

**0903034 [2009] RRTA 709 (6 August 2009)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0903034

**DIAC REFERENCE(S):** CLF2009/6750 CLF2009/9016

**COUNTRY OF REFERENCE:** Zimbabwe

**TRIBUNAL MEMBER:** Deborah Jordan

**DATE:** 6 August 2009

**PLACE OF DECISION:** Melbourne

**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 a Class TU Subclass 573 (Higher Education Sector) visa [in] February 2007. He applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] January 2009. The delegate decided to refuse to grant the visa [in] April 2009 and notified the applicant of the decision and his review rights by letter dated [in] April 2009.
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] April 2009 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**

- The Department's file relating to the applicant. The file is in two parts: CLF2009/6750 (Df1-190) and CLF2009/9016 (Df1-85); and
  - Tribunal file 0903034 (Tf1-65).
19. The Tribunal has also had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
  20. The applicant appeared before the Tribunal [in] July 2009 to give evidence and present arguments. The applicant's agent did not attend the hearing, but the applicant confirmed that the agent is still representing him. The Tribunal also received oral evidence from [Person 1's name deleted in accordance with s.431(2) of the Migration Act as it may identify the applicant], who is a friend of the applicant.
  21. In a submission dated [in] June 2009 (Tf48-63), the applicant's agent states that the applicant fears persecution on the basis of his actual/imputed political opinion because of his membership and support for the Movement for Democratic Change (MDC). His agent states that the applicant also fears persecution on the basis of his membership of a particular social group, as a failed asylum seeker.
  22. The applicant claims that he has been targeted in the past by ZANU-PF supporters because he supports the MDC. He was a member of the youth wing of the MDC and was involved in mobilising youth through rallies, recruiting new members and mobilising members to vote.
  23. The authorities were aware that he was involved in these political activities. He was arrested [in] June 2005 and severely beaten, but released later the same day. After that incident, he ceased his involvement in MDC activities for fear of being arrested again. His cousin who is also an MDC member, was arrested and tortured by the police because he participated in an MDC rally.
  24. The applicant claims that he fears:
    - imprisonment and detention at the airport upon his arrival;
    - detention and torture because of his suspected support for the MDC and failure to demonstrate support for the ZANU-PF and given his prolonged residence in Australia;
    - physical assault and threats from ZANU-PF members;
    - incapacity to subsist because of his political profile; and
    - repression of his political freedoms and inability to express his political views.

25. The submission also states that the applicant has been in a de facto relationship with an Australian citizen for over 12 months and [in] February 2009, their daughter was born.
26. The submission states that relocation within Zimbabwe is not reasonable for the applicant because government militia have a stronghold over the entire country including rural areas.

### **The hearing**

#### *The applicant's evidence*

27. The applicant told the Tribunal:
  - On several occasions, he and others in the street were beaten by police, for participating in MDC rallies.
  - He was taken to a police station in [Town A], on three occasions, in 2003/2004 and in June 2005. On each occasion, he was beaten and then released.
  - He is an MDC member. When he was in Zimbabwe, he attended rallies, handed out information, put up flyers and handed out T-shirts. Anyone seen by the police participating in such activities is arrested.
  - His parents came to Australia from Zimbabwe for his sister's wedding in April 2009. They told the applicant that although there is an agreement on paper between Mugabe and Tsvangirai, people are still being beaten or disappear.
  - The police in Zimbabwe are corrupt and even if the government told people to stop the violence, the police would not stop.
  - In regards to his claims of discrimination on the basis of his ethnicity, he told the Tribunal that he is from the Ndebele tribe, whose origins are in South Africa. There is fighting between Ndebele and Shona people. [Town A], where his family live, is mostly Shona, so Ndebele people are a minority group there, and are discriminated against for that reason. There are two factions of the MDC which is split into Shona and Ndebele. His father works on a cane plantation in [Town A]. Prior to coming to Australia, the applicant worked as a cane sampler. The Tribunal observed that being Ndebele in a largely Shona population had not prevented his family from settling or working there.
  - He has been a member of the MDC since 2003. His father is an MDC member. The Tribunal asked if his father had problems in Zimbabwe because of his MDC membership. He said not at the moment, but before the applicant was born, his father had a couple of MDC members staying in his house. They came from Harare for a rally the next day. Some opposition members came to the house looking for his father who was not home. They beat up his mother when she would not say where he was.
  - The Tribunal noted that, on his protection visa application, the applicant said he left Zimbabwe legally, but it took him three years to get his passport. He said he had to pay money to lodge his passport application. There is a lot of official corruption, and those who pay more money get their passports more quickly. This put the other applications at the bottom of the pile. His passport took three years to be issued because he did not pay extra money to have it processed more quickly.

- In about late 2005 or early 2006, his cousin, who is an MDC member, was arrested and tortured.
- If the applicant returns to Zimbabwe, he would have to do compulsory national service. The Tribunal asked him if it is possible to avoid national service. He said people know if you have done your service or not and will notify the authorities if you have not. He said if he doesn't do national service, he could not get a job in Zimbabwe.
- Of the two year delay between his arrival in Australia and his protection visa application, the applicant said in 2007, he left Zimbabwe because of the political situation there. He left Zimbabwe on a student visa. His sister in Australia arranged his visa and paid for his airline ticket. He did not know about protection visas then. He went to watch the Homeless World Cup in Melbourne in December 2008, and spoke to some of the players from Zimbabwe. Those players told him about protection visas and told him about [organisation name deleted: s.431(2)]. He went to that organization in January 2009 and lodged his application [in] January 2009.
- The Tribunal asked him why he fears being arrested on arrival in Zimbabwe when he was allowed to leave legally. He said when he left, it was on a 2 year student visa, so he was expected to return to Zimbabwe. For that reason, he would not have been seen by the authorities as a "sell out". He said he is still an active MDC supporter and is also a musician. [Information deleted: s.431(2)]. He said the authorities know who he is. He said it would therefore be risky for him to return to Zimbabwe.
- [Information deleted: s.431(2)]
- [Information deleted: s.431(2)]
- The Tribunal asked the applicant if he could relocate to another part of Zimbabwe and thus be safe from the persecution he fears. He said nowhere in Zimbabwe is safe at the moment because there are police stations everywhere and the police are corrupt. He said there are militia and ZANU-PF supporters everywhere in Zimbabwe and they are always looking for information and beating people up. Nobody knows who to trust because supporters do not wear uniforms.

*Evidence of [Person 1]*

28. [Person 1] told the Tribunal that he is from Harare and has not lived in [Town A]. He is from the Shona tribe. The Tribunal asked if he and the applicant would have been friends in Zimbabwe and he said no.
29. He supports the MDC. He has been in Australia for 5 years.
30. He said people are still being persecuted in Zimbabwe. He said the agreement between ZANU-PF and MDC is on paper only and the political problems still exist in Zimbabwe. He said the politicians have their own reasons for saying everything is alright in Zimbabwe now.
31. He said things have slightly improved in Harare, but the situation is still difficult there and in the rural areas it is still very bad.

## Independent Country Information

32. US Department of State Report on Human Rights Practices 2008, released on 25 February 2009, provides the following relevant information:

*Zimbabwe, with a population of approximately nine million, is constitutionally a republic, but the government, dominated by President Robert Mugabe and his Zimbabwe African National Union-Patriotic Front (ZANU-PF) since independence, was not freely elected and was authoritarian. The last four national elections--the presidential election in 2002, the parliamentary elections in March 2005, the harmonized presidential and parliamentary elections in March 2008, and the presidential run-off in June--were not free and fair. In the March 29 elections two factions of the opposition Movement for Democratic Change (MDC) gained a parliamentary majority. Mugabe was declared the winner of the June 27 run-off election after opposing candidate Morgan Tsvangirai withdrew due to ZANU-PF-directed violence that made a free and fair election impossible. Negotiations subsequently took place between ZANU-PF and the two MDC factions aimed at agreement on a power-sharing government. On September 15, all three parties signed a power-sharing agreement under which Mugabe would retain the presidency and Tsvangirai would become prime minister-elect; however, the provisions of the deal had not been implemented by year's end. Although the constitution allows for multiple parties, ZANU-PF, through the use of government and paramilitary forces, intimidated and committed abuses against opposition parties and their supporters and obstructed their activities. The Joint Operation Command (JOC), a group of senior security and civilian authorities, maintained control of the security forces, and often used them to control opposition to ZANU-PF.*

*The government continued to engage in the pervasive and systematic abuse of human rights, which increased during the year. The ruling party's dominant control and manipulation of the political process through violence, intimidation, and corruption effectively negated the right of citizens to change their government. Unlawful killings and politically motivated abductions increased. State-sanctioned use of excessive force increased, and security forces tortured members of the opposition, student leaders, and civil society activists with impunity. Security forces refused to document cases of political violence committed by ruling party loyalists against members of the opposition. Prison conditions were harsh and life threatening. Security forces, who regularly acted with impunity, arbitrarily arrested and detained the opposition, members of civil society, labor leaders, journalists, demonstrators, and religious leaders; lengthy pretrial detention was a problem. Executive influence and interference in the judiciary continued. The government continued to evict citizens and to demolish homes and informal marketplaces. The government continued to use repressive laws to suppress freedoms of speech, press, assembly, association, academic freedom, and movement. Government corruption remained widespread. High-ranking government officials made numerous public threats of violence against demonstrators and members of the opposition. A nearly three-month ban on the activities of nongovernmental organizations (NGOs) exacerbated food insecurity and poverty. After the ban was lifted, security forces, war veteran groups, and provincial governors continued to interfere with NGO operations, hampering food distributions. Tens of thousands of citizens were displaced in the wake of election-related violence and instability, and the government impeded NGOs' efforts to assist them and other vulnerable populations. The following human rights violations also continued: violence and discrimination against women; trafficking of women and children; discrimination against persons with disabilities, ethnic minorities, homosexuals, and persons*

*living with HIV/AIDS; harassment and interference with labor organizations critical of government policies; child labor; and forced labor, including of children.*

## **RESPECT FOR HUMAN RIGHTS**

*Section 1 Respect for the Integrity of the Person, Including Freedom From:*

### *a. Arbitrary or Unlawful Deprivation of Life*

*The government or its agents committed politically motivated, arbitrary, and unlawful killings during the year. By year's end over 193 citizens had been killed in political violence that targeted members of the opposition party. The MDC claimed that approximately 200 other members and supporters were missing and presumed dead at year's end. The killings were primarily committed by members of ZANU-PF, ZANU-PF youth militia, war veterans, and, to a lesser extent, members of the military and police. The majority of politically motivated killings occurred between the March 29 harmonized election and the June 27 presidential run-off election. NGOs also estimated security forces killed between 200 and 300 citizens in the Chiadzwa diamond fields in Manicaland Province.*

*Security forces killed opposition members during the year. For example, on May 14, Tonderai Ndira, MDC Secretary for Security in the party's Youth Assembly, was abducted from his home in a suburb of Harare by suspected security agents. His mutilated body was found on May 21.*

*On May 22, MDC treasurer in Mashonaland East Shepherd Jani was abducted in Murehwa by four men suspected of being intelligence officers. Jani's mutilated body was found two days later.*

*Security forces engaged in extralegal killings in connection with illegal diamond mining. According to the press and NGO reports, security forces undertook a major operation to kill illegal diamond miners in the Marange/Chiadzwa area of Manicaland during the year, in order to ensure the diamond sales benefited the Mugabe regime. On December 12, the NGOs Global Witness and Partnership Africa Canada claimed "police reportedly shot and killed as many as 50 informal diamond diggers in November's raid, allegedly termed Operation No Return." According to numerous reports, military forces used a ground attack with dogs and guns as well as an aerial assault to kill indiscriminately persons digging for diamonds. The military allegedly intervened after learning that police in the area were benefiting from illegal diamond mining. Press reports from nearby Mutare, where many of the bodies were taken, indicated dozens of men, women, and children died from gunshot wounds, dog bite wounds, and torture inflicted by soldiers. On December 12, the NGOs called for signatories to the Kimberley Process to prevent Zimbabwean diamonds from entering the global market, noting, "the perpetuation of human rights abuses and indiscriminate extrajudicial killing by governments in pursuit of Kimberley Process objectives is little better than the problem the scheme seeks to end. The Kimberley Process should act to condemn and prevent such violence."*

*There were killings by paramilitary forces during the year. For example, on April 5, ZANU-PF youths and war veterans killed Tapiwa Mbwanda, MDC organizing secretary for Hurungwe East. According to Human Rights Watch (HRW), four people were arrested in*



*connection with the murder but were released without charge after a local ZANU-PF leader demanded their release.*

*On April 25, MDC activist Tabitha Marume was shot and killed in Manicaland when a group of war veterans opened fire on a group of MDC supporters. Marume and 21 other MDC supporters had gone to a ZANU-PF-sponsored torture camp to seek the release of 12 MDC members who had been abducted by war veterans on April 23. When they attempted to release their colleagues, several dozen war veterans and ZANU-PF youths, some armed with AK-47 rifles, confronted them. As the MDC supporters attempted to flee, three persons, including Marume, were shot and killed.*

*There were killings by party supporters during the year. For example, on June 7, a mob of ZANU-PF supporters killed Dadirai Chipiro, the wife of Patson Chipiro, a MDC local chairman in Mhondoro, by cutting off her hand and both feet, dragging her body into the kitchen of their home, setting it on fire, and burning her alive.*

*On June 16, ZANU-PF supporters attacked the home of Harare's Deputy Mayor and MDC Councilor for Ward 42, Emmanuel Chiroto, and took away his wife, Abigail. On June 18, her burned body was found on a nearby farm. HRW reported that police refused to take action to investigate the killing.*

*On July 26, former police officer Kingsley Muteta died after he was attacked by 12 suspected ZANU-PF youths at his family home in Mudzi. The mob beat Muteta when he arrived at the house, intending to visit his mother, who the group said was a known MDC activist. Police made arrests in the case, but they were subsequently released.*

*Despite the nearly 200 killings resulting from political violence, there were no prosecutions or convictions in any of the cases. The Zimbabwe Human Rights NGO Forum filed five civil suits in the High Court against perpetrators for wrongful deprivation of life; all were pending at year's end.*

*There were no developments in previously reported killings from 2006 or 2007.*

...

## *b. Disappearance*

*There were numerous reports of politically motivated abductions during the year. MDC leaders reported that state security agents and ZANU-PF party supporters abducted and tortured hundreds of opposition and civil society members, as well as student leaders, as part of a systematic government-sponsored campaign to dismantle the opposition party's structures before the March 29 election and, especially, immediately preceding the June 27 presidential run-off. In the majority of cases, victims were abducted from their homes or off the streets by a group of unidentified assailants, driven to remote locations, interrogated and tortured for one or two days, and abandoned. In some cases, the abducted person was located in police custody days or weeks later. Between late October and year's end, approximately 32 people were abducted by suspected state security agents and held for up to two months before being brought to court. At year's end an estimated 14 were still missing.*

*On June 23, suspected ZANU-PF members abducted lawyer Ernest Jena from his office in Bindura just before he was due to make a bail application for detained MDC members. A group of men forced Jena into a car marked with a ZANU-PF flag and stickers. The men drove Jena to a secluded place outside Bindura and repeatedly beat him on the buttocks and back. Jena was detained in leg irons without food and water for two days. On June 27, Jena's assailants returned him to his office and forcibly took his passport, identification documents, money, and other private documents.*

*In late October, 13 MDC officials, who were primarily from the Zvimba South constituency, and a two-year-old child were abducted near Banket in Mashonaland West. Those abducted included Ward 25 councilor Emmanuel Chinanzvavana; Mashonaland West women's assembly provincial chairperson, defeated MP candidate, and member of the MDC National Council Concilia Chinanzvavana; district chairman and defeated senatorial candidate Fidelis Chiramba; Provincial Secretary Terry Musona; party youth organizer Fanwell Tembo; party activists Tawanda Bvumo, Larry Gaka, Gwenzi Kahiya, Agrippa Kakonda, Pieta Kaseke, and Lloyd Tarumbwa; and youth chairman Collen Mutemagau, along with his wife Violet Mupfuranhehwe and their two-year-old son Nigel Mutemagau. Eight of the abductees surfaced in Harare jails on December 23. Police continued to hold them in custody in connection with allegations of plotting an insurgency at year's end. While Kakonda, Kahiya, Tembo, Gaka, Musona, and Tarumbwa remained unaccounted for at year's end, the six were included in the December 24 High Court order calling on police to release them.*

*On December 3, Jestina Mukoko, Director of the NGO Zimbabwe Peace Project (ZPP), was abducted from her home in Norton. Witnesses reported that between 15 and 20 men and one woman, several of whom were armed, arrived at Mukoko's house in two unmarked vehicles at 5:00 a.m., where approximately five of the men dragged Mukoko from her home into an unmarked vehicle. Her family immediately reported her abduction to local police. On December 8, the Chief Superintendent of Norton police responded to a letter from the National Association of NGOs (NANGO) by stating that Mukoko was not in police custody and that her case was being treated as a kidnapping. Despite a December 9 High Court order directing the police to work closely with her lawyers, search for Mukoko, and to report daily to the courts on their progress, police did not fully comply with the order. Separately, on December 8, two ZPP employees, Pascal Gonzo and Broderick Takawira, were abducted from the ZPP office in Harare by six suspected state agents in an unmarked vehicle.*

*On December 23, 18 persons, including Mukoko, Gonzo, Takawira, eight persons abducted near Banket in October, and other persons abducted in November and December, were discovered in numerous Harare police stations. On December 24, some of the abductees appeared in a lower court. Officials from the attorney general's office refused to provide the defendants' lawyers with information on the intended charges of recruiting and conspiring to mount an armed insurgency from Botswana until the court hearing began.*

*On the same day, the High Court issued a final order declaring illegal the detention of 32 abductees, including the 18 in police custody and the 14 others still missing, and ordered that nine persons claiming torture while in custody should be released to a clinic for examination. On December 25, the majority of the group was moved to a maximum security prison. On December 29, the government appealed to the Supreme Court. At year's end the case was ongoing, the group remained in prison, and prison officials continued to deny the defendants' lawyers access to meet privately with their clients.*

*Prison officials allowed a private doctor to examine the detainees at a prison hospital; however, they were not granted access to a private facility. Although officials claimed that the 18 detainees were involved in various plots to overthrow the government, none had been formally charged by year's end. Due to a lack of formal charges and arrest warrants, and because their custody defied the December 24 court order, their lawyers referred to them as abductees.*

*In some cases, abducted persons were killed. For example, on May 13, Beta Chokururama, a member of the MDC National Youth Assembly, and two other MDC activists, Cain Nyevehe and Godfrey Kauzani, were abducted in Mashonaland East by men in two trucks without license plates. Chokururama's body was found the same day; the bodies of Nyevehe and Kauzani were found on May 18.*

*The government seldom investigated reported abductions.*

*There were no developments in the July 2006 disappearance of an MDC youth organizer.*

### *c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*

*Although the constitution prohibits torture and other cruel, inhuman, or degrading treatment or punishment, security forces continued to engage in such practices. Security forces routinely committed political violence, including torture of citizens in custody, particularly in areas suspected of heavy support for the opposition. Army and police units organized, participated in, or provided logistical support to perpetrators of political violence and generally permitted their activities. Police also refused to record reports of politically motivated violence or destruction of property. Police used excessive force in apprehending and detaining criminal suspects. Government supporters continued to assault suspected and known opposition members and their families, civil society activists, and student leaders. Violent confrontations between various youth groups aligned with either the government or the opposition continued.*

*Human rights groups reported that physical and psychological torture perpetrated by security agents and government supporters increased during the year. The violence was particularly widespread between the March 29 harmonized elections and the June 27 presidential run-off when security agents and government supporters established torture*

*camps across the country, particularly in the northern, central, and eastern provinces. The ruling party also set up numerous torture camps throughout the country, including Matapi base in Mbare, Chidodo in Uzumba Maramba Pfungwe, and Dendera in Mudzi. One NGO report stated that at least 6,300 victims of torture and assault received medical treatment during the year, nearly double the 3,463 victims recorded in 2007. Torture and other assault methods commonly reported included beating victims with sticks, whips and cables; suspension; burning; electric shock; and falanga (beating the soles of the feet).*

*For example, on May 4, according to HRW, ZANU-PF officials and war veterans tortured and beat 70 villagers at a "re-education" meeting at Chaona primary school. Alex Chiseri, Fushirai Dofu, Wilson Emmanuel, Joseph Madzuramhende, Tapiwa Meda, and Geoffrey Jemedze died as a result of their injuries. According to witnesses and doctors, three of the men who died had severely mutilated testicles. Madzuramhende's genitals were tied with barbed wire, placed on a log and then beaten severely. Others were forced to lie on the floor while ZANU-PF youths beat their buttocks with sticks. Some victims required skin grafts for their injuries. During the beatings, victims were forced to name other MDC activists, who were then called forward for additional beatings.*

*On June 16, according to Amnesty International's (AI) October report Zimbabwe: Time for Accountability, a woman who was five months pregnant was assaulted by ZANU-PF supporters in Gutu, Midlands Province, after she failed to attend a ZANU-PF meeting. An estimated 200 persons arrived at the house where the woman and her sister rented a room. The mob broke windows and dragged the women from the house, where they were beaten on their buttocks and forced to sing ZANU-PF songs while the mob looted the home. The following day, a group of ZANU-PF youths and uniformed soldiers came to the house and ordered the woman to leave. The youths then beat the woman's sister and another teenage boy who remained in the house. Soldiers guarded the area while the ZANU-PF youths singing party songs stole food and soap and destroyed furniture.*

...

*Eric Matinenga, an MDC member of parliament for Buhera West and a prominent attorney, presented a case before the High Court on May 19, alleging the involvement of the Zimbabwean Defense Forces in harassing, assaulting, and humiliating MDC supporters. The case named the Commander of the Defense Forces Constantine Chiwenga, and Major Svosve as the organizers of the repressive activities by security personnel in Buhera. On May 23, Justice Bhunu issued a court order declaring the deployment of defense forces in Buhera for any purpose not in the constitution as unlawful and ordered them to withdraw. However, reports of army personnel in the area continued. HRW reported the details of this case and similar incidents from other areas of the country.*

*Police repeatedly used cruel, inhuman, or degrading treatment or punishment against those in custody. For example, on September 17, riot police detained 10 student leaders from Bindura University after dispersing a peaceful protest. The students were held for more than 12 hours without food and water and were assaulted in custody. Police told the students their mission was to "flush out and deal with little MDC troublemakers," according to HRW.*

*Police also used excessive force to disperse demonstrators. For example, on January 23, police fired tear gas into a crowd of several hundred MDC supporters as they attempted to leave a Harare court hearing where a magistrate ruled to allow a scheduled MDC rally to*

*proceed, despite a government ban on the rally that had been imposed days earlier. Explaining her decision, the magistrate asked MDC marchers to "withdraw peacefully and in a nonriotous manner, and proceed to the Glamis Stadium." However, before the MDC supporters could leave, heavily armed riot police used batons and tear gas to break up the crowd, resulting in numerous injuries.*

*On January 25, police beat and arrested 25 members of the NGO Restoration of Human Rights in Zimbabwe (ROHR) as they marched in protest of repressive legislation and police harassment. After police dispersed the march, and while protesters were leaving the scene, more than a dozen additional police arrived and arrested four more members of ROHR. Riot police then went to ROHR's office, where they forcibly took those present outside and beat them with batons before taking them to the police station. The ROHR members paid fines for "disorderly conduct or conduct likely to cause a breach of the peace."*

*Government supporters, including youth militia and war veterans trained by ZANU-PF, were also deployed to harass and intimidate members of the opposition, labor, student movement, and civic groups, as well as journalists considered critical of the government. For example, on May 4, Zimbabwe Election Support Network (ZESN) observers in Mount Darwin East were attacked by suspected ZANU-PF supporters for allegedly facilitating an MDC victory in the March harmonized election. The attacks involved harassment, assault of the observers and their relatives, vandalizing and setting fire to observers' homes, and looting of their property, including blankets and food reserves. At least seven observers and two of their relatives sustained serious injuries in the attacks and were hospitalized.*

*No action was taken in the other 2006 or 2007 cases of abuse.*

...

#### *d. Arbitrary Arrest or Detention*

*The constitution and law prohibit arbitrary arrest and detention; however, some laws effectively weakened this prohibition, and security forces repeatedly arbitrarily arrested and detained persons.*

#### *Role of the Police and Security Apparatus*

*The Zimbabwe Republic Police (ZRP) is responsible for maintaining law and order. Although the ZRP officially is under the authority of the Ministry of Home Affairs, in practice the president's office, through the JOC, controlled some roles and missions. The Zimbabwe National Army and Air Force, under the Defense Ministry, were responsible for external security; however, there were cases in which the government called upon them for domestic operations. The Central Intelligence Organization (CIO), under the Ministry of State for National Security, is responsible for internal and external security.*

*Security forces were widely used to carry out government-sponsored politically motivated violence. Police routinely and violently disrupted public gatherings and demonstrations, and tortured opposition and civil society activists in police custody.*

*It was difficult for rank-and-file police to remain impartial due to continued politicization of the force's upper echelons. For example, in the pre-election period, police officers were*

*reportedly forced to attend ZANU-PF rallies during work hours. In addition, the November HRW report, *Our Hands Are Tied: Erosion of the Rule of Law in Zimbabwe*, described occasions when police officers were told that they were not to investigate or arrest ZANU-PF supporters who might have been implicated in political violence.*

*In the March 29 election, police and military ballot results cast in secret indicated overwhelming support for the MDC. However, there were widespread reports that police were forced to vote under their superiors' supervision in the June 27 run-off election, which ZANU-PF won overwhelmingly. In mid-March the press quoted the commander of the Zimbabwean Army, General Constantine Chiwenga as saying that "the army will not support or salute sell-outs and agents of the West before, during, and after the presidential elections." There were reports that untrained or unqualified personnel were hired into the police solely because of their support for ZANU-PF.*

*There were reports that police and army personnel suspected of being sympathetic to the political opposition were demoted or fired. Several policemen told HRW that officers were told to support ZANU-PF or resign, and that promotion in the police was contingent on support for ZANU-PF. In September policeman Masimba Dinyero was sent to the barracks for three weeks after he allegedly criticized Mugabe for continuing to cling to power while police officers starved.*

*Police were poorly trained and equipped, underpaid, and corrupt. Severely depleted human and material resources, especially fuel, further reduced police effectiveness during the year. Corruption continued to increase in part due to low salaries and a worsening economy.*

*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. In March 2007, after security forces violently prevented a public gathering, Mugabe was widely quoted as saying that "the police have a right to bash" protesters who resist them.*

*Mechanisms to investigate security force abuses remained weak. Court orders compelling investigations into allegations of abuse were routinely ignored by authorities. Government efforts to reform security forces were minimal, and training was rarely provided.*

*Police seldom responded during incidents of vigilante violence.*

#### *Arrest and Detention*

*Arrests require court-issued warrants, and the law requires that police inform an arrested person of the charges before taking the individual into custody; however, these rights were not respected in practice. Although the law requires a preliminary hearing before a magistrate within 48 hours of an arrest (or 96 hours over a weekend), authorities routinely disregarded the law if a person did not have legal representation. Police typically made arrests which may have been politically motivated on Friday, which permitted legal detention until Monday. 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.*

...

*There were reports that victims or witnesses of crimes were detained or charged with the crime after reporting it to police. For example, in January three MDC activists were assaulted by ZANU-PF youths, who accused the activists of spying on them while walking near a ZANU-PF rally in Harare. When the MDC activists reported the incident to police, they were detained for a week.*

*On June 18, MDC Minister of Parliament-elect (MP) Abednico Bhebe and Senator-elect Robert Makhula were arrested at the police station in Nyaki where they were attempting to intercede on behalf of a constituent who had been arrested the day before. When lawyers for the three arrived, police denied them access to the arrestees. On June 20, the lawyers obtained a court order directing police to bring the three to court within 24 hours, but police refused to comply and threatened the lawyers with arrest. The arrestees were brought to court on July 1 and released. The magistrate refused to place them on remand for trial, effectively removing the case from the court's list of pending cases, citing gross abuse and wanton disregard for the law by the police.*

*The government increasingly used arbitrary arrest and detention as a tool of intimidation and harassment, especially against opposition members and supporters, civil society activists, student activists, and journalists. The Zimbabwe Human Rights NGO Forum reported more than 800 confirmed cases of unlawful arrest and detention during the year. According to the 2006 Solidarity Peace Trust and Institute for Justice and Reconciliation report *Policing the State*, an evaluation of 1,981 politically-motivated arrests from 2000 to 2005 showed that 1,721 cases resulted in no trial, 256 cases came to trial but resulted in no conviction, and only four cases resulted in a conviction. This trend continued during the year.*

*On April 25, police raided the MDC's headquarters, Harvest House, in downtown Harare. The MDC estimated that 250 armed police arrested approximately 300 persons who had fled election-related violence and sought refuge at the office building. Police raided the office again on June 23, and took approximately 30 elderly, ill, or injured persons into custody. When MDC MP Evelyn Masaiti attempted to visit the detainees in jail, police detained her as well. Authorities later moved an estimated 30 persons to a facility in Ruwa, outside Harare. When lawyers attempted to visit the detainees, police denied access, stating that they had not been arrested. Over subsequent weeks, the detained persons were slowly allowed to leave and were assisted returning to their homes.*

*Police and other security officials detained MDC President Morgan Tsvangirai without charge several times during the year. On January 23, police executed a predawn raid on Tsvangirai's home and took him into custody for several hours just before he was expected to lead an MDC march and rally. On June 4, police stopped Tsvangirai and other MDC officials at a roadblock near Bulawayo as they traveled between political rallies. He and several other party officials were taken to a police station and questioned. Police detained Tsvangirai for several hours again on June 7.*

...

### *Political Prisoners and Detainees*

*There were hundreds of reports of political detainees throughout the year, including opposition officials, their supporters, NGO workers, and civil society activists. Many were held for one or two days and released, others were held for weeks or months. During the year*

*police severely beat and tortured numerous opposition, civil society, and student leaders while in detention.*

*At year's end there were at least 18 political prisoners in police custody. All were abducted between October 31 and mid-December and were brought to jails in Harare on December 22 and 23 by the state security agents who abducted them. According to affidavits and testimony from victims, witnesses, and their families, they were abducted and later jailed because of their affiliations with the MDC or membership in a civil society organization. At least nine claimed they were tortured after their abduction. Despite court orders calling on the state to investigate the abductions and torture claims and to release the group, police refused to take action. At year's end an additional 14 persons abducted in the same manner remained unaccounted for, although civil society organizations believed they were also in state custody.*

...

#### *Civil Judicial Procedures and Remedies*

*There was an independent and impartial judiciary in civil matters; however, in practice the judiciary showed indications of being politically influenced or intimidated in cases involving high-ranking government officials, politically connected persons, or violations of human rights. There were systematic problems enforcing domestic court orders, as resources for the judiciary and police were severely strained.*

#### *f. Arbitrary Interference with Privacy, Family, Home, or Correspondence*

*The constitution and law prohibit such actions, but the government did not respect these provisions in practice. Security forces searched homes and offices without warrants; the government pressured local chiefs and ruling party loyalists to monitor and report on suspected opposition supporters; and the government forcibly displaced persons from their homes. The government coerced ruling party supporters and punished opposition supporters by manipulating the distribution of food aid, agricultural inputs, and access to other government assistance programs.*

...

*According to local human rights and humanitarian NGOs, sporadic evictions continued during the year, especially of tenants and informal vendors suspected of supporting the opposition. According to a 2007 Shadow Report to the African Union's African Commission for Human and Peoples' Rights (ACHPR) compiled by five independent human rights organizations, including AI and HRW, two years after Operation Murambatsvina, "many victims remain homeless or living in makeshift accommodation." The government completed rebuilding only "3,325 structures after destroying more than 92,000 dwellings," approximately 20 percent of which were "allocated to police, soldiers and civil servants and the remainder were given mostly to people who were not affected by the mass evictions." The 2008 HRW report *Neighbors in Need: Zimbabweans Seeking Refuge in South Africa*, detailed the struggles of the estimated 1.5 million Zimbabweans living illegally in South Africa. The report noted that a significant, but unknown, portion of these were affected by Operation Murambatsvina.*



*No action was taken against security forces involved in 2007 forced evictions.*

...

*In December 2007 the Southern African Development Community (SADC) Tribunal in Namibia, in its first decision since its establishment in 2000, ruled in favor of Michael Campbell, who was contesting the compulsory government acquisition of his farm. The tribunal was set up to ensure that SADC member states, including Zimbabwe, adhere to the SADC treaty and protocols, protect the rights of citizens, and ensure the rule of law. According to the protocol establishing the tribunal, a person can bring a case after exhausting all available remedies or when unable to proceed under domestic jurisdiction. Campbell brought the case to the tribunal after the Supreme Court in Zimbabwe failed to issue a judgment on the case. The tribunal issued an interim protective order, which prohibited the government from evicting or allowing the eviction of or interference with the farm, its owners, employees, or property pending a decision by the tribunal on the issue of the legality of the contested expropriation; government representatives told the three-member tribunal it would abide by the decision.*

*However, on January 22, the Supreme Court issued a judgment dismissing the Campbell case. Soon after the ruling, Minister Mutasa declared that the country would only be bound by its laws and decisions of its superior courts.*

...

*Section 2 Respect for Civil Liberties, Including:*

*a. Freedom of Speech and Press*

*The constitution provides for freedom of speech and of the press, but legislation limits these freedoms in the "interest of defense, public safety, public order, state economic interests, public morality, and public health." The government restricted these rights in practice. Journalists and publishers practiced self-censorship.*

*The government continued to restrict freedom of speech, particularly by those making or publicizing comments critical of President Mugabe. Passage of the 2007 ICA increased the government's ability to monitor speech and to punish those who criticized the government.*

*Under authority of the Official Secrets Act, Public Order, and Security Act (POSA), or the Criminal Law Act, the government arrested individuals for criticizing President Mugabe in public.*

*There were credible reports that CIO agents and informers routinely monitored political and other meetings. Persons deemed critical of the government were frequently targeted for harassment, abduction, and torture.*

*On March 20, ZANU-PF youth conducted a citizen's arrest on 16-year-old girl Simanzeni Ngwabi after she allegedly made disparaging comments about Mugabe to other ZANU-PF youths who were putting up campaign posters in Bulawayo. Police detained Ngwabi for five days; she was charged with insulting the president and the case was pending at year's end.*

...

### *Internally Displaced Persons (IDPs)*

*According to independent assessments, hundreds of thousands of persons remain displaced within the country as a result of government policies including state-sponsored election-related violence, land reform, and Operation Murambatsvina in 2005. Eight percent of citizens surveyed in mid-2007 said they had moved in the last five years because they were "asked to move." Nevertheless, the government denies an IDP problem exists. The government does not tolerate use of the phrase "internally displaced people" and instead refers to "mobile and vulnerable populations" (MVPs).*

*The government's campaign of forced evictions and the demolition of homes and businesses continued during the year. At least 30,000 people were displaced between April and July in the wake of government-sponsored political violence and destruction of property, particularly in rural areas. The government did not provide assistance to IDPs, established an NGO ban that forbid humanitarian agencies from assisting IDPs or conducting surveys to assess the scope of the problem, and refused to acknowledge that its policies had caused internal displacement. In August, when violence levels in rural areas declined in the wake of political talks, many IDPs returned to or near their homes and were "fined" in food, animals, or money by local ZANU-PF militias.*

...

### *Government Corruption and Transparency*

*The law provides criminal penalties for official corruption; however, the government did not implement the law effectively and impartially, and officials frequently engaged in corrupt practices with impunity. The World Bank's Worldwide Governance Indicators reflected that corruption was a severe problem. Implementation of the government's ongoing redistribution of expropriated, white-owned, commercial farms substantially favored the ruling party elite and continued to lack transparency. Top ruling party officials continued to handpick numerous farms and register them in the names of family members to evade the government's one-farm policy. The government continued to allow individuals aligned with top officials to seize land not designated for acquisition.*

*Top ruling party officials and entrepreneurs supporting the ruling party received priority access to limited foreign exchange, farm inputs such as fertilizer and seed, and fuel. The government's campaign to provide housing plots and vending sites for victims of Operation Murambatsvina mostly benefited civil servants, security forces, and ruling party supporters.*

*After significant shortages of basic goods in stores, in August the government established shops under the National Basic Commodities Supply Enhancement Program (BACOSSE) designed to provide basic goods at reduced prices. Under the program, local traditional leaders including chiefs and headmen were involved in the distribution. Politicization of the program was widely reported. In some cases, chiefs reportedly refused to provide goods to members of their community who were members of the MDC. In many of the stores, ZANU-PF cards were reportedly required to purchase goods, and ZANU-PF leaders and soldiers reportedly stole goods from some stores and later sold them on the black market at an increased price. The Confederation of Zimbabwe Industries' 2008 Manufacturing Survey*

*noted that "the BACOSI facilities are having little impact given that they tend to be targeted and those who get them are not getting their full disbursements."*

*A government-appointed Anticorruption Commission was established in 2005 but had yet to register any notable accomplishments. In September, one senior member of the ACC was implicated in the takeover of a commercial farm when she planted her own crops on someone else's farm.*

*In November the Inspector General of the Global Fund for AIDS, TB, and Malaria revealed that the government had misused \$7.3 million of its \$12.3 million grant. For several months, local organizations providing life-saving medical assistance were unable to access the funds, which were being held by the Reserve Bank because the government had reallocated the funds for other purposes. Due to the government's failure to use the money appropriately, only 495 of an intended 27,000 health workers received training in proper distribution of HIV/AIDS, TB, and malaria drugs. Shortly after the misallocation became public, the government returned the funds to the Global Fund's account.*

*Prosecutions for corruption continued but were selective and generally seen as politically motivated. The government targeted persons who had fallen out of favor with the ruling party or individuals without high-level political backing. Prosecutions were often for externalizing foreign currency, which was a common practice among the political and business elites.*

...

#### *Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights*

*A number of domestic and international human rights groups operated in the country, investigating and publishing their findings on human rights cases; however, they were subject to government restrictions, interference, monitoring, and harassment. Domestic NGOs worked on human rights and democracy issues, including lobbying for revision of POSA and AIPPA; election observation; constitutional and electoral reform; increasing poor women's access to the courts; raising awareness of the abuse of children; conducting civic education; preserving the independence of the judiciary; and combating torture, arbitrary detention, and restrictions on freedom of the press and assembly. Major domestic independent human rights organizations included the Crisis in Zimbabwe Coalition, Zimbabwe Human Rights NGO Forum, ZESN, ZLHR, ZPP, NCA, SST, and WOZA.*

*The government continued to use the state-controlled media to disparage and attack human rights groups. Articles typically dismissed the efforts and recommendations of NGOs that were considered critical of the government as efforts by groups that merely did the bidding of "Western governments."*

*During the year police arrested or detained NGO members, often in connection with demonstrations or marches; many were beaten during arrest and tortured while in custody. Some NGO members died in postelection violence.*

33. The Human Rights Watch 2009 Report, released in January 2009 provides the following information:

*Impunity and the Rule of Law*

*Zimbabwe's long history of impunity for politically motivated crimes has worsened the political crisis. Those who committed past abuses have remained free to carry out further violence and other crimes. Since 2000 the government has led an onslaught on the judiciary that has included physical and verbal attacks against judges and bribes intended to compromise the impartiality and undermine the work of the judiciary.*

*Law enforcement agencies have subverted the rule of law. The police are responsible for widespread violations, including harassment, threats, and violence against opposition supporters and human rights activists, as well as torture and other mistreatment. Police have routinely refused to take action against ZANU-PF supporters and militia implicated in political violence.*

*Public confidence in the judiciary and police—especially regarding independence and impartiality—is eroded. There have been no investigations into the role of senior government, military, and ruling party officials implicated in mobilizing and inciting militia forces responsible for election-related violence.*

...

*Key International Actors*

*Previous inaction to address Zimbabwe's political crisis by regional bodies such as the Southern African Development Community (SADC) and the African Union (AU) emboldened the government of Zimbabwe to turn the institutions of state even more aggressively against Zimbabweans seeking democratic change. Instead, African leaders put their faith in the mediation of Thabo Mbeki, initiated on behalf of SADC in 2007 following a widely reported incident of police brutality against Morgan Tsvangirai and other MDC officials. While this led to some improvements in the electoral process leading up to the March elections, it failed to address the root causes of Zimbabwe's political crisis—the government's systematic violation of international human rights standards.*

*The serious violence after the March elections finally compelled several African leaders to publicly condemn abuses, although other countries, including South Africa, initially refused to acknowledge the serious nature of the situation. Differing positions within SADC prevented it from taking concerted and decisive action. At an emergency SADC summit on April 12, leaders expressed concern about the delay in the release of the presidential results, but did little to address spiraling violence and other abuses.*

*As the violence intensified before the June presidential run-off, SADC and AU election observers declared that it would not be free and fair. Once again African leaders failed to take a robust approach. In June at the AU heads of state summit in Sharmel-Sheikh, Egypt, leaders not only ignored ZANU-PF's responsibility for the widespread violence, but failed to recognize the illegitimacy of Mugabe's presidency. The summit participants issued a weak resolution calling for negotiations between the two political parties, but not mentioning the violence. To their credit, several African leaders spoke publicly in condemnation of the run-off and Mugabe's brutal actions. The leaders of Botswana and Nigeria made it clear that they did not recognize Mugabe as Zimbabwe's president.*

*In September Mbeki's mediation led to the MDC and ZANU-PF signing a powersharing agreement meant to bring an end to the political crisis. However, both parties remain deadlocked over the division of ministerial positions, and there have*

*been few efforts to address abuses or accountability. The role of SADC and the AU remains crucial in ensuring a peaceful return to the rule of law and respect for human rights, but the ongoing situation is a blot on the credibility of their commitment to an effective regional solution.*

*The European Union, United States, and United Kingdom have each consistently condemned the government's abusive record, and maintained travel sanctions and asset freezes against senior government and ZANU-PF officials. Despite the powersharing agreement, EU officials have indicated that sanctions and asset freezes will remain until there is a return to democracy and marked improvement in human rights conditions. International aid to reconstruct the country is also likely to remain on hold until human rights conditions improve and democracy is restored.*

34. UK Home Office 2008, 'Country of origin information report: Zimbabwe', UK Home Office website, 29 September 2008 reports:

### **SECURITY FORCES**

11.01 *The CIA World Fact Book (Zimbabwe), updated on 15 November 2007, notes that the main military branches are the "Zimbabwe Defense Force (ZDF): Zimbabwe National Army, Air Force of Zimbabwe (AFZ), and the Zimbabwe Republic Police." [136] In addition, Jane's Security Sentinel – Country Profile: Zimbabwe (Security and Foreign Forces, date posted: 25 January 2007), reported that other security forces included the Central Intelligence Organisation and the Police Support Unit (PSU). The PSU is described as "...a de facto counter-insurgency and border patrol force..." The PSU is thought to number in excess of 2,000 full-time personnel..." [111b] (p73)*

11.02 *In addition to the torture of political opponents, the Zimbabwe Human Rights NGO Forum's Political Violence Report for September 2006 noted that it had "...discerned a highly disturbing trend by the police, the CIO and the Army assaulting and torturing people in the course of carrying out their investigations in incidents that are not politically motivated. The unbridled power the police appear to have been given by the state to deal with alleged political offences seems to be spilling over into their handling of non-political matters." [35b] (p2)*

...

### **POLICE**

11.10 *Human Rights Watch reported on 12 August 2008 that the police were generally partisan. Abuses committed by government supporting forces such as the 'War veterans', ZANU-PF Youth, army and the CIO, took place "...with almost total impunity. Serious crimes are committed without investigation, prosecution or legal redress or compensation for the victims. Police have taken little or no substantial action to investigate the abuses... ... To Human Rights Watch's knowledge no alleged perpetrators have been questioned or arrested despite victims and witnesses naming them as the abusers. Instead, the police have embarked on a witch-hunt of elected MDC MPs with at least 12 facing what Human Rights Watch believes to be politically motivated criminal charges." [69a] (p2)*

...

### **Torture**

- 11.25 *Amnesty International's 2008 Zimbabwe report noted that: "Reports of people being tortured in police custody persisted throughout the year. Many torture victims had been arrested after engaging in peaceful protest or were MDC members accused by police of involvement in alleged terrorism attacks and bombings." [14d] (p3)*
- 11.26 *A report published by the Zimbabwe Lawyers for Human Rights and the Zimbabwe Association of Doctors for Human Rights published in May 2007 noted that:*
- "There has been a disturbing trend within the police force since 13 September 2006. The majority of HRD [Human Rights Defenders] who are arrested and detained whilst carrying out peaceful protest action are subjected to brutal beatings, on command of the arresting officers. Torture in detention for interrogation purposes has been routine in Zimbabwe and increasing over the past 7 years, but now every incident of mass arrest results in severe beatings with many of the detainees requiring urgent medical attention, including surgery for fractures and admission to hospital for management of complications of their torture." The report noted that following the events of 11 March 2007, there were at least 107 cases of torture reported. [52] (p5-6)*
- 11.27 *The Zimbabwe Human Rights NGO Forum noted in its December 2007 report that "torture remains a perennial problem in Zimbabwe. There was a marked increase in the incidents of torture from the 136 in 2005 to 368 cases in Zimbabwe in 2006 and 586 in 2007. For 2006, these attributed to the ZCTU demonstrations in September and the Bindura State University students' demonstration and subsequent barbaric torture in May 2006. September 2006 recorded the highest number of cases in the year, 143 in total and May recorded 86. In 2007, there were 82 cases of torture recorded for February. March had the highest number of 68 for reasons that have already been noted before and July 180." [35z] (p23)*
- 11.28 *The NGO Forum report continued: "The month of July was again characterised by police brutality on peaceful demonstrations. The ZRP arrested 279 NCA members following a countrywide demonstration against Constitutional Amendment (No.18) Bill. Close to 170 of the demonstrators, including the NCA National Director, Ernest Mudzengi, were hospitalised after being severely tortured while in police custody at Harare Central Police Station. It is reported that the police arrested 243 NCA members in Harare while 12 people were arrested in Mutare, 10 in Masvingo and 14 in Gweru. The Forum notes with concern the continued use of force by the ZRP in contravention of its Police Charter and other international norms and standards that regulate the conduct of law enforcement officials." [35z] (p23)*
- ...
- 11.31 *Freedom House noted in Freedom in the World – Zimbabwe 2008 that: "In general, security and military forces are accountable to the government but abuse citizens with impunity. Security forces often ignore basic rights regarding detention, searches, and seizures. The government has taken no clear action to halt the rising incidence of torture and mistreatment of suspects held by police..." [105a] (p10) ZimOnline noted on 6 May 2006 that the "...government has in the past denied reports by the ZHRF [Zimbabwe Human Rights Forum], churches and pro-democracy groups that its army and police routinely commit torture against perceived opposition supporters. [49am] Noting the government's unwillingness to investigate allegations of torture against state employees, Human Rights Watch,*

*noted in a report published in November 2006, that “the authorities in Zimbabwe rarely investigate allegations of torture and other mistreatment”. [69b] (p2)*

...  
11.33 *The Zimbabwean (accessed on 22 June 2006) noted that Amani Trust and Action Aid reported that torture continued to be used by the security services in Zimbabwe. The article noted that “Rape, electrocution, severe beatings on the body and the soles of the feet, forced nakedness, witnessing the torture of family members and friends and mock executions are all part of a long list of horrifying state-sanctioned acts with which huge numbers of Zimbabweans are all too familiar.” The article noted that Patson Muzuwa, who is chairman of the Zimbabwe Association, claimed that before he fled Zimbabwe in 2001 he was severely tortured and beaten unconscious by the police. [99d] An article published by ZimOnline on 27 June 2006 noted that the Zimbabwe Human Rights Forum [ZHRF] reported that “...there is widespread use of torture by state security agents...” The “...police routinely mistreat and beat suspects to get information and confessions.” [49al] The ZHRF reported that incidents of torture were “rising”. [49am]*

35. An article dated 27 July 2009, from the IRIN website ([www.irinnews.org/PrintReport.aspx?ReportId=85451](http://www.irinnews.org/PrintReport.aspx?ReportId=85451)), accessed on 5 August 2009, entitled “ZIMBABWE: Political violence growing in rural areas” provides the following information:

*Families are turning on each other in Zimbabwe’s rural areas, where a higher premium is being placed on political allegiance to [ZANU-PF or MDC] than ties blood. ...*

*Mugabe declared three “peace days” from 24 to 26 July “to observe the prevailing peace [and] promote the ideals of national healing and reconciliation”, but in the rural provinces of Mashonaland West, East and Central, Masvingo and Manicaland – once ZANU-PF strongholds – supporting the MDC still carries the risk of a beating.*

*Morgan Komichi, a senior MDC official involved in rural organization, told IRIN that ZANU-PF violence was increasing as the party went about shoring up its support ahead of the elections expected to take place once a new constitution has been agreed. ...*

*[Komichi said] “The reports of violence that we are receiving at our offices are extremely shocking and barbaric. MDC supporters are being axed, while in some instances members of the military are viciously assaulting our members.*

36. An article dated 4 August 2009, from the IRIN website ([www.irinnews.org/PrintReport.aspx?ReportId=85575](http://www.irinnews.org/PrintReport.aspx?ReportId=85575)), accessed on 5 August 2009, entitled “Zimbabwe: A turbulent marriage” discusses Zimbabwe’s progress after the signing of the Global Political Agreement (GPA) on 15 September 2008. The article states:

*It has been a steep and rocky road, with [Tsvangirai]... claiming that Mugabe has failed to respect the GPA deal.*

*Tsvangirai met with South African President Jacob Zuma – chair of the Southern African Development Community (SADC), which brokered and endorsed the GPA –in Johannesburg, South Africa, on 3 August and again accused Mugabe of frustrating efforts to implement the reforms required in terms of the GPA.*

*“The Prime Minister has briefed me that the majority of issues are moving forward, except for a few,” Zuma told local media. “I have said I will be contacting President Mugabe”.*

*Tsvangirai has stressed the need to deal with unresolved issues, including control of Zimbabwe’s security forces, and ZANU-PF’s unilateral appointment of Attorney-General Johannes Tomana and Governor of the Reserve Bank, Gideon Gono, which were contrary to the terms of the GPA.*

37. In the same article, the president of the Zimbabwe Union of Journalists states, *“All cannot be well if the Prime Minister has to go to meet Zuma to appeal for the full implementation of the GPA”.*

## **FINDINGS AND REASONS**

38. Based on copies of the applicant’s passport on file, the Tribunal finds that the applicant is a citizen of Zimbabwe.
39. The applicant claims he is in need of protection for reasons of his actual/imputed political opinion; that is as an MDC supporter in Zimbabwe.
40. The Tribunal finds that the harm feared by the applicant involves serious harm and systematic and discriminatory conduct, and that the essential and significant reason for the harm claimed to be feared is his actual/imputed political opinion, which is a Convention reason.
41. The applicant claims that he was a member of the youth wing of the MDC, which he joined in 2003. He attended rallies, put up flyers and handed out MDC merchandise. He claims that he was arrested and beaten by police on three occasions for his participation in MDC activities, and on other occasions, he and others were beaten on the street while participating in demonstrations.
42. The Tribunal found the applicant to be a credible witness at the hearing. His evidence was consistent with his written claims and the available country information. The Tribunal therefore accepts that he was an active member of the MDC and that he was arrested and beaten.
43. The Tribunal also accepts that the applicant is a musician [information deleted: s431(2)]. The Tribunal is satisfied that he did so because of his political beliefs and his experiences in Zimbabwe and not for the purpose of strengthening his claim to be a refugee.
44. The Tribunal accepts that the applicant fears arrest and physical harm from the police and other ZANU-PF supporters if he returns to Zimbabwe.
45. Country information, cited above, indicates that the power sharing arrangement between Mugabe and Tsvangirai, is fragile and the level of political violence remains unpredictable in Zimbabwe. Arrests and detention of MDC activists continue. Human rights abuses, including disappearances and extra-judicial killings, continue.
46. Based on such country information the Tribunal is of the view that politically motivated violence against MDC members and supporters remains a serious risk in Zimbabwe.



47. The Tribunal accepts that the applicant has suffered physical harm for his political opinion in the past. Given the continuing risk of persecution of MDC supporters, the Tribunal finds that the applicant faces a real chance of serious harm amounting to persecution for reason of his political opinion if he were to return to Zimbabwe now or in the reasonably foreseeable future.
48. The applicant told the Tribunal that it would not matter where he goes in Zimbabwe, once it is known that he supports the MDC, he would be arrested and/or beaten up again. Country information supports his contention.
49. As the perpetrators of such harm are the State itself, the Tribunal finds that the applicant would not be able to avoid the harm he fears by relocating elsewhere in Zimbabwe.
50. For the reasons set out above, the Tribunal finds that the applicant has a well-founded fear of persecution for a Convention reason in Zimbabwe should he return now or in the reasonably foreseeable future.

### **CONCLUSIONS**

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

### **DECISION**

52. 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.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*

Sealing Officer's I.D. prrt44