3/09; VOA News, Food availability improves in Zimbabwe – for those with hard currency, 5/3/09; IWPR, Break on food inflation eases hardships, 9/3/09; IRIN, Inflation at 6.5 quidecillion novemdecillion percent, 21/1/09.

¹⁹ IRIN, 30 strains of cholera as death toll approaches 4,000, 3/3/09

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.²⁰

- 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, but 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 150 people, mostly those perceived to be MDC supporters, were killed, thousands injured 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. Shortly after the MOU was signed ZANU-PF reportedly dismantled some of the bases that 'war veterans' had used to launch attacks on MDC supporters after the MOU was signed but some remained, particularly in Mashonaland West, East and Central provinces.²¹
- 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.²² 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 is exceptionally 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.²³
- 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.²⁴
- 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. 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

²⁰ COIS Zimbabwe Country Report 2008; COI Country Situation Update 9/2/09

²¹ COIS Zimbabwe Country Report 2007 (Background Information: Recent Developments), BBC News 'Crackdown on Zimbabwean activists' dated 20 March 2007, IRIN: Zimbabwe 'More arrests, tension rises' dated 12 March 2007 & IRIN: Zimbabwe 'Opposition leaders picked up by police' dated 28 March 2007

²² Letter from FCO 22 August 2008

²³ Letter from FCO 22 August 2008

²⁴ COI Service Country Situation Update 9/2/09

cases, soldiers protested over pay, assaulting people and confiscating goods and money. In Victoria Falls, 120 households were forced to destroy their homes.²⁵

3.6.7 From early 2009 there were increasing reports of retributory violence perpetrated by MDC supporters on ZANU-PF supporters who had allegedly been responsible for human rights abuses around the time of the presidential elections and of attempts by these MDC supporters to reclaim their looted property. As a result, more than 160 MDC supporters from around the country were arrested, detained and charged. February and March 2009 have also seen the arrest of the new Deputy Minister for Agriculture, Roy Bennett, an intensification of the campaign against white farmers, with arrests and farm invasions on the increase, some involving violence. Reports of political violence have continued, if not on the scale of April – June 2008, and suppression of peaceful protests is still the normal pattern. Teachers have experienced intimidation and harassment on attempting to return to work.²⁶

3.6.8 *Sufficiency of protection.* 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.

3.6.9 *Internal relocation.* Where an applicant's fear is of ill treatment/persecution by the state authorities, case owners should not automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):

“The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts.”

3.6.10 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.

3.6.11 The Asylum and Immigration Tribunal (AIT) in 'RN' found that:

233. In our view the level of risk is not reduced by the failed asylum seeker returning not to his home area but to another area instead where he is unknown. As a newcomer to the area, he would be very likely to encounter enquiries from those representatives of the regime in control of the area as to his background, history and associations. In such an area the same risk arises of being faced with a demand to demonstrate loyalty to the ruling party and it may be that the level of risk is perhaps enhanced because, as a newcomer, he would attract interest as to his background and suspicion of having been displaced already on account of being found to be disloyal or a potential supporter of the opposition to the regime.

²⁵ COI Service Country Situation Update 9/2/09; Zimbabwe Peace Project, Dec 2008; Human Rights NGO Forum, Political Violence Report, January 2009, 27/2/09; BBC, Victims Demand Justice, 17/9/08; HRW, Free Activists Unlawfully Detained, 15/1/09; SW Radio Africa, High Court grants bail to eight MDC activists from Mbare, 3/3/09; SW Radio Africa, 89 MDC supporters still in custody in Nyanga, 3/3/09; Sokwanele.com, Update on abductees from ZLHR, 4/3/09; IRIN, Tit-for-tat violence flares up, 23/2/09; VOA News, From bad to worse in Zimbabwe, 8/3/09; BBC News: Zimbabwe cabinet nominee is freed 12/3/09

²⁶ COI Service Country Situation Update 9/2/09; Zimbabwe Peace Project, Dec 2008; Human Rights NGO Forum, Political Violence Report, January 2009, 27/2/09; BBC, Victims Demand Justice, 17/9/08; HRW, Free Activists Unlawfully Detained, 15/1/09; SW Radio Africa, High Court grants bail to eight MDC activists from Mbare, 3/3/09; SW Radio Africa, 89 MDC supporters still in custody in Nyanga, 3/3/09; Sokwanele.com, Update on abductees from ZLHR, 4/3/09; IRIN, Tit-for-tat violence flares up, 23/2/09; VOA News, From bad to worse in Zimbabwe, 8/3/09; BBC News: Zimbabwe cabinet nominee is freed 12/3/09

3.6.12 Supplementary evidence put to the Tribunal in RN about the situation post the 15 September power-sharing agreement indicated that Matabeleland was largely free of political violence, and that indeed there had been relatively few incidents of political violence there even at the height of the violence elsewhere in Zimbabwe. Since then, although the number and seriousness of human rights abuses throughout Zimbabwe is not at as high a level as from April – June 2008, significant numbers of incidents continue to occur in various areas. Case owners should therefore ensure that they obtain the latest information about the situation but remember that the burden of proof is on the applicant to show that internal relocation within Zimbabwe would not avoid the risk they fear or would not be reasonable.

3.6.13 Caselaw.

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.

3.6.14 Conclusion. In the period immediately before the AIT heard the country guidance case of RN, there was already evidence that the very high levels of political violence that were seen in the period between the first and second presidential polls had abated. This is still the case up to the present. Human rights abuses continue at 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.

3.6.15 Despite numerous ongoing incidents, the widespread and seemingly indiscriminate attacks

that led the AIT to conclude that anyone who was unable to demonstrate loyalty to ZANU-PF would be at risk have not been repeated since the summer of 2008. There was a notable increase in abuses from October to December 2008 with a series of abductions/detentions of activists and human rights defenders, which continued into 2009 with attacks on/arrests of MDC supporters who sought to reclaim property that had been taken from them at the height of the political violence, assaults/arrests of those in diamond mining areas, of white farmers, and also attacks by soldiers apparently lashing out because for example they were unpaid or were unable to access money from banks. There has also been a new spate of incidents of violence between MDC and ZANU-PF supporters.

- 3.6.16** Although deplorable, a significant feature of the human rights abuses that are occurring now is that they have been for reasons other than those which led the AIT to conclude that those who were unable to demonstrate loyalty to ZANU-PF would generally be at risk. The evidence of the past six months or so therefore no longer supports the contention that Zimbabweans are at risk merely because they would be unable to show support for ZANU-PF (and there have been instances where ZANU PF supporters have been harassed or hurt, especially if perceived to have 'betrayed' the regime). A grant of asylum solely on this basis will not therefore usually be appropriate.
- 3.6.17** Political activists, human rights defenders, members of civil society, and those in sensitive professions, such as journalists (see separate section below for teachers), may be at risk of persecution or serious harm. Each case must be considered on its individual merits but it is likely that those whose activities have or would be likely to bring them to the adverse attention of elements within the Zimbabwean state which remain loyal to ZANU-PF, or of non-state ZANU-PF supporters, will be at continuing risk. In the event that an applicant with a national profile is found to be at continuing risk in their home area, internal relocation would not effectively avoid such a risk and there is not yet evidence that they would be able to rely on the Zimbabwean justice system for sufficient protection. A grant of asylum will be appropriate in such circumstances. Lower profile applicants who would otherwise be at risk in their home area may be able to relocate internally. Again, each case must be considered on its merits.
- 3.6.18** Ordinary Zimbabweans who are not politically active or in sensitive occupations will not generally be at continuing risk of politically motivated mistreatment. There have, however, been ongoing reports of incidents in which MDC supporters have been attacked for e.g. wearing MDC 'regalia' or expressing anti-ZANU-PF views, so each case will need to be considered on its merits. The evidence indicates that these are generally local incidents at the hands of ZANU activists/supporters, but there is not yet evidence that an applicant would be able to rely on the Zimbabwean justice system for sufficient protection. In many cases internal relocation elsewhere in Zimbabwe is likely to be an effective way of avoiding such a threat, but if there is a real risk which could not be avoided by internal relocation, or if in the circumstances of the case internal relocation would be unduly harsh, a grant of asylum will be appropriate. As with any asylum or human rights claim, the burden of proof is on the applicant to show why they would be at risk and why they could not avoid that risk by internal relocation.
- 3.6.19** It is important that case owners refer to the most up to date country information to ascertain whether, in the circumstances prevailing at the time the decision is made, there is a risk to the individual applicant in their home area and if there is, whether internal relocation would be a reasonable and effective way for them to avoid that risk.

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 and the implication that professional position will be used to influence students.
- 3.7.2 *Treatment.*** Continuing a long established pattern, Zimbabwean teachers were in the period

around the harmonised elections in 2008 accused of supporting the opposition MDC and of being responsible for ZANU (PF) defeats, due to their role as election officials. Several thousand teachers, mostly from rural areas, fled their schools. Teachers were killed, including two beaten to death at their school in the north-western Guruve region, and many were threatened, assaulted and hospitalised. There were reports that teachers in ZANU-PF's strongholds in Mashonaland East, Central and West and Manicaland provinces were worst affected. Even the usually pro-Mugabe Zimbabwe Teachers Association stated that it was concerned about the safety of its members.²⁷

- 3.7.3** The reason for teachers being targeted may in many cases have been because many teachers serve as polling and returning officers in elections, and as such were accused of assisting MDC in its victory, although there is no evidence that this took place. Teachers may also have antagonised the regime by encouraging voters to vote freely for the candidate of their choice. Historically, their position was not helped by the MDC, shortly after its formation in 1999, having identified teachers as the perfect messengers for the party because of their involvement in voter education programmes.²⁸
- 3.7.4** The Education Ministry in the Government of National Unity was allocated to the MDC. One of the first acts of the new Government was to promise to review teachers salaries and put in place arrangements to pay them, along with other public servants, in hard currency. This brought to an end a long running strike and schools, many of which had been closed for months, began to re-open. However, teachers have reported intimidation and harassment in 2009 when they have tried to return to work in certain areas of the country and have had difficulty cashing their USD vouchers. There have also been reports of State security agents being implanted in schools to monitor behaviour.²⁹
- 3.7.5** **Sufficiency of protection.** 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.
- 3.7.6** **Internal relocation.** Where an applicant's fear is of ill treatment/persecution by the state authorities, case owners should not automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):

“The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts.”

- 3.7.7** 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.
- 3.7.8** The AIT in 'RN' found that:

233. In our view the level of risk is not reduced by the failed asylum seeker returning not to his home area but to another area instead where he is unknown. As a newcomer to the area, he would be very likely to encounter enquiries from those representatives of the regime in control of the area as to his background, history and associations. In such an area the same risk arises of being faced with a demand to demonstrate loyalty to the ruling party and it may be that the level

²⁷ COIS Zimbabwe Country Report 2008

²⁸ COIS Zimbabwe Country Report 2008

²⁹ News 24, Zim teachers end strike, 24/2/09

of risk is perhaps enhanced because, as a newcomer, he would attract interest as to his background and suspicion of having been displaced already on account of being found to be disloyal or a potential supporter of the opposition to the regime.

3.7.9 Supplementary evidence put to the Tribunal in RN about the situation post the 15 September power-sharing agreement indicated that Matabeleland was largely free of political violence, and that indeed there had been relatively few incidents of political violence there even at the height of the violence elsewhere in Zimbabwe. Since then, although the number and seriousness of human rights abuses throughout Zimbabwe is not at as high a level as from April – June 2008, significant numbers of isolated incidents continue to occur in various areas. Case owners should therefore ensure that they obtain the latest information about the situation but remember that the burden of proof is on the applicant to show that internal relocation within Zimbabwe would not avoid the risk they fear or would not be reasonable.

3.7.10 Caselaw.

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.

3.7.11 Conclusion. Each case must be decided on its individual facts. Being a teacher will not of itself give rise to a well-founded fear of persecution - the key issue is whether the applicant has been or is perceived to have been engaged in political activity so as to be of adverse interest to elements within the Zimbabwean state which remain loyal to ZANU-PF, or of non-state ZANU-PF supporters. The level of activity required to bring such attention on a teacher is likely to be lower than that for activists in some other walks of life. Teachers are particularly vulnerable because their activities are open to greater scrutiny than those in less public positions, because of their role in the 2008 elections, and because the authorities and associated groups are wary of the influence they could have on their students.

3.7.12 Therefore, a teacher who is able to establish credibly that they have come to the adverse attention of elements within the Zimbabwean state which remain loyal to ZANU-PF, or of non-state ZANU-PF supporters, as a result of their political activities, may have a well-founded fear or persecution in their home area and will not be able to rely on the protection of the state. Where the treatment feared is localised, internal relocation elsewhere in Zimbabwe is likely to be an effective way of avoiding such a threat, but if there is a real risk which could not be avoided by internal relocation, or if in the circumstances of the case internal relocation would be unduly harsh, a grant of asylum will be appropriate. As with any asylum or human rights claim, the burden of proof is on the applicant to show why they would be at risk and why they could not avoid that risk by internal relocation.

3.7.13 It is important that case owners refer to the most up to date country information to ascertain whether, in the circumstances prevailing at the time the decision is made, there is a risk to the individual applicant in their home area and if there is, whether internal relocation would be a reasonable and effective way for them to avoid that risk.

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 80%, and in December 2008 inflation was estimated to stand at 65 followed by 107 (sic) zeros per cent per annum.³⁰ In February 2009, the Government of Zimbabwe finally bowed to the inevitable and legalised the use of hard currency, and 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 but goods were only available to those who had access to hard currency to pay for them.³¹

3.8.3 For many others who do not have access to hard currency, the food crisis continues and it was estimated that around 7 million Zimbabweans would require food aid ahead of the April 2009 harvest. The anticipated low harvest yield is expected to be reasonably good where seeds were planted but limited in distribution as a result of a lack of inputs. The importation of around 750,000 tonnes of cereal in early 2009 has eased the situation but food aid will be necessary through the next year and into 2010.³²

3.8.4 Between August 2008 and 1 March 2009 nearly 4,000 people died from Cholera in an epidemic that resulted in over 90,000 people directly infected. Cholera was reported in all 10 provinces in Zimbabwe and in 55 out of 62 districts.³³ In addition, Zimbabwe is suffering as a result of HIV and AIDS, with the pandemic claiming an estimated 2300 lives a week.³⁴

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

3.8.6 *Internal relocation.* The humanitarian situation in Zimbabwe changes 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.

3.8.7 *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*

³⁰ COIS Country Report 2008 (Background Information: History)

³¹ IRIN, Zimbabwe's food security eases, 2/3/09; VOA News, Food availability improves in Zimbabwe – for those with hard currency, 5/3/09; IWPR, Break on food inflation eases hardships, 9/3/09; IRIN, Inflation at 6.5 quidecillion novemdecillion percent, 21/1/09.

³² IRIN, Zimbabwe's food security eases, 2/3/09; VOA News, Food availability improves in Zimbabwe – for those with hard currency, 5/3/09; IWPR, Break on food inflation eases hardships, 9/3/09; IRIN, Inflation at 6.5 quidecillion novemdecillion percent, 21/1/09.

³³ IRIN, 30 strains of cholera as death toll approaches 4,000, 3/3/09

³⁴ COIS Zimbabwe Country Report 2008 (Humanitarian issues)

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. 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.

3.8.8 Conclusion. General country conditions are poor. Food is scarce and accommodation difficult to find. However, the availability of food is improving and there is sufficient food in the shops for those who have the hard currency to 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. 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 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 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 are harsh and life-threatening. The government's 42 prisons were designed for a maximum of 17,000 prisoners. In May 2008 the Ministry of Justice, Legal, and Parliamentary Affairs reported that the country's prisons held between 22,000-24,000 prisoners; however, a local NGO reported that they actually held approximately 35,000 inmates. Prison guards beat and abused prisoners. Poor sanitary conditions and overcrowding persisted, which aggravated outbreaks of cholera, diarrhea, measles, tuberculosis, and HIV/AIDS-related illnesses. Human rights activists familiar with prison conditions reported constant shortages of food, water, electricity, clothing, and soap. According to the 2006 Solidarity Peace Trust and Institute for Justice and Reconciliation report *Policing the State*, "political arrestees are routinely and deliberately overcrowded, with 30 or more people being kept at times in cells intended for six," and those "who have been severely beaten by the police and have fractures and other injuries, are routinely denied any access to health care or medication for varying periods of time." In June then-Deputy Attorney General Johannes Tomana acknowledged overcrowding and stated, "jail is not nice. It is not meant to be nice." Tomana was appointed Attorney General in December 2008.³⁵
- 3.9.4** Juveniles are not held separately from adults. The Prison Fellowship of Zimbabwe, a local Christian organisation working with former inmates, estimated in 2006 that more than 200 children were living in the prison system with their detained mothers. Another source estimated that in 2006 there were than 300 children in the country's prisons, the majority who are less than two-years-old. The source reported that children had to share their mother's food rations and that additional blankets and children's clothing was not issued.³⁶
- 3.9.5** According to MDC Minister Roy Bennett, there are serious human rights abuses behind prison walls, adding that while he was imprisoned in early 2009 some prisoners had "died while I was inside and it took the prison officers four to five days to remove the bodies. The situation behind there is pathetic." And that "There is huge starvation because prisoners are only given one meal a day consisting of a handful of sadza (a thickened maize-meal porridge) and water with salt in it. Those people who do not have friends and relatives to bring them food on a daily basis are basically dying."³⁷
- 3.9.6 Conclusion.** Prison conditions in Zimbabwe are severe and taking into account the levels of overcrowding, poor sanitation, prevalence of disease, absence of medical facilities and lack of food, are likely to reach the Article 3 threshold. 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

³⁵ US State Department Report 2008

³⁶ COIS Zimbabwe Country Report 2008 (Prisons)

³⁷ ZimOnline: MDC Politician Bennett says prison conditions "absolutely disastrous" 13/3/09

categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception and care arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception and care arrangements in place.

4.3.2 Minors claiming in their own right without a family to return to, or where there are no adequate reception and care arrangements, 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 health care delivery system, once considered as a model for the region, has collapsed due to under-funding, lack of foreign exchange for importing drugs, and attrition of qualified staff. At the primary level, utilisation of services has declined, due to a lack of essential drug supplies, staff shortages, low quality of services, poor maintenance of health facilities and an inability of patients to pay user fees for care.³⁸

4.4.3 Zimbabwe has ten provincial hospitals; the two most important hospitals being Parirenyatwa Hospital in Harare (900 beds) and Mpilo Central Hospital in Bulawayo (600 beds). Medical facilities, particularly outside of Harare and Bulawayo are limited and the level of care available at Parirenyatwa Hospital is rudimentary, with medicines and medical equipment such as thermometers and wheelchairs in short supply. Therefore, specialist care in the public sector is poorly available and unreliable. Cancer treatment, renal dialysis, and almost every kind of specialist services usually found in referral hospitals could not be considered as available and accessible. Between October and January, the main referral hospital (Parirenyatwa) was closed almost entirely. Although the Government still provides free healthcare to low-income earners (theoretically), patients are required to pay for medication, diagnostic tests, consulting fees and even to bring basic supplies like disposable gloves for deliveries. The costs of these have risen quickly in recent years. In addition, many drugs are not available now that the Ministry of Health and Child Welfare is required to make payments in advance for most products. While donors are funding a basic supply of vital medicines, these have not reached every clinic yet and are only the most basic commodities. The move to pre-packaged kits currently underway should increase reliable and consistent availability.³⁹

4.4.4 Between August 2008 and 1 March 2009 nearly 4,000 people died from Cholera in an epidemic that resulted in over 90,000 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 which, due to the nature of cholera, is likely to re-surface again in the next rainy season.⁴⁰

³⁸ COIS Zimbabwe Country Report 2008 (Human Rights: Medical Issues)

³⁹ COIS Zimbabwe Country Report 2008 (Human Rights: Medical Issues)

⁴⁰ IRIN, 30 strains of cholera as death toll approaches 4,000, 3/3/09

- 4.4.5** In July 2006, Human Rights Watch noted that: Zimbabwe has one of the highest HIV prevalence rates in the world, with 15.6% of those aged 15-49 living with HIV or AIDS. An estimated 1.5 million Zimbabweans out of a total population of about 11 million are living with HIV and AIDS. According to 2005 National Estimates from the Ministry of Health and Child Welfare, 115,000 of the people living with HIV/AIDS are children under the age of 15. In 2005, 169,000 Zimbabweans died as a result of AIDS. The availability of medical care provided by the Government and NGOs for people living with HIV/AIDS has increased in the past few years due to efforts to scale up access to treatment. Voluntary Counselling and Testing (VCT) programs are also expanding and administered free of charge or for a small nominal fee. The provision of Anti-Retroviral drugs (ARVs) does not begin to meet the needs of the population, however, and the Government's stated aim of providing ARVs to 300,000 people by 2010 had reportedly reached only 137,000 people by Dec 2008. A number of NGOs continue to work towards improving treatment for HIV/AIDS in Zimbabwe, including Medicins Sans Frontieres and the Catholic Mission in Harare.⁴¹
- 4.4.6** Where a case owner or caseworker 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.

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 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

⁴¹ COIS Zimbabwe Country Report 2008; COIS Country Situation Update 9/2/09

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.

- 5.2** Caseworkers and case owners should consider claims on their merits and grant asylum if the applicant establishes a well-founded fear of persecution and is not excluded from protection. Consideration of Humanitarian Protection or Discretionary Leave should be carried out in accordance with normal policy.
- 5.3** Zimbabwean nationals may return voluntarily to any region of Zimbabwe at any time by way of the Voluntary Assisted Return and Reintegration Programme implemented on behalf of the UK Border Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining 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 contact the IOM offices in London on 0800 783 2332 or www.iomlondon.org.

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