

DECISION RECORD

RRT CASE NUMBER: 1006415

DIAC REFERENCE(S): CLF2010/44162

COUNTRY OF REFERENCE: Zimbabwe

TRIBUNAL MEMBER: Vanessa Moss

DATE: 13 April 2011

PLACE OF DECISION: Perth

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Zimbabwe, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] February 2005 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] March 2010. The delegate decided to refuse to grant the visa [in] July 2010 and notified the applicant of the decision and his review rights by letter dated [the same date].

3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] August 2010 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve "serious harm" to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression "serious harm" includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or

denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase "for reasons of" serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant's fear of persecution for a Convention reason must be a "well-founded" fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a "well-founded fear" of persecution under the Convention if they have genuine fear founded upon a "real chance" of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A "real chance" is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file (CLF2010/44162) and the Tribunal's file (1006415) relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. Electronic records before the Tribunal indicate that the applicant arrived in Australia on a student visa [in] February 2005, and subsequently was granted a series of student visas, the last of which was granted [in] January 2009 and was valid until [a date in] September 2009. His movement records indicate that he has not departed Australia since his arrival [in] February 2005.

Protection visa application

21. The applicant applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] March 2010. In his protection visa application (DIAC folios 1-25) he stated that he was born in Mutare, Zimbabwe on [date deleted: s.431(2)] (and is [age deleted: s.431(2)] at the time of decision). He speaks, reads and writes Shona and English. He belongs to the Shona ethnic group and is a Christian. He has never been married or in a de facto relationship. He is a citizen of Zimbabwe and is not a national of any other country. He does not have the right to enter or reside in any other country. He has a Zimbabwean passport issued [in] September 2002 valid until [a date in] September 2012. He has never been outside his home country before his current journey to Australia. Before arriving in Australia he resided at one address in Mutare from birth until his departure for Australia. He stated in his application that he has completed 9 years education and he gave details of his education from [years deleted: s.431(2)] in Zimbabwe and Australia, commencing in [year deleted: s.431(2)] with his attendance at [college deleted: s.431(2)]. He has qualifications as a [tradesman], a [diploma], a National Certificate in Christian Studies and a Diploma in Christian Studies. He gave his occupation as a [tradesman] and he was employed as a [tradesman] in Mutare between May 2004 to September 2004. His widowed mother and siblings live in Zimbabwe.
22. His answers in response to questions 41-46 are summarised as follows:
- He left Zimbabwe because of escalating violence leading up to the 2005 parliamentary elections;
 - At college he participated in MDC rallies and he was one of the MDC youth leaders;
 - On several occasions they used to clash with the Zanu PF supporters, were beaten and locked up;
 - [In] November 2004 in [Village 1], the Zanu PF youth beat them up for educating rural people how to vote, and they spent the night in cells;
 - [Politician A], an aspiring MP and former [Minister] is a Zanu PF member and once sent a truck of Zanu PF youths to look for him at his house. His mother had to run away because they were harassing everyone and beating his brothers so that they would reveal where he was hiding. [Politician A] has indicated the applicant will be arrested when he returns to Zimbabwe;
 - During the 2005 election, three of his team mates who he used to campaign with were imprisoned and died in prison;
 - The Zanu PF have his name on a list of people who have gone abroad, and he will be arrested if he returns;
 - He will be harmed by the Zanu PF militia, Zanu PF supporters, green bombers and the war veterans because he is an MDC supporter and a returnee from overseas;
23. The applicant provided with his visa application the following documents:
- A copy of the biodata page of his Zimbabwean passport (DIAC folio 27) and subsequently a copy of his passport in its entirety (DIAC folios 68-92);

- A copy of his Zimbabwean birth certificate (DIAC folio 26);
 - A copy of his WA driver's licence (DIAC folio 27).
24. [In] July 2010 the applicant was interviewed by an officer from the Department. A recording of the interview is on the Department's file.
 25. The applicant subsequently provided to the Department photographs of injuries indicating scars on his right arm, and left leg (at DIAC folio 64- 65) which he indicated were sustained on his way home from an MDC rally [in] August 2004 held about a kilometre from his home at [a hall]. On that occasion he was attacked by four men who he suspects were ZANU PF supporters. He was attacked when he pulled over to assist a broken-down truck by the road.
 26. [In] July 2010 the delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention. The delegate accepted that the applicant was an MDC supporter during his college years and in the period leading up to the 2005 Presidential election. However the delegate was not satisfied as to the veracity of the applicant's account of the attack on him and whether it occurred as a result of individually targeted political violence or as a result of general political violence.
 27. In respect of the applicant's account of his three campaign team mates who died in prison the delegate noted that inconsistencies in his written claims and his claims at interview undermined the accuracy of the applicant's accounts of what actually happened.
 28. In respect of the applicant's fears of harm from [Politician A] the delegate noted inconsistencies in his written claims and his claims at interview. He noted that there was no information before him to indicate that the applicant is targeted individually by [Politician A] who has been leading a campaign of violence and intimidation against residents and MDC supporters alike. In respect of the applicant's claim to be on a list of people who have gone overseas the delegate noted that the people on these lists are largely high profile level opposition and civic activists, not everyday MDC supporters.
 29. The delegate found it implausible that someone who claims to be a strong supporter of the MDC and heavily involved in MDC political campaigning would be unaware of when major elections were, and that his decision not to vote in the 2002 election was inconsistent with his strong political beliefs. He noted that in response to a question regarding how he would organise a political rally he provided only general information an attendee would be able to provide rather than details as to how he actually organised a rally.
 30. The delegate found it implausible that someone who quit their job to devote more time to his political involvement with the MDC would cease their political activities two months later to wait for a student visa application to be processed. The delegate had concerns about his level of involvement and commitment to the MDC.
 31. The delegate accepted the applicant's stated intention in coming to Australia was to study and that he intended to return to Zimbabwe and that this was inconsistent with his written claims to have left due to the escalating political violence of which he would have been a target.
 32. The delegate found that the applicant's delay in lodging a protection claim gave rise to serious concerns about the immediacy, gravity and credibility of his claims to fear persecution. He was not satisfied that the applicant left Zimbabwe in 2005 due to his fear of harm resulting

from his actual or imputed political opinion. And that even if he were to accept that this was the case, he was not satisfied that the applicant faces a real risk of serious harm in the future. Given that only high profile MDC supporters remain at risk the delegate was not satisfied that a person with the applicant's profile who has been outside the country for some time, is at risk of serious harm.

33. The delegate accepted that the applicant may have attended a rally [in] August 2004 and that he may have been attacked. However, the delegate was unable to determine whether the scars in the photos were from the injuries sustained in that attack. Accordingly he gave little weight to the photographs. Even if he accepted that the scars were sustained in the attack [in] August 2004, he was not satisfied that the attack was necessarily from his political opinions since the applicant did not know who the attackers were, or why he believed he was attacked.

Review application

34. The applicant applied to the Tribunal [in] August 2010 for review of the delegate's decision. Following the appointment of a representative the Tribunal received a submission from the applicant's representative attaching the following documents in support of the application for review.
35. A letter from [Mr B] dated [in] October 2010 which includes the following, in summary:
- He is the [official deleted: s.431(2)] of the National Constitutional Assembly of Zimbabwe and a founding member of the MDC;
 - As part of his involvement with the NCA he travels around Zimbabwe and comes into contact with a number of persons and organisations;
 - The purpose of the NCA is to make representations regarding proposed amendments to the Constitution to better protect the rights of individuals;
 - In about 2003 and while visiting the offices of [Politician C], who is the Member of Parliament for [constituency deleted: s.431(2)], he was introduced to the applicant. The applicant struck him as a person of great commitment to the MDC's ideals and aims;
 - They held a number of meetings when he was in Mutare to prepare him with feedback on his work on the NCA;
 - Part of his work on the NCA and Constitution is the protection of political freedom;
 - The applicant reported to him (as far as he can remember) that he had been assaulted and threatened on three or four occasions as a result of his active involvement in the MDC in general and [Politician C]'s office in particular;
 - His reports to him were the sort of information that is needed in making representations for the Constitution;
 - He understands that the applicant left Zimbabwe in early 2005 to further his studies abroad;

- Because of the current political situation in Zimbabwe and because of his profile as a MDC activist he fears that if the applicant returns to Zimbabwe after a protracted period abroad he will be targeted by the authorities ;
- In his opinion there is a real chance that the applicant will be targeted on his return. He is well known in the Mutare area. He does not believe it will make a difference if he tries to relocate to elsewhere in Zimbabwe;
- He fears that if the applicant returns he would face persecution without being able to obtain protection from the authorities.

36. A letter from [Politician C], dated [in] November 2010, which may be summarised as follows;

- He is a [details in relation to the business activities of Politician C deleted: s.431(2)];
- He is one of the founding members of the MDC and was elected MP for [constituency deleted: s.431(2)] in 2000 and re-elected in 2005 and 2008;
- He first met the applicant in 2003, when he attended his offices and asked about joining the MDC following which he was granted membership;
- From that time until late 2004 the applicant was an active member of the MDC, and he outlined in detail the nature and extent of the activities undertaken by the applicant;
- As a result of these activities the applicant became well known in the area as an MDC activist. The applicant was of great assistance to him in his position as an MP;
- He is aware of the following four occasions in 2004 when the applicant was subjected to assault due to his MDC activism;
 - when he was assisting [Politician D] prior to the 2005 elections in the [district deleted: s.431(2)] he had been held overnight in a camp by Zanu PF supporters (and he reported this to the witness);
 - after a rally at a stadium Zanu PF supporters flagged his car down and then pulled him from the car and assaulted him;
 - a third occasion was when the applicant had gone to [Village 1] to help with [Politician D]'s campaign when he stayed overnight at his uncle's house Zanu PF supporters came to the house looking for him. The applicant escaped but his cousin was badly assaulted;
 - in August 2004 after an MDC rally which had been held at [a hall], where he was pulled out of his car and beaten;
 - after a rally at Sakubva stadium the applicant was one of a number of MDC supporters surrounded and beaten by Zanu PF supporters;
- In late 2004 the applicant confided in him that he feared for his safety and that he was considering furthering his studies in Australia;

- From late 2004 he remained a member of the MDC but did not positively participate because he feared for his life;
 - He believes that if the applicant returns to Zimbabwe the present regime will seek him out and this will result in gaol or further assaults or worse.
37. An article from [newspaper and date deleted: s.431(2)] 2010 referring to the campaign of terror being conducted by [Politician A] in [Village 1] against MDC supporters.
38. A lengthy and detailed statutory declaration from the applicant dated [in] November 2010 in which he included details of his family background, his education history, his political activism, the 4 attacks on him in 2004 arising from his involvement with the MDC, his concerns for his safety, and the reasons for the delay in his lodging his protection visa application. In respect of his political activism his claims may be summarised as follows;
- In 2002 and whilst at College he began taking an active interest in politics. He has lost contact with three of his fellow students who were involved with the MDC and believes that they have either fled or been imprisoned or died.
 - He joined the MDC and became an active member in 2003, at the offices of the local MDC Member of Parliament (MP) [Politician C]. He received a membership card but did not want to risk taking his membership card with him to Australia.
 - He tried to vote in the 2000 and 2002 elections but could not do so because his name was not on the voters roll.
 - He attended at [Politician C]'s offices in Mutare as often as he could get there and would sit in on meetings at which Counsellors from different wards reported to [Politician C] about their concerns and particular needs for the people in their ward. He took the minutes of the meetings.
 - It was valuable for [Politician C] to keep in contact with the people's needs, and raise the profile of the MDC and this was done by holding rallies about once every month. An important part of his work in [Politician C]'s office was organising rallies. In addition, he and other young members would go out into the community to find out about community concerns so [Politician C] could try and assist. They also tried to encourage people to come forward and join the MDC. He provided lengthy details regarding his part in the organisation of rallies.
 - In respect of the 4 attacks on him in 2004 because of his involvement with the MDC he provided details of the following 4 incidents:
 1. Early in 2004 he stayed at his uncle's house in [Village 1] because he was in the area assisting the local MDC Member of Parliament, [Politician D] with the forthcoming 2005 elections. Part of his duties was to go into the countryside and talk to people about educating them about the election process. His "uncle" [name deleted: s.431(2)] lives in [Village 1] and is in fact a cousin of his late father. His uncle is a strong supporter of the MDC. His grandmother also lived in [Village 1], and she was a neighbour to [Politician A] who was a strong Zanu PF supporter and a former Minister in the Zanu PF government. The two families were well known to each other over a long period of time. During the course of the day he saw [Politician A] and

understood that he was upset because he had hoped that as a neighbour his family would support Zanu PF. He had seen the applicant in his red t-shirt. He knew that the applicant was an activist. That night a truck arrived at his uncle's house and he heard people calling his name. He could tell by the uniforms that they were Zanu PF. He and his uncle's children (with the exception of one child) escaped by running away into the bush. The child who remained was severely beaten and hospitalised. His name is [Mr E].

2. The second occasion was after a rally had been held at Sakubva Stadium in Mutare. He and other MDC supporters were surrounded by Zanu PF supporters. They had been there during the rally and had been trying to disrupt the rally. He and the MDC supporters were surrounded and beaten.
 3. The third incident occurred after a MDC rally held [in] August 2004. The rally was held at [a hall] which is within 1km of his family home where many people knew about his background and his role in the MDC. After the rally ended, he collected unused MDC party fliers and t-shirts for distribution in his area. Shortly after leaving the hall, he was driving away when he was flagged to stop by one of four men, who were standing next to an unmarked 1 tonne truck. Their truck appeared to have broken down so he stopped to give a hand. One man grabbed his right arm through the open car window while the others opened the car door. He was pulled out of the vehicle and assaulted by knob kerries (wooden sticks with a knob on the end) and other sharp objects. He started calling for help and two men ran came to his rescue. He believes that the men who assaulted him were ZANU PF supporters because they would have known that he was travelling back from the rally and he was wearing his red MDC t-shirt. They were in civilian clothes. When the other two men came to his assistance these four people jumped into their truck and drove off at high speed.
 4. The last attack was also at [Village 1] in about November 2004 whilst he and others had been helping [Politician D] with his upcoming campaigns. They were approached by Zanu PF youths (identifiable by their green outfits). The ZANU PF knew who they were because they were wearing red t-shirts. These are people who are trained by Zanu PF to disrupt the opposition. They questioned them about what they were doing there and why they were supporting the MDC. Some carried batons and they proceeded to beat them and then forcibly took them to a camp which is situated on the grounds of the police station. They were held overnight in that camp. There were continually assaulted. They were told to sing Zanu PF songs and chant slogans. The next day they were released after some Zanu PF officials came and enquired about whether they had been chanting the slogans and taught to sing Zanu PF songs. They were released and given a Zanu PF t-shirt and a cap and told to wear them. They did not report to the police because they knew that it was useless to do so. They never take any of those reports seriously. The applicant clarified that he was only interned overnight on this occasion, and this did not take place after the incident at the Sakubva Stadium referred to above. He was never kept overnight at the remand prison in Mutare.
- Due to the assaults he decided to keep a low profile and not go out into the field helping the MDC. This continued until he left Zimbabwe on February 2005 to travel to Australia. He had wanted to further his studies in Australia. His uncle acted as a financial sponsor for him. Around about September of 2004 he lodged an application for a Student visa and from then until he left Zimbabwe in February 2005 he stopped his active involvement because he felt that it was only a matter of time before something far more serious would

happen to him. He remained an MDC supporter and did attend at [Politician C]'s office but did not take any further part in organizing or attending rallies.

- One of his main concerns is that [Politician A] to whom he is known would have put his name onto a list of people to target as having fled Zimbabwe. In Zimbabwe it is common place for people to be taken into prison without trial and then to disappear or die. He is concerned that this will happen to him. He fears for my life if he were forced to return to Zimbabwe. Zanu PF officials still call at his house asking his mother where he is and when he will return.
- Though the rest of his family is not actively involved in politics, they will also face trouble if he were to return to Zimbabwe. His mother is a teacher and their family home was purchased on an ownership scheme formed by the Teachers Association. Though the scheme is run by the Teacher's Association, it is largely funded by the government and his mother is still making monthly repayments. If he were to return to Zimbabwe and continue his activities with the MDC, there is a real risk that the government will reclaim the family home to punish his family.
- He hoped that by the time he completed his studies and was meant to return to Zimbabwe that there would have been a change in government. He enrolled in an [Advanced Diploma] Course at [college deleted: s.431(2)]. He had hoped to be able to then return to Zimbabwe at the end of that course. He completed the [course] and then re-enrolled for [subject deleted: s.431(2)]. He did not complete the [studies] and then decided to change to Christian Studies at [college deleted: s.431(2)].
- In March 2010 he applied for a Protection visa as he was fearful of returning to Zimbabwe. He did not apply previously for a protection visa as he had felt secure on his previous student visas.

39. The detailed submissions from the applicant's representative included the above documents as well as submissions in respect of the definition of a refugee and how the applicant satisfies that definition, and relevant country information and reference to comparable RRT decisions.
40. [In] March 2011 the applicant's representative wrote to the Tribunal advising that the proposed witness [Mr E] had left Zimbabwe for South Africa and as of that date, the applicant was unable to contact him. He advised that another proposed witness, [Mr B], had been served with a summons to appear in Court in Zimbabwe [in] March 2011, the same date as the Tribunal hearing. Attached was an extract from [website deleted: s.431(2)] dated [in] March 2011 outlining the circumstances of the police summons on [Mr B], and confirmed that he was summonsed to appear [on a date in] March 2011 and that he was accused of holding an illegal rally in 2004.

Tribunal hearing

41. The applicant appeared before the Tribunal [in] March 2011 to give evidence and present arguments. The Tribunal also received oral evidence from [Politician C].
42. The applicant was represented in relation to the review by his registered migration agent.
43. A summary of the oral evidence follows.

Oral evidence from the visa applicant

44. The Tribunal invited the applicant to present his claims and evidence in support of his application for review. The applicant responded by outlining his claims of membership of the MDC since 2003, and the activities in which he was involved.
45. Asked what family members he had remaining in Zimbabwe the applicant said his mother and brothers and uncles remained in Zimbabwe. His family are MDC supporters although are not politically active.
46. The Tribunal asked the applicant whether he had recently been in contact with his family, and if so what they had told him about the situation in Zimbabwe. The applicant indicated that his brother had recently told him that [Politician A] had been enquiring as to the applicant's whereabouts. In 2008 around the time of the elections his mother had received many anonymous calls from people asking for the whereabouts of the applicant. The callers did not identify themselves, and his mother had the phone land line disconnected.
47. In particular the Tribunal enquired about [Mr E]. The applicant indicated that he last had direct contact with [Mr E] in 2004, and that subsequent contact had been via his brother. He confirmed that his brother had been in contact with [Mr E] in late 2010, when the applicant was needing him as a witness. The applicant confirmed that his brother had since been unable to contact [Mr E], who has left Zimbabwe for South Africa. When asked if he knew why [Mr E] left Zimbabwe the applicant responded that he did not, and that he did not think he had left for political reasons, but rather because he likes travelling.
48. Asked to describe his involvement with the MDC, the applicant provided detailed evidence consistent with the details in his statutory declaration of his activities in 2003 and 2004. He indicated that he had a few people to assist him in his work for the MDC and that he took instructions direct from [Politician C]. He indicated that he met [Mr B] of the NCA a couple of times when he came to Mutare and that he met him at [Politician C]'s office. He also described his activities in assisting [Politician D] in 2003 and 2004 in the lead up to the 2005 election.
49. The Tribunal invited the applicant to describe each of the attacks on him by Zanu PF supporters. His oral evidence was detailed and consistent with the written evidence in his statutory declaration.
50. The Tribunal asked the applicant about his written claim on his protection visa application form that during the 2005 election three of his team mates he used to campaign with were imprisoned and died in prison. The applicant indicated that in fact he did not really know what became of these three team mates, and only knew that they disappeared, and agreed that the rest was supposition.
51. When asked to comment on whether he could rely on state protection to protect him in Zimbabwe the applicant indicated that they are the ones causing the violence, especially the police and soldiers who are meant to be protecting people.
52. When asked if he could safely relocate to somewhere else in Zimbabwe the applicant indicated that [Politician A] would have put his name on a list and that he would be apprehended as soon as he arrived in Zimbabwe, and that even if he moved to another area he would be found.

53. The Tribunal asked the applicant why he delayed lodging his protection visa for 5 years following his arrival in Australia. He responded that he had intended to return to Zimbabwe when he finished his course, and that he felt safe on the student visa and it is only when his student visa expired, and there had been no change in the government in Zimbabwe, that he felt unsafe.
54. When asked about the status of his student visa application he confirmed that his application for review by the Migration Review Tribunal of the Department's rejection of his application was still pending. He confirmed that it was after his student visa application was refused by the Department that he lodged his application for a protection visa.
55. The Tribunal enquired whether he had been politically active in Australia, and the applicant responded that he had not. When the Tribunal enquired why this was so, the applicant responded that it would have no impact on the situation in Zimbabwe and so there was no reason for him to be politically active in Australia.

Oral evidence from [Politician C]

56. The witness indicated that the situation in Zimbabwe was rapidly deteriorating, people were being harassed, and violence was escalating and that three or four members of parliament were in police custody.
57. When asked whether someone of the applicant's profile would be at risk on return to Zimbabwe, the witness responded in the affirmative. He indicated that anyone who is associated with the MDC, or perceived to be in opposition to the Zanu PF is at risk. He indicated that the applicant was at risk of abduction, arrest, and intimidation, and that this risk comes from different quarters including law enforcement agencies, war veterans etc. That a person can be targeted from the top, but also from the local areas and that this risk escalates as the country moves towards an election.
58. When asked what in his view makes the applicant at risk the witness indicated that the applicant was very active in the MDC and that he is known to members of the Zanu PF. He indicated that the Zanu PF keep tabs on people and will know when the applicant returns. He indicated that a person may be targeted even if they are not currently active, and that the Zanu PF are particularly suspicious of a person who has been away from Zimbabwe. He indicated that the applicant was most definitely known to the Zanu PF. He indicated that the applicant would not be protected by the authorities if he returns. Further, he agreed that nothing would be achieved by the applicant reporting incidences of assault to the police.

The witness indicated that he had a close working relationship with the applicant and he confirmed the activities undertaken by the applicant as outlined in his letter.

Country information

Background

59. The power-sharing arrangement between Robert Mugabe's ZANU-PF and Morgan Tsvangirai's MDC-T party negotiated after the controversial 2008 Presidential election provides for constitutional reform process to take place before elections planned for 2011.¹ The

¹ 'Robert Mugabe: Zimbabwe unity deal should end next year' 2010, *BBC News*, 15 October, <http://www.bbc.co.uk/news/world-africa-11551493#> - Accessed 1 November 2010.

current constitutional debate is the third time Zimbabwe will have attempted to enact a new constitution to replace the Constitution put in place by the ‘Lancaster House Agreement’ at Zimbabwe’s independence from British rule in 1979. Negotiations broke down in 2000 and again in 2007 (the ‘Kariba Draft’) after constitutional drafts were heavily criticised for being developed secretly by the government and for significantly expanding presidential discretion.² The Kariba Draft has again been put forward by ZANU-PF during the 2010 Constitutional Outreach Program as an option.³ Writing for the newspaper, *The Zimbabwean* in April 2010, Iti Mabasa and Tony Saxon report that support for the Kariba Draft is being encouraged through the deployment of the ZANU-PF force, ‘the Green Bombers’, who identify MDC supporters, interrogate “and torture them at their bases”.⁴ Mabasa and Saxon go on to note that there are: widespread reports that the violent revolutionary party has re-engaged its violent tactics countrywide in a bid to force the electorate to forcibly accept the Zanu (PF) favoured Kariba Draft as the constitution of Zimbabwe.⁵

60. The Zimbabwean human rights advocacy blog site, *Zimbabwe Democracy Now* reported in March 2010 that torture camps were being set up again by ZANU-PF youth who had been incorporated into state security forces after the 2008 elections. The site posits the youth “are taking part to [make sure] the constitutional process is disturbed and that the elections are to be held under the Kariba Draft... They are making sure to do their best to intimidate, torture, and instil fear, so people will vote for the Kariba Draft in the referendum.”⁶
61. As the news service *Voice of America* observed in July 2010, “[v]iolence is escalating as the country moves into the public outreach phase of its constitutional revision process.”⁷ The public outreach program designed to educate Zimbabweans about the process of constitutional reform rolled out in the latter half of 2010 was put on hold in September after an MDC supporter was killed during a meeting.⁸

On the risk of harm to MDC supporters and activists

62. Human Rights Watch and the US Department of State report that both perceived and known MDC members and supporters, as well as their families, continue to be harassed, arbitrarily arrested, assaulted, intimidated and killed. The perpetrators are primarily members and supporters of ZANU-PF, ZANU-PF affiliated youth militia, war veterans and, to a lesser extent, police officers and security forces. On a number of occasions, citizens have reported being “harassed or assaulted for listening to music or singing songs affiliated with the MDC-T” ZANU-PF supporters and state security agents also reportedly “abducted and tortured dozens

² Sokwanele 2009, ‘Presidential Powers in the “Kariba Draft Constitution”’, 29 June, *Sokwanele.com*, <http://www.sokwanele.com/thisiszimbabwe/archives/4341#> - Accessed 1 November 2010.

³ Karimakwenda, T. 2010, ‘Zimbabwe: Zanu PF Using Soldiers, Chiefs and Militia to Attack MDC’, *SW Radio Africa* as hosted at *All Africa Global Media*, 4 August <http://allafrica.com/stories/201008040999.html> - Accessed 28 September 2010. For a critique of the Kariba Draft, see Sokwanele 2009, ‘Presidential Powers in the “Kariba Draft Constitution”’ 29 June, *Sokwanele.com*, <http://www.sokwanele.com/thisiszimbabwe/archives/4341#> - Accessed 1 November 2010.

⁴ Mabasa, I. and Saxon, T. 2010, ‘Zanu Beating MDC Supporters for Wearing Red’, *Zimbabwe Metro*, 19 April <http://www.zimbabwemetro.com/news/zanu-beating-mdc-supporters-for-wearing-red/> - Accessed 14 July 2010.

⁵ Mabasa, I. and Saxon, T. 2010, ‘Zanu Beating MDC Supporters for Wearing Red’, *Zimbabwe Metro*, 19 April <http://www.zimbabwemetro.com/news/zanu-beating-mdc-supporters-for-wearing-red/> - Accessed 14 July 2010.

⁶ Zimbabwe Democracy Now (Nxwala) 2010, ‘Torture camps reemerge’, *Zimbabwe Democracy Now blog*, 14 March, <http://www.zimbabwedemocracynow.com/2010/03/14/torture-camps-reemerge/#> - Accessed 2 November 2010.

⁷ Zulu, B. 2010, ‘Zimbabwe’s MDC Releases Report Naming Perpetrators of Political Violence’, *VOA News.com*, 6 July <http://www.voanews.com/zimbabwe/news/politics/Zimbabwes-MDC-Releases-Report-Naming-Perpetrators-of-Violence-97876909.html> - Accessed 28 September 2010.

⁸ ‘Robert Mugabe: Zimbabwe unity deal should end next year’ 2010, *BBC News Online*, 15 October, <http://www.bbc.co.uk/news/world-africa-11551493#> - Accessed 1 November 2010.

of opposition and civil society members, as well as student leaders, as part of an effort to intimidate MDC supporters and civil society members and leaders”. Such abductions were rarely investigated by the government. Furthermore, ZANU-PF government officials reportedly removed perceived MDC supporters from civil service positions and the military.⁹

63. Political violence against perceived ZANU-PF opponents, including citizens suspected of being sympathetic to the MDC, has continued despite the signing of a power-sharing agreement between ZANU-PF and the MDC in September 2008, and the formation of the unity government in February 2009. Throughout 2009, political violence targeting opposition MDC members and supporters resulted in at least three deaths, while at least 19 people died from injuries sustained during the 2008 election-related political violence. The MDC claimed that a further “200...members and supporters were missing and presumed dead in the wake of election-related violence in 2008”.¹⁰ In June 2009, *BBC News* reported that a senior member of the MDC, Sekai Holland, had made claims that members of ZANU-PF were sending threats and warnings to MDC members on a daily basis, and “drawing up assassination lists...[w]ith the worst violence planned to coincide with elections due in 18 months”.¹¹
64. In addition, MDC legislators and activists have been subject to politically motivated prosecutions by officials aligned with ZANU-PF. In January 2010, Human Rights Watch reported that at least 17 MDC legislators were facing “trumped-up criminal charges”, while five had already been convicted. One prominent example is the arrest of senior MDC official Roy Bennett in late 2009, on charges of “sabotage, banditry, terrorism, and inciting terrorism”, initiated by ZANU-PF. On 16 October 2009, Prime Minister and MDC leader Morgan Tsvangirai “announced that the MDC had “disengaged” from the unity government”, ostensibly over the treatment of senior MDC member Roy Bennett. However, Human Rights Watch argues that increased attacks on MDC supporters by ZANU-PF were a significant factor in the decision.¹² The MDC rejoined the unity government a few weeks later.¹³
65. A number of reports indicate that attacks on MDC supporters intensified following the disengagement of the MDC, particularly in rural areas. In October 2009, teachers in Mashonaland Central Province were attacked by ZANU-PF supporters, and reportedly told that they are now considered to be enemies of ZANU-PF since the MDC pulled out of the unity government. Other news reports from late 2009 indicate that “ZANU-PF militias [are] re-deploying to rural areas and...holding political meetings to intimidate MDC and opposition supporters” The re-opening of youth militia camps, an increase in recruitment, and attacks on the homes of MDC supporters by youth militias were also reported. In addition, arrests and abductions of MDC members and supporters were reported by *The Times* and the *Zimbabwe Telegraph* in October 2009. As a result, Amnesty International warned that Zimbabwe was “on the brink of sliding back into...violence”.¹⁴ Furthermore, it was reported in November 2009

⁹ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Zimbabwe*, 11 March, Sections 1a-d, 4; Human Rights Watch 2010, *World Report 2010: Zimbabwe*, January

¹⁰ Human Rights Watch 2009, *False Dawn: The Zimbabwe Power-Sharing Government’s Failure to Deliver Human Rights Improvements*, August, pp.5-8; US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Zimbabwe*, 11 March, Section 1a

¹¹ UK Home Office 2009, *Country of Origin Information Report: Zimbabwe*, 23 December, p.28

¹² Human Rights Watch 2010, *World Report 2010: Zimbabwe*, January; Phiri, G. 2010, ‘Zanu (PF) continues to thwart MDC ... political persecution, violence continues’, *New Zimbabwe*, 28 April

¹³ Chinaka, C. 2010, ‘Slow reforms will prolong Zimbabwe unity government’, *The Citizen*, 8 March

<http://www.thecitizen.co.tz/editorial-analysis/20-analysis-opinions/531-slow-reforms-will-prolong-zimbabwe-unity-government.html> – Accessed 12 August 2010

¹⁴ UK Home Office 2009, *Country of Origin Information Report: Zimbabwe*, 23 December, pp.30-31; ‘ZIMBABWE: Violence spikes after MDC’s withdrawal from government’ 2009, *IRIN News*, 27 October

that the MDC claimed to have evidence of ZANU-PF meetings in all 10 provinces aimed at reviving “terror squads to harass, intimidate and torture people” to accept the Kariba Draft Constitution endorsed by President Mugabe.¹⁵

66. However, prior to the disengagement of the MDC from the unity government, the Department of Foreign Affairs and Trade advised that “it is clear from assessments from a variety of sources spread across Zimbabwe that the level of politically-motivated violence has decreased greatly since the inclusive government was formed on 13 February 2009. It should be noted that one influential local civil society group admitted to us that it paid informants for reports of cases of violence, thus rendering its information unreliable and systemically biased to exaggerating the number of cases. ZANU-PF’s current campaign on constitutional reform has been based on small bribes for village headmen rather than physical intimidation, a strategic shift from the overt violence seen in rural areas in April-June 2008”.¹⁶
67. A most recent report of the fact finding mission conducted in August 2010 by the UK Border Agency of the Home Office states:
- 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.¹⁷
68. The MDC have been reporting throughout the latter half of 2010 that their supporters were being harassed and ‘war veterans’ loyal to ZANU-PF were again setting up bases in rural areas to intimidate people.¹⁸ The United Nations news service, the Integrated Regional Information Networks (IRIN) reported in October 2010 that violence has flared in Mashonaland Central, where reports indicate that “30 families had been displaced and soldiers deployed in the three districts of Muzabarabani, Shamva and Bindura in the ZANU-PF stronghold.”¹⁹

On the availability of state protection and the attitude of police and their connection with ZANU PF

<http://www.irinnews.org/Report.aspx?ReportId=86773> – Accessed 9 August 2010; Chimhete, C. 2009, ‘Violence intensifies after MDC-T pull out’, *The Zimbabwe Standard*, 31 October; Sibanda, T. 2009, ‘Zimbabwe: MDC Supporters Attacked by Zanu PF Militia in Uzumba’, AllAfrica Global Media, source: *SW Radio Africa*, 8 December <http://allafrica.com/stories/200912080979.html> – Accessed 4 January 2010; Gumede, G. 2009, ‘Gang tries to abduct MDC official’, *Zimbabwe Telegraph*, 27 October <http://www.zimtelegraph.com/?p=3913> – Accessed 4 January 2010; Sibanda, T. 2009, ‘MDC Activist Left for Dead by Zanu PF War Veterans in Makoni’, AllAfrica Global Media, source: *SW Radio Africa*, 20 October <http://allafrica.com/stories/200910201168.html> – Accessed 5 November 2009

¹⁵ UK Home Office 2009, *Country of Origin Information Report: Zimbabwe*, 23 December, p.71

¹⁶ DIAC Country Information Service 2009, *Country Information Report No. 09/63 – CRS Request No. ZWE9736: Update of country information post February 2009*, (sourced from DFAT advice of 31 August 2009), 1 September

¹⁷ UK border Agency, Home Office Report of Fact-Finding Mission to Zimbabwe Harare 9-17 August 2010, published 21 September 2010, http://rds.homeoffice.gov.uk/rds/country_reports.html#countries, p24. Accessed 12 October 2010.

¹⁸ Integrated regional Information Networks (IRIN) ‘Zimbabwe: Election call raises fears of more violence’, *United Nations Office for the Coordination of Humanitarian Affairs*, 22 October,

<http://www.unhcr.org/refworld/docid/4cc672ff1e.html> - Accessed 1 November 2010.

¹⁹ Integrated Regional Information Networks (IRIN) ‘Zimbabwe: Election call raises fears of more violence’, *United Nations Office for the Coordination of Humanitarian Affairs*, 22 October,

<http://www.unhcr.org/refworld/docid/4cc672ff1e.html> - Accessed 1 November 2010.

69. It has been widely reported that members of the Zimbabwe Republic Police act with a high level of impunity in support of the ZANU-PF, and in countering the MDC, its supporters and non-government organisations that have been supportive of human rights. The US Department of State's report on human rights practices in Zimbabwe in 2009 noted that army and police units "organized, participated in or provided logistical support to perpetrators of political violence and generally permitted their activities"²⁰. The report noted that "[p]olice routinely and violently disrupted public gatherings and demonstrations, and they tortured opposition and civil society activists in their custody", and that continued politicisation of the force's upper echelons made it difficult for rank-and-file police to act impartially. Further to this, it was reported:

Security forces were rarely held accountable for abuses. Frequent allegations of excessive force and torture were often dismissed by senior government officials who claimed that the actions were necessary to maintain public order.

...

Police continued to refuse to investigate cases of political violence...

Police seldom responded during incidents of vigilante violence.

...

There were numerous reports of security forces arbitrarily arresting opposition and civil society activists, interrogating and beating them for information about their organizations' activities, and then releasing them the next day without charge.²¹

70. Numerous arrests of MDC parliamentarians throughout 2009 were considered by civil society to have been politically motivated and intended to erode the MDC's power in parliament.²² Human Rights Watch reported that police intimidation and harassment of MDC and human rights activists continued unabated in 2009, and that the "[p]olice, prosecuting authorities, and court officials aligned with ZANU-PF have persecuted MDC legislators and activists through politically motivated prosecutions".²³ Similarly, Amnesty International's report for 2009 included information that the suppression of perceived political opponents of ZANU-PF persisted, and that:

No meaningful measures were taken to bring to justice perpetrators of serious human rights violations during the state-sponsored violence and torture of political opponents of ZANU-PF in the run-up to the second round of the presidential elections in June 2008.... Throughout 2009, elements within the army, police and intelligence services felt able to continue targeting human rights activists and members of the MDC-T for human rights violations.²⁴

71. Having regard to the current political situation in Zimbabwe as well as police inefficiency and corruption and the restrictions placed on the judiciary, limited state protection may be available to those who oppose President Robert Mugabe and the ZANU-PF. The UK Home Office has also reported that persons who fear ill-treatment from war veterans cannot apply to the state for protection as it is a group associated and acting with the acquiescence, or encouragement, of ZANU-PF controlled agents of the state.

²⁰ US Department of State 2010, *2009 Human Rights Report: Zimbabwe*, March, Section 1c.

²¹ US Department of State 2010, *2009 Human Rights Report: Zimbabwe*, March, Section 1d.

²² US Department of State 2010, *2009 Human Rights Report: Zimbabwe*, March, Section 1e.

²³ Human Rights Watch 2010, *World Report 2009 – Zimbabwe*, January.

²⁴ Amnesty International 2010, *Amnesty International Report 2010 – Zimbabwe*, May.

72. A unity government was created under the Global Political Agreement (GPA) which was approved in September 2008 and took effect on 11 February 2009²⁵. On 19 February 2009 the unity government was sworn in comprising the ZANU-PF led by Robert Mugabe, the Movement for Democratic (MDC-T) led by Morgan Tsvangirai and the MDC rival faction (MDC-M) led by Arthur Mutambara.²⁶ The ZANU-PF retained control of the army, intelligence services and the Attorney General's Office. The ZANU-PF and MDC-T jointly control the police.²⁷ An International Crisis Group (ICG) report, dated 3 March 2010, states that the unity government has started off well with schools and hospitals re-opening and civil servants paid and returning to work. The report continued, however, that major concerns remain: hardline generals, as well as Mugabe's ZANU-PF loyalists refusing to implement the government's decisions.²⁸
73. Brian Raftopoulos, a former associate professor of the Institute for Development at the University of Zimbabwe and now Director of Research and Policy at the Solidarity Peace Trust in South Africa²⁹, comments on state protection in an April 2010 *CapeTimes* interview:
- It is clear that the capacity of the Zimbabwean state to protect its citizens has been severely compromised, though Zimbabwe is not a failed state as is generally understood, and it certainly has the capacity to maintain central state power in the near future...³⁰
74. Although the ICG stated that human rights activists reported "a significant drop in abuses"³¹ Amnesty International has reported that "Torture, harassment and politically motivated prosecutions of human rights defenders and perceived opponents have persisted"³² In February 2010 Human Rights Watch also reported that groups such as the war veterans and the ZANU-PF youth, used in the past to target the opposition, remain. It stated that the ZANU-PF continues to use parts of the security forces as "instruments of repression".³³
75. The most recent US State Department report stated that the police were underpaid, corrupt and poorly trained and equipped. The police refused to investigate cases of political violence and

²⁵ Human Rights Watch 2010, *Zimbabwe One Year On, Reform a Failure*, 12 February <http://www.hrw.org/en/news/2010/02/12/zimbabwe-one-year-reform-failure> – Accessed 23 March 2010.

²⁶ Human Rights Watch 2010, *Zimbabwe One Year On, Reform a Failure*, 12 February <http://www.hrw.org/en/news/2010/02/12/zimbabwe-one-year-reform-failure> – Accessed 23 March 2010; Banks, Arthur S. et al. 2010, 'Zimbabwe' in *Political Handbook of the World Online Edition*, CQ Press, Washington http://library.cqpress.com/phw/phw2010_Zimbabwe – Accessed 4 June 2010.

²⁷ Amnesty International 2010, 'Zimbabwe: Abuse of human rights continues under unity government', AI Index: PRE01/041/2010, 10 February <http://www.amnesty.org/en/for-media/press-releases/zimbabwe-abuse-human-rights-continues-under-unity-government-20100210-0> – Accessed 30 June 2010.

²⁸ International Crisis Group 2010, *Zimbabwe: Political and Security Challenges to the Transition*, Asia Briefing No. 70, 3 March, pp.1,4 [http://www.crisisgroup.org/~media/Files/africa/southern-africa/zimbabwe/B070%20Zimbabwe%20Political%20and%20Security%20Challenges%20to%20the%20Transition.ashx](http://www.crisisgroup.org/~/media/Files/africa/southern-africa/zimbabwe/B070%20Zimbabwe%20Political%20and%20Security%20Challenges%20to%20the%20Transition.ashx) – Accessed 5 July 2010.

²⁹ 'Response to the Mamdani Debate' 2009, Association of Concerned Africa Scholars website <http://concernedafricascholars.org/response-to-the-mamdani-debate/> – Accessed 6 July 2010.

³⁰ Weaver, Tony 2010, 'Why Mugabe has proved so hard to dislodge', *Cape Times*, 19 April.

³¹ International Crisis Group 2010, *Zimbabwe: Political and Security Challenges to the Transition*, Asia Briefing No. 70, 3 March, p.1 <http://www.crisisgroup.org/~media/Files/africa/southern-africa/zimbabwe/B070%20Zimbabwe%20Political%20and%20Security%20Challenges%20to%20the%20Transition.ashx> – Accessed 5 July 2010.

³² Amnesty International 2010, 'Zimbabwe: Abuse of human rights continues under unity government', AI Index: PRE01/041/2010, 10 February <http://www.amnesty.org/en/for-media/press-releases/zimbabwe-abuse-human-rights-continues-under-unity-government-20100210-0> – Accessed 30 June 2010.

³³ Human Rights Watch 2010, *Zimbabwe One Year On, Reform a Failure*, 12 February <http://www.hrw.org/en/news/2010/02/12/zimbabwe-one-year-reform-failure> – Accessed 23 March 2010.

seldom responded to vigilante violence.³⁴ For example, June 2010 news articles reported that in recent farm “invasions” the police, in many instances, did not seek to “contain the invasions and associated violence”.³⁵ The US State Department stated that the “government seldom investigated reported abductions”.³⁶ It stated that the army and police organised, participated in or provided support to perpetrators of political violence.³⁷ Amnesty International noted that the police, especially within the Law and Order section, needed to be reformed to end a culture of impunity.³⁸

76. On the judiciary, the US State Department reported that the constitution provided for an independent judiciary but it was under pressure to conform to government policies. The government repeatedly refused to obey court decisions. Defendants in politically sensitive cases were reportedly more likely to receive a fair hearing in the magistrates’ lower courts than in the higher courts.³⁹ Although the judiciary was impartial and independent, in practice it “showed indications of being politically influenced or intimidated in cases involving high-ranking government officials, politically connected persons, or violations of human right”.⁴⁰
77. A 2010 Freedom House also reported that judicial independence has been substantially eroded in recent years, although it “somewhat” improved in 2009.⁴¹
78. Freedom House also reported on the impunity of ZANU-PF militias as follows:
...ZANU-PF militias operate as de facto enforcers of government policies and have committed assault, torture, rape, extralegal evictions, and extralegal executions without fear of punishment; the incidence of these abuses increased significantly in 2008 and continued, though at a decreased rate, in 2009...⁴²
79. The UK Home Office, in a report dated March 2009 (after the swearing in of the unity government in February 2009), noted that war veterans, amongst others, ill-treated persons perceived as opponents of ZANU-PF.⁴³ In such cases the UK Home Office stated on state protection:

³⁴ US Department of State 2010, ‘Role of the Police and the Security Apparatus’ in *Country Reports on Human Rights Practices for 2009 – Zimbabwe*, 11 March.

³⁵ ‘Zimbabwe: Activists Fuel Economic Demise’ 2010, *Zimbabwe Independent*, 24 June, allAfrica.com website <http://allafrica.com/stories/printable/201006250887.html> – Accessed 28 June 2010; Sibanda, Tichaona 2010, ‘Zimbabwe: Zanu PF Unleashes Violence to Thwart Outreach Program’, *SW Radio Africa (London)*, 24 June, allAfrica.cm website <http://allafrica.com/stories/printable/201006250224.html> – Accessed 28 June 2010.

³⁶ US Department of State 2010, ‘Disappearance’ in *Country Reports on Human Rights Practices for 2009 – Zimbabwe*, 11 March.

³⁷ US Department of State 2010, ‘Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment’ in *Country Reports on Human Rights Practices for 2009 – Zimbabwe*, 11 March.

³⁸ Amnesty International 2010, ‘Zimbabwean police must end intimidation of activists’, 20 April <http://www.amnesty.org/en/news-and-updates/zimbabwean-police-must-end-intimidation-activists-2010-04-20> – Accessed 6 July 2010.

³⁹ US Department of State 2010, ‘Denial of Fair Public Trial’ in *Country Reports on Human Rights Practices for 2009 – Zimbabwe*, 11 March.

⁴⁰ US Department of State 2010, ‘Civil Judicial Procedures and Remedies’ in *Country Reports on Human Rights Practices for 2009 – Zimbabwe*, 11 March.

⁴¹ Freedom House 2010, *Freedom in the World: Country Report – Zimbabwe* <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7952> – Accessed 6 July 2010.

⁴² Freedom House 2010, *Freedom in the World: Country Report – Zimbabwe* <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7952> – Accessed 6 July 2010.

⁴³ UK Home Office 2009, *Operational Guidance Note – Zimbabwe*, March, pp.5-7/paras.3.6-3.6.7.

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.⁴⁴

On the reasonableness of relocation

80. Advice received from the Department of Foreign Affairs and Trade (DFAT) in August 2009 states that "MDC supporters can live safely, that is free from politically-motivated violence, in Harare and other major population centres in Zimbabwe. The only exception might be the squatter district of Epworth on the fringe of Harare, where community violence is not uncommon" Furthermore, aside from the Marange diamond field (which is closed to anyone who is not authorised to mine there), previous 'no-go' zones in the country have been removed. As such, perceived or actual MDC supporters now have full access to all parts of the country, although it is noted that movement in the provinces of Mashonaland West, Mashonaland East, and Mashonaland Central is still monitored by local authorities.⁴⁵
81. However, in October 2009 *IRIN News* reported an outbreak of violence in former ZANU-PF stronghold Mashonaland Central Province, as ZANU-PF supporters attacked teachers who, as a group, are considered to be sympathetic to the MDC. The violence also reportedly spread to other provinces such as Mashonaland West and East, Manicaland and Masvingo, as well as in Harare.⁴⁶ In November 2009, the MDC claimed to have evidence of ZANU-PF meetings in all 10 provinces aimed at reviving "terror squads to harass, intimidate and torture people" to accept the Kariba Draft Constitution endorsed by President Mugabe.⁴⁷ An April 2010 report states that war veterans and ZANU-PF youth militia have established military bases in various parts of the country, including "Muzarabani, Epworth, Harare South, Kamativi Mutasa North, Mudzi, Mutoko, Chiredzi, Zaka and Gutu and most [of] rural Mashonaland".⁴⁸

On the risk to returnees to Zimbabwe

82. Information on the situation for returnees from the UK is contained in the latest Operational Guidance Note of the UK Home Office (October 2010). An excerpt from the summary of Caselaw RN (Returnees) Zimbabwe CG [2008] UKAIT 00083 cited in Section 3 and 5 of the report outlines what would attract the adverse attention of Zimbabwean airport authorities when they vet returning nationals and how those who are identified as Movement for Democratic Change (MDC) supporters may be at real risk of harm from Robert Mugabe's Zimbabwe African National Union – Patriotic Front (ZANU-PF):

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. (Section 3.6.19)

⁴⁴ UK Home Office 2009, *Operational Guidance Note – Zimbabwe*, March, p.7/para. 3.6.8.

⁴⁵ DIAC Country Information Service 2009, *Country Information Report No. 09/63 – CRS Request No. ZWE9736: Update of country information post February 2009*, (sourced from DFAT advice of 31 August 2009), 1 September

⁴⁶ 'ZIMBABWE: Violence spikes after MDC's withdrawal from government' 2009, *IRIN News*, 27 October <http://www.irinnews.org/Report.aspx?ReportId=86773> – Accessed 9 August 2010

⁴⁷ UK Home Office 2009, *Country of Origin Information Report: Zimbabwe*, 23 December, p.71

⁴⁸ Phiri, G. 2010, 'Zanu (PF) continues to thwart MDC ... political persecution, violence continues', *New Zimbabwe*, 28 April

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 [*this is a reference to Case law HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094*] 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. (Section 5.2)

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. (Section 5.2)⁴⁹

83. However this ‘Operational Guidance Note’ cautions against a blanket assessment of the situation and states that there were exceptionally high levels of political violence in 2008 (the year the Caselaw is referring to). It found that there is now ‘very little’ political violence in the major urban areas of Harare and Bulawayo and that it was possible for anyone except someone with a higher political profile to relocate to either city. Only those who cannot relocate because they would incur adverse attention because of their higher political profile are at risk of harm.⁵⁰
84. While authorities see the Zimbabwean diaspora as a security threat, there is little information to suggest the mistreatment by authorities of people because they return to Zimbabwe from overseas. This will depend on the returnee’s profile, whether it is known that they sought asylum, and where they are returning from.
85. In September 2010, the UK Home Office’s Border Agency interviewed seven returned asylum seekers and found that none had experienced problems on re-settling in the country or from officials upon passing through Harare airport. Information in the report was obtained during a fact-finding mission to Zimbabwe in August 2010 and is based on the experiences of Zimbabweans who had claimed asylum in the UK and voluntarily returned to Zimbabwe during 2009 and 2010. The interviewees were independently selected by the International Organisation for Migration. All had low political profiles and feared harm from the ZANU PF Party. The report also provides the opinions of two human rights NGOs which are consistent with the views of the interviewed returnees. The report states that the Zimbabwe Association of Doctors for Human Rights assessed that returnees to rural areas (who do not participate in political activity) do not face additional problems compared with other residents.
86. The Zimbabwe Human Rights NGO Forum was also unaware of mistreatment of any returnees and states that it “considers that the abolition of hate speech against asylum seekers returning from the UK is central to creating a more conducive environment” The Forum expected that it would be informed of harm against returnees through either its nationwide member organisations or the London-based Zimbabwe Association. The Forum does maintain concerns,

⁴⁹ UK Home Office 2010, *Operational Guidance Note – Zimbabwe*, October (Section 3.6.19; Section 5.2) March

⁵⁰ UK Home Office 2010, *Operational Guidance Note – Zimbabwe*, October (Section 3.6.20 -3.6.22) March

however, that failed asylum seekers would be considered disloyal and therefore face additional problems re-integrating. It adds that while returning economic migrants may not face these problems, they are still possible if the returnee has family members known to be political activists.

87. Since the formation of the unity government following the 2008 elections, Tsvangirai has called for the diaspora to return to Zimbabwe and help rebuild the economy and the democracy. This also suggests a confidence on behalf of the MDC that returnees will not be exposed to harm.
88. The returnees in the aforementioned UK Home Office report had been cautious, however, not to reveal that they had sought asylum overseas; some from a general uncertainty of how people would react, others from fear that doing so would result in discrimination against them, for example in employment, and one from a fear of reprisals from ZANU PF. A June 2008 opinion piece in *The African Executive* argues that the Zimbabwean diaspora is seen by the state and ZANU PF as “a security threat...a source of political and economic competition” who are “working against the ruling party”. Another June 2008 article claims that all of Zimbabwe’s policies were geared toward “countering foreign threats including the ‘threats’ from Zimbabweans abroad, who are seen as working against the ruling party” A December 2009 UK Home Office report adds that anyone who returns to Zimbabwe through Harare airport, as they pass through immigration, has their details fed into a “central system as part of Zimbabwe’s paranoia to detect undesirables, like journalists, or trade unionists”. However, given that the diaspora is estimated to be anywhere between three and four million, it is highly unlikely that Zimbabwe’s Central Intelligence Organisation (CIO) has been able to monitor the political activities of most of this population, including whether they had sought asylum while overseas.
89. Information was found to suggest that those returning from Western states were sometimes suspected of spying for these states. There were, however, conflicting views as to the extent of this and whether it would result in returnees being mistreated or targeted.
90. A *BBC News* article from 2005 cites claims by lawyers for Zimbabwean asylum seekers in Britain that “Zimbabweans deported home are regarded as traitors or spies by Robert Mugabe's government”. They stated that “Authorities believe returning asylum seekers are being deliberately sent back as ‘agents of regime change’”. However, the UK Home Office argued that while returnees were subject to “in-depth questioning” by the CIO, they were not at “real risk of persecution” The article states that Zimbabwean authorities took a particular interest in those returning from Britain due to the perception that the Blair Government was leading the international campaign for “regime change” in Zimbabwe. Furthermore, the UK Asylum and Immigration Tribunal assessed in a 2005 case that “it was clear that Zimbabwean security services believed returning asylum seekers were British spies”.
91. DFAT provided advice in February 2008 in relation to an individual from Zimbabwe who had claimed that her neighbours would assume that because she had travelled overseas and sent her children overseas for education, she must be receiving money from the MDC. DFAT, however, assessed that the individual would not be likely to be targeted by her neighbours as described. In October 2009, a UK based Zimbabwean asylum seeker charity reported the story of a

returnee from the UK who was allegedly murdered by ZANU PF youths “for being a ‘sell-out’”⁵¹

[Politician A]

[Information in relation to Politician A deleted: s.431(2)]

FINDINGS AND REASONS

92. The applicant claims to be a national of Zimbabwe. Departmental Movement Records indicate that he entered Australia [in] February 2005 as the holder of a subclass 572 student visa granted to him [in] December 2004. He has provided with his protection visa application, a certified copy of the biodata page of his Zimbabwean passport, and a copy of his Birth Certificate indicating that he was born in Zimbabwe on [date deleted: s.431(2)] On the basis of the evidence before it the Tribunal accepts that the applicant is a national of Zimbabwe, and has assessed his claims against Zimbabwe as his country of nationality.
93. The applicant claims that he would be targeted for harm if he returns to Zimbabwe due to his membership of, and the activities he carried out in support of, the MDC in 2003-2004. He claims to have worked with [Politician D], [Politician C], and [Mr B] of the National Constitutional Assembly of Zimbabwe. He claims to have come to the attention of ZANU-PF on four occasions in 2004, when he was beaten and on one occasion detained overnight. He claims he is also at risk of being targeted by [Politician A], the former Minister for [portfolio deleted: s.431(2)]. He allegedly sent a group of ZANU-PF youths to look for him at his uncle’s home at [Village 1] and he claims [Politician A] is still looking for him. Further the applicant claims he will be targeted by the authorities if he returns to Zimbabwe after a protracted period abroad.
94. The applicant’s oral evidence at the Tribunal hearing was consistent with the detailed statutory declaration he provided to the Tribunal and the Tribunal found him to be a credible witness. He did not embellish his claims. The Tribunal notes that following the appointment of his advisor the deficiencies and inconsistencies in the applicant’s claims were addressed in the detailed statutory declaration provided to the Tribunal. Further, that there was corroborating evidence in respect of the extent of the applicant’s membership and activism within the MDC provided by [Politician C], and by [Mr B] of the National Constitutional Assembly of Zimbabwe.
95. The Tribunal has had regard to the applicant’s written and oral evidence, and the evidence of [Politician C] and [Mr B] and it accepts that the applicant joined the MDC at the offices of [Politician C] in 2003 and that he was an active member of the MDC thereafter until 2004 when he ceased his activism due to the fears he held for his life. The applicant was able to provide detailed evidence regarding the nature and extent of his activities in the MDC and this was corroborated by these two witnesses
96. The Tribunal accepts the evidence of the applicant, which was corroborated by [Politician C] with whom he had a close working relationship, that the applicant is well known in his area as an MDC activist. Further, on the basis of the applicant’s written and oral evidence, which was corroborated by the evidence of both witnesses, the Tribunal accepts that the applicant was attacked on four occasions in 2004 and that these attacks on him were directly attributable to his MDC activism.

⁵¹ RRT Country Advice 2011, *Country Advice ZWE37927*, 14 January –

97. The Tribunal accepts the evidence of the applicant that he is known to [Politician A], since [Politician A] and the applicant's grandmother are neighbours in [Village 1]. The Tribunal accepts the applicant's evidence that [Politician A] sent a group of ZANU-PF youths to look for him at his uncle's home at [Village 1] and his claim that [Politician A] is still looking for him. The applicant's evidence is consistent with the country information about [Politician A], which paints a grim portrait of [Politician A], who was previously a Member of Parliament appointed to [portfolio and details deleted: s.431(2)]. The Tribunal notes the report of [Politician A]'s attendance at a meeting in Manicaland in November 2010 which was attended by ZANU PF politicians and military personnel and in which the military are reportedly taking over the ZANU-PF electoral campaign with a strategy to use violent means to ensure a Mugabe victory at the forthcoming Zimbabwean poll. It further notes the article from [newspaper and date deleted: s.431(2)] 2010 referring to the campaign of terror being conducted by [Politician A] in [Village 1] against MDC supporters.
98. The Tribunal accepts the evidence of [Politician C] that the Zanu PF keep tabs on people, that the applicant is known to the Zanu PF, and that the Zanu PF will know when the applicant returns to Zimbabwe.
99. The Tribunal accepts that the harm feared by the applicant amounts to persecution for the purposes of s 91R(1). The Tribunal accepts the applicant's claims to have been beaten (and the photographic evidence he provided is consistent with those claims) and detained. The Tribunal accepts that the applicant's political opinion is or would be the essential and significant reason for the persecution. The Tribunal also accepts that the persecution involves serious harm in the form of either a threat to his life or significant physical harassment or ill-treatment arising from his political opinion. The Tribunal also accepts that this feared persecution involves systematic and discriminatory conduct against MDC supporters for reasons of their political opinion.
100. The applicant claims that he faces persecution if he returns to Zimbabwe on the basis of his political opinion. The country information referred to above indicates that both perceived and known MDC members and supporters, as well as their families, continue to be harassed, arbitrarily arrested, assaulted, intimidated and killed and that the perpetrators are primarily members and supporters of ZANU-PF, ZANU-PF affiliated youth militia, war veterans and, to a lesser extent, police officers and security forces. The country information supports the applicant's claim that active opponents of the Zanu PF are at risk of serious harm amounting to persecution and the Tribunal finds that there is a real chance that the applicant will experience serious harm if he returns to Zimbabwe in the reasonably foreseeable future.
101. The Tribunal finds the applicant's explanation for the delay in lodging his protection claim to be reasonable and is of the view that the delay in lodging his application does not undermine the veracity of his claims. It accepts the applicant's evidence that he left Zimbabwe due to the escalating violence and fears for his safety (which evidence was corroborated by [Politician C]) and that it had been his intention to return to Zimbabwe at the conclusion of his study in Australia and that it was only when his student visa expired in circumstances where there had been no change in the regime in Zimbabwe, that he felt unsafe.
102. In respect of the applicant claims he will be targeted by the authorities if he returns to Zimbabwe after a protracted period abroad, the applicant's evidence was to some extent corroborated by [Politician C], who gave evidence that the Zanu PF are particularly suspicious of a person who has been away from Zimbabwe. The Tribunal accepts that persons returning to Zimbabwe after a period of time abroad are likely to face some degree of scrutiny by the Zimbabwean authorities. The country information indicates that returnees per se are not at risk

however those who are identified as MDC supporters may be at real risk of harm, and this is accepted by the Tribunal. The Tribunal does not accept that the applicant faces a real chance of serious harm simply by virtue of returning to Zimbabwe after a prolonged absence, however given the findings made by the Tribunal regarding his political profile the Tribunal finds that he will be at real risk of harm on returning to Zimbabwe, now or in the foreseeable future.

103. The Tribunal finds that the applicant would not be able to avail himself of the protection of the authorities of Zimbabwe. It accepts the evidence of [Politician C] in this regard, which is supported by the country information which indicates that members of the Zimbabwe Republic Police act with a high level of impunity in support of the ZANU-PF, and that they are involved in the intimidation and harassment MDC supporters and activists. In making these findings, the Tribunal notes that the agent of the feared persecution is the Zimbabwean authorities. The Tribunal is therefore satisfied that state protection against the feared persecution would not be available to the applicant in Zimbabwe.
104. As to whether the applicant can safely relocate within Zimbabwe the Tribunal considers that in the present circumstances of escalating violence in Zimbabwe, it is difficult to predict with any certainty the relative safety of the applicant in different parts of Zimbabwe, particularly given that the applicant is a known MDC supporter who has campaigned on behalf of MDC candidates, and who is known to [Politician A], an ex Zanu PF Member of Parliament. In these circumstances the Tribunal does not accept that there is anywhere in Zimbabwe where there is no real chance of feared persecution. The Tribunal considers that there is no part of Zimbabwe to which the applicant could reasonably be expected to relocate where he would be safe from the persecution which he fears.
105. The Tribunal finds that the applicant is outside of his country of nationality. For the reasons stated above, the Tribunal finds that the applicant has a well-founded fear of being persecuted for reasons of his political opinion if he returns to Zimbabwe. The Tribunal finds that the applicant is unwilling, owing to his fear of persecution, to avail himself of the protection of the government of Zimbabwe. Nothing in the evidence before the Tribunal suggests that the applicant has a legally enforceable right to enter and reside in any other country. The Tribunal finds that the applicant is not excluded from Australia's protection by s.36(3) of the Act.

CONCLUSIONS

106. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

DECISION

107. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.