

1211655 [2013] RRTA 543 (12 August 2013)

DECISION RECORD

RRT CASE NUMBER: 1211655

DIAC REFERENCE(S): CLF2012/69644

COUNTRY OF REFERENCE: Zimbabwe

TRIBUNAL MEMBER: Vanessa Moss

DATE: 12 August 2013

PLACE OF DECISION: Perth

DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependent.

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 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, applied to the Department of Immigration for the visa on 28 March 2012.
3. The delegate refused to grant the visa on 25 June 2012, and the applicant applied to the Tribunal for review of that decision.

CLAIMS AND EVIDENCE

4. The Tribunal has before it the Department's file 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.

Evidence on the Department's file

5. The applicant is a [age] year old (born [date]) male born in [Town 1], Zimbabwe. He speaks, reads and writes Shona and English. He is from the Shona ethnic group. He is a Christian. He has never been married or in a de facto relationship. The applicant claims to be a citizen of Zimbabwe and does not hold the citizenship of any other country or have the right to enter and reside in any other country. The applicant lived in [Harare] from [2007] to [2008] and previously lived in [Village 2], [District 3] in Manicaland province. The applicant's mother is living in [Country 4] along with his [siblings]. He has never known his father
6. Documents provided in support of his protection visa application include:
 - a certified copy of his birth certificate
 - a certified copy of the biodata page of his Zimbabwean passport issued in [dates]
7. His statutory declaration dated 5 April 2012 states as follows:

I am making this statement in support of my application for a Class XA Subclass 866 Protection visa.

2. I am a citizen of Zimbabwe and of no other country.

Family Background

3. I was born in a hospital in [Town 1] and grew up in the village of [Village 2], in [District 3], Manicaland, Zimbabwe.

4. [Village 2] is a rural community where most people make a living through agriculture. When I lived there, there were approximately [number] households in [Village 2].

5. I was raised by my grandparents. I have never met my father. My mother visited once when I was [age] years old but I do not know where she was living at that time. I only know that she did not live with me.

6. I have [number of siblings] and they have always lived with our mother.

7. My grandfather became head of our village when I was [age] years old. The position was passed to him when his older brother died. As head, he made decisions for the village. His role became very important from around 2000 onwards, when political troubles developed in Zimbabwe.

Past Persecution in Zimbabwe

8. In 2000, people from another area who were supporters of Zanu-PF came and burned all the houses in [Village 2]. After we rebuilt, the village was burned again. On both occasions, it was done by supporters of Zanu-PF who came from outside the area. At that time, the only people in [Village 2] who supported Zanu-PF were the war veterans.

9. The first time [Village 2] was burned, the Police Station was overtaken. The perpetrators assumed that everyone in [Village 2] supported MDC so they rounded up all the boys and youths and took them to the Police Station and beat them. I was about [age] years old at that time and I was beaten with the other boys of our village.

10. After the burnings my grandfather was responsible for identifying which people and households needed assistance and providing their names to donors. I assisted him in this work from a young age.

11. Over the next few years, the war veterans held regular meetings in [Village 2] and tried to persuade people to join Zanu-PF. They said that the British were supporting the Opposition Leader and that the Opposition wanted to sell Zimbabwe.

12. My grandfather was persuaded by the war veterans and their growing power to join Zanu-PF. He formally became a member and had a membership card.

13. After this, the war veterans decided that only those people who supported Zanu-PF would receive donor assistance. My grandfather had the power to carry out that determination and he did so. As a result, many more people in [Village 2] joined Zanu-PF but a significant minority did not.

14. My grandfather organised the village into wards through which World Food Program aid was distributed. I assisted him by preparing and maintaining lists of villagers who supported Zanu-PF. I was [age] years old when I began doing this.

15. At the end of 2002 the shop of a war veteran was burned down by MDC supporters from another area. He had been living there as well and was inside at the time. He escaped but he lost all his possessions and his wife was severely beaten. He went on a rampage against the local MDC supporters. He took the youths and boys from nearby villagers and assigned one of the Police Departments who had a military role to beating them. They tied people up and whipped them with elephant skin. I have heard that that war veteran is now working as a Police Officer and still has a strong hatred of MDC young people and seeks out opportunities to harm them.

16. In 2003, war veterans took all the youths who were supporters of MDC and tied them up and whipped and beat them. This did not happen to me because I was assisting my grandfather and was seen as a supporter of Zanu-PF at that time.

17. I went to [a school outside the village] in 2003 and only returned to the village in school holidays. Each time when I returned, the situation was the same and I continued to assist my grandfather.

18. When I returned in 2004, Opposition meetings had begun to be held in [Village 2] as well. MDC handed out cards and t-shirts to their supporters. I saw that most people supported MDC and its popularity continued, even though the war veterans were routinely beating people who wore MDC t-

shirts and aid was being withheld from those who did not support Zanu-PF. The village had divided and I was in the minority as a person associated with Zanu-PF.

19. Towards the end of 2004 and beginning of 2005, I began attending MDC meetings and stopped attending Zanu-PF meetings. My grandfather was worried about my actions because it was a dangerous thing for me to do.

20. The war veterans told my grandfather to take me to the Police Station, but he refused to do it. If he had taken me there, they would have beaten me severely. I was fortunate that my grandfather was a powerful man in the area and Zanu-PF knew they needed his support. For that reason, he was able to protect me.

21. In 2006 I discovered that there was nevertheless a limit to my grandfather's protection. The Police came to my house when my grandfather was not home. They took me to the back of the Police Station. There were some adults and Zanu-PF youths there. They broke sticks from nearby trees and made us lay down on the ground and then they beat us with the sticks. From the things they said to us, it was clear that they were beating us because we supported MDC.

22. At the end of 2006 I finished [at the school outside the village] and returned to [Village 2] full-time. I started going to church a lot and tried to stay out of politics. Although I was sympathetic to MDC; I chose not to be too closely involved with their activities because I was afraid that my grandfather would not be able to continue protecting me if I was active and open in my support of the Opposition.

Australia

23. I wanted to do further study. My school results were good but I did not know how I could leave home in order to study. Then some leaders from our church said that they would assist me. They found me a sponsor who could help me to study in Zimbabwe.

24. Several discussions followed this and in the end, a range of people, including my aunt, a former Zanu-PF MP and my sponsor, assisted me to come to Australia.

25. I was excited about the possibility of studying in Australia and hoped that perhaps in the future I would be able to join my mother in [Country 4]. The church leaders also knew that Zimbabwe was not safe for me and I believe that was why they went to so much trouble to help me study in Australia.

26. While it was being arranged, I lived mostly in Harare, returning to [Village 2] from time to time for short stays. I was afraid of the escalating tensions in [Village 2] and knew that I was a target there because I had changed my allegiance.

27. In [2008], I arrived in Australia and began studying at [a] University.

28. In the lead up to the 2008 Elections, a large number of soldiers were sent by Zanu-PF to [Village 2] and large scale violence occurred there. I have heard from my friends that soldiers picked people up off the street and from their homes, and tortured them by burning them with melted plastic.

29. In [2008] I approached [a refugee organisation] and inquired about applying for a Protection Visa. They gave me an appointment for early in 2009 but in the meantime my mother told me that she thought she could sponsor me to go to [Country 4]. For this reason, I did not keep my appointment at [the refugee organisation] or instruct them to assist me

[Country 4]

30. My [mother], has been living in [Country 4] for several years. I do not know whether she is a citizen or permanent resident but I know she has residency rights there. I am not certain but I believe she has refugee status there.

31. She saw a lawyer and tried to get me included on her visa. First she was told that she had to save sufficient funds to demonstrate that she could support me when I came to [Country 4]. I waited several months while she did that.

32. She then returned to the lawyer but by then I had turned [age]. The lawyer told her that she could no longer add me to her visa but that I would have to apply for a visa in my own right.

33. As far as I know, my mother has never applied for a [Country 4] visa for me. I have not applied for one either.

Future Developments in Zimbabwe

34. In 2010, my grandfather died in [Village 2]. My grandmother has now moved away.

35. My grandfather's cousin should have taken over from him as head of the village but I do not know for certain whether this has happened because I have had no contact with anyone in the village. My grandfather's cousin is not a close relative of mine. His father and my grandfather's father were brothers but this is not a close enough relationship for me to be able to rely on him for protection. I do not believe he would help me if I returned to [Village 2].

36. Because I have not kept in contact with anyone in [Village 2], my knowledge of the current situation there is limited to what I have heard second-hand and in the media.

37. I have a friend in Perth from Zimbabwe. He has told me that Mugabe has said that he wants elections to be held in May of this year and that people are being beaten up on wide scale by military personnel in the lead-up to that.

38. In previous elections there have been soldiers in the voting booths checking who people vote for and telling them who they must vote for. There has also been a lot of intimidation and violent directed at people who do not support Zanu-PF in the lead-up to elections.

39. People in Zimbabwe do not want Mugabe. They have had enough and will vote him out when they can I fear that this will lead to large scale retaliations against people who are known on a local level to not support Mugabe and Zanu-PF. I am one of those people.

40. There are two particular war veterans who live about 3km from [Village 2]. They were two of the people involved in beating me before and were very strong in their belief that I was a traitor and should be severely punished for that. They and their families are still living there and I believe that if I go back there they will torture me and possibly kill me.

41. I also believe that there is a real risk that Zimbabwe will descend into civil war in the near future.

42. Mugabe is old and is losing some of the power within Zanu-PF that he once had. A man who Mugabe fought with during the Liberation War was one of the few people within Zanu-PF who could stand up to Mugabe. He was killed by burning recently and since then Zanu-PF has begun fracturing.

43. Zanu-PF has control of all of the military but the General is perceived by many in the Army to be incompetent. He was appointed by Mugabe and has been General for as long as I remember. If Mugabe loses the election or dies there is very real chance that another faction within the Army will either attempt to seize power from the current General and his supporters, or else smuggle weapons to the Opposition and begin a civil war.

44. The military will also not allow the Opposition to win the election and take power in their own right. They will use force to prevent that happening if they cannot do it any other way.

45. If I return to Zimbabwe, I would be compelled to support change in the country by supporting the Opposition. I have no hope if Zanu-PF remains in power so I would do all that I could to bring about democratic change. I come from a political family and have learned about politics from a young age through working with my grandfather. This and the things that I have seen and experienced in Zimbabwe have given me a strong political opinion that is opposed to Zanu-PF and its tyranny, and supportive of MDC, democracy and human rights for Zimbabwe.

State Protection

46. The Zimbabwean authorities are both unable and unwilling to protect me.

47. Although MDC shares power in some respects, politically, with Zanu-PF, the Police and military are still wholly controlled by Zanu-PF. Zanu-PF is unwilling to protect me.

48. Even if MDC was to win the upcoming election it is very unlikely that they would obtain power of the Police and military without further violence. At present they are unable to protect me and I believe that situation will remain for the foreseeable future.

49. If I return to [Village 2], Zanu-PF supporters will remember me because of my family's prominence in the area. They will also recall that I left Zanu-PF and associated myself with MDC. They will regard me as a traitor and a sell-out and seek to harm me.

50. My grandfather is no longer able to protect me and because of this I fear that my life will be in grave danger if I return to Zimbabwe.

Relocation

51. There is no area of Zimbabwe where I can safely relocate to.

52. The power and influence of Zanu-PF extends throughout the country.

53. I believe that I am a refugee and ask the Australian government to provide me with protection

8. On 25 June 2012 the delegate refused the application. The delegate noted that there were discrepancies in relation to his account of the assault on him in 2006 (in his statement he stated that the police came to his house, whereas in the interview he stated he was coming back from the shops when he was apprehended), that between 2006 and 2008 nothing adverse happened to him, the applicant lacked knowledge of the MDC and the election processes, that he was able to continue to residing, working and coming back to his village until his departure contradicted his claims of being in danger as someone perceived as a traitor. The delegate relied on country information that MDC members with low profiles were safe in MDC dominated areas and the applicant confirmed this and indicated that [District 3] was a safe area for MDC supporters. The delegate was not satisfied that the applicant had any profile as an MDC member warranting the attention of the Zimbabwe authorities or ZANU PF party members. Further the delegate was of the view that the country information does not support his claim that he would be harmed upon return to Zimbabwe as a member of a particular social group of returnees from the West.

Evidence on the Tribunal's file

9. Movement records indicate that the applicant arrived in Australia [in] 2008 on a student visa. He entered Australia on a Zimbabwean passport. His student visa was valid until [2012].
10. On 12 March 2013 the applicant's representative forwarded to the Tribunal a submission setting out the legal framework in respect of the criterion for the grant of protection visas, background information on Zimbabwe, details relating to the basis of the applicant's claim for protection, and a response to the delegate's reasons for decision. The Tribunal has read the submission and taken it into account in its assessment of the applicant's claims.
11. The applicant appeared before the Tribunal on 18 March 2013 to give evidence and present arguments. The applicant was represented in relation to the review by his registered migration agent. A summary of the evidence follows.
12. The applicant confirmed his identifying details and his birth in [Town 1]. He lived in [Village 2] until mid-2007 from which time he lived in Harare and went back and forth to his village. His mother left him with his grandparents in [Village 2] when he was [age] years old. She returned once to visit him when he was [age] years old. His mother and his [siblings] (who he has never met) now live in [Country 4], where his mother's immigration status is that of a refugee. He has never known his father. He grew up in [Village 2] with his grandparents and his cousin [Mr A] who is [a number of] years older than him and who now lives in [another country] where he has been since 2008. He indicated that his cousin [Mr A] previously went to [a couple of other countries], where he tried to live as he did not want to be involved in the harshness of politics in Zimbabwe. He last saw [Mr A] in 2007. They last lived under the same roof in 2006. The applicant's grandfather passed away in 2010 and his grandmother remains living in [Village 2].
13. The Tribunal asked the applicant why he left Zimbabwe and he responded that he left to get an education and because he was running away from the political situation.
14. The applicant indicated that he attended [school] until [2006], and that on finishing [a certain level of schooling] he returned to his village at that time. He began participating full-time in a soccer program for MDC supporters, which was sponsored by a local MDC MP, amongst others. Previously he had been involved in this during school holidays from 2004. The team members were all MDC supporters. The applicant rarely played in the team but was involved in organising the matches and coaching. The team practised daily in the village and comprised MDC supporters from a number of villages. The applicant's grandfather was aware of his involvement in the MDC soccer program and in his view it was not problematic for the applicant to participate in the program whilst he continued to assist his grandfather at ZANU PF meetings.
15. Between [2006] and [2007] the applicant attended fortnightly ZANU PF meetings with his grandfather. He sometimes attended extra meetings that were called when grain allocations were to be made. The applicant indicated that his grandfather attended as the village chief and the representative of their village. The applicant was responsible for keeping the attendance records at the meetings, advising people from his village of the date of the next meeting, and keeping a list of donees for the food program. He indicated that war veterans attended these meetings.

16. The applicant claimed that there were tensions between him and war veterans in the area who would look at him in a threatening way.
17. The Tribunal asked the applicant why he delayed for 4 years before making his application for a protection visa and he indicated that initially he had been waiting for his mother to sponsor him to [Country 4], and he outlined the protracted nature of that process.
18. The applicant indicated that when he was [age] years old he used to sneak off with friends to attend big MDC meetings (the last one of which he attended in 2005). He also used to sneak off with friends to attend MDC meetings in private houses in 2004, one of which was crashed by war veterans. After he finished school in [2006] he became a member of the MDC. He was issued with a membership card and paid his subscription. He joined because his friends joined.
19. The applicant indicated that on one occasion he was taken to the police station by the police who came to his house. They told him they suspected him of burglary however when he got to the police station he was taken out the back and beaten with tree branches by 5 ununiformed people. He was told his grandfather had been told to discipline him for attending MDC meetings and that he didn't do so, and so they came to get him. He indicated that the police slapped him, and that he was told that he was a traitor for passing information to the MDC and then he was let go. He indicated that he did not have any further problems with the police and that he continued being involved with the MDC soccer program.
20. The applicant has not been politically active since he came to Australia, as he has been focussing on his studies and has been concerned with trying to get to [Country 4].
21. The Tribunal asked whether any of his family members in Zimbabwe have a political profile, and he indicated that only his grandfather, who was senior in the ZANU PF, and himself. His grandfather became aware, in 2005, that the applicant was involved in the MDC and at first he told him to stop his involvement but then he wanted him to enjoy the soccer, and resolved that it was not a problem since the applicant was continuing to help him at the ZANU PF meetings.
22. Asked whether any of his family members have experienced any problems on account of their politics the applicant responded that he is the one who has suffered the most because of his politics. He indicated that his mother was an MDC activist in Zimbabwe and [Country 4].
23. When asked what he fears may happen to him if he returns to Zimbabwe the applicant indicated that he will be killed or will disappear and he is perceived as a traitor because he has applied for asylum and because of the tensions between him and the war veterans due to his getting involved in the MDC whilst being involved in the ZANU PF meetings. He fears he will be harmed by the war veterans and government officials.
24. The Tribunal invited the applicant to respond to the delegate's decision. He indicated that although nothing happened to him after 2006, the threat remains. In respect of the discrepancy between his accounts of the 2006 assault on him, he indicated that he was taken by the police from his home to the police station, where he was beaten by 5 ununiformed people out the back of the police station. They told him he was a traitor for passing ZANU PF information to the MDC. He had not seen these 5 people before this incident, or since. He indicated that although he was able to keep coming back to his village the threat was still there and that he knew from the faces of the war veterans that they were planning to do

something. In respect of the country information that MDC supporters with a low profile are safe in MDC dominated areas the applicant indicated that the fact that an area was represented by an MDC MP never stopped people getting beaten up by the war veterans. He stated that he was not low profile because he was known to co-ordinate the soccer games, attend MDC meetings and ZANU PF meetings with his grandfather. In respect of the delegate's view that the country information does not support his claim that he would be harmed upon return to Zimbabwe as a member of a particular social group of returnees from the West, the applicant responded that he was involved in MDC activities in the past and that people returning to Zimbabwe get harmed for this.

25. The Tribunal indicated to the applicant that it considered that the delay in him making his application for protection undermined the veracity of his claims. The applicant outlined the reasons for the delay, which related to his hopes that he could join his mother in [Country 4], and the requirement that she needed money to sponsor him, hence the delay.
26. The Tribunal also indicated to the applicant that it found it incredible that he could continue to attend ZANU PF meetings until mid 2007 and also be active in the MDC. The applicant responded that he was more involved in organising the soccer games than in the MDC meetings.
27. The Tribunal put it to the applicant that it was of the view that he came to Australia to pursue his education and the applicant indicated that he had also been running away from politics.
28. On 26 April 2013 the applicant provided further submissions including two affidavits of 16 April 2013 from the applicant's aunt, the second of which confirms that the applicant was beaten in 2006 for "consulting with MDC youth activities" while having the ascribed political affiliation of the ZANU PF through his grandfather. She states that he is in danger from the local ZANU PF operatives and confirms that [a District 3] Mission raised money for him to come to Australia after receiving representations that he was bright academically and in danger for political opinion. Also included in the submissions is a statement dated 18 April 2013 from the applicant's mother in [Country 4] who is currently awaiting the outcome of her asylum claim and regarding her efforts to sponsor her son to join her in [Country 4]

FINDINGS AND REASONS

29. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

Is the applicant credible as to his claim to be a citizen of Zimbabwe?

30. The applicant claims to be a national of Zimbabwe. Departmental records indicate that he entered Australia [in] 2008 as the holder of what appears to be a Zimbabwean passport endorsed with a [student] visa. He has provided with his protection visa application a certified copy of the biodata page of his Zimbabwean passport. 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.

Does he have a right to enter and reside in any other country?

31. There is nothing in the evidence before the Tribunal to suggest that the applicant has a legally enforceable right to enter and reside in any country other than his country of nationality,

Zimbabwe. Therefore the Tribunal finds that the applicant is not excluded from Australia's protection by subsection 36(3) of the Act (see *Applicant C v Minister for Immigration and Multicultural Affairs* [2001] FCA 229; upheld on appeal, *Minister for Immigration and Multicultural Affairs v Applicant C* (2001) 116 FCR 154).

Is the applicant credible as to his claims?

32. The Tribunal accepts the applicant's consistent claims to have been born in [Town 1] in [year] and grown up with his grandparents in [Village 2], in [District 3] in Manicaland, Zimbabwe. Documents provided in support of this include his birth certificate which confirms his birth in [Town 1] in [year] (as does his passport) and his educational documents indicate his attendance at [a District 3] school. It accepts his consistent evidence that from July 2007 until he left for Australia he lived in Harare, returning to his village from time to time throughout this period.
33. The Tribunal accepts the applicant's credible evidence that his village was burned on 2 occasions in 2000 by ZANU PF supporters and that he, along with all the other men and boys of the village were rounded up and beaten by the ZANU PF.
34. It accepts that his grandfather was the head of [Village 2] and that he was persuaded to join the ZANU PF, and that as the village head he was senior in ZANU PF and responsible for distributing aid under the World Food Program. It accepts the applicant's consistent claims that from the age of [age] he began assisting his grandfather in preparing and maintaining lists of ZANU PF supporters in the village who were to receive the aid. It accepts his evidence given at the Tribunal hearing that after he returned to the village in [2006] until [2007] he attended fortnightly ZANU PF meetings with his grandfather, and that he sometimes attended extra meetings that were called when grain allocations were to be made. It accepts that the applicant was responsible for keeping the attendance records at the meetings, advising people from his village of the date of the next meeting, and keeping a list of donees for the food program.
35. The applicant claims that towards the end of 2004/the beginning of 2005 he used to "sneak off" with friends to attend MDC meetings and he claims to have become a member of the MDC in [2006] and been issued with a membership card following payment of his subscription. He claims that on his return to the village from boarding school in [2006] he began participating full-time in a soccer program for MDC supporters, which was sponsored by a local MDC MP, amongst others. Previously he had been involved in this during school holidays from 2004. The team members were all MDC supporters. The applicant rarely played in the team but was involved in organising the matches and coaching. The team practised daily in the village and comprised MDC supporters from a number of villages.
36. The Tribunal finds the applicant's claims to be active in the MDC from 2004 and to have become a member of the MDC in [2006] in circumstances where he was also assisting his grandfather in preparing and maintaining lists of ZANU PF supporters in the village who were to receive the aid, and from [2006] to [2007] attending fortnightly ZANU PF meetings, to be incredible. The applicant has claimed that his attendance at MDC compromised the ZANU PF meetings. The Tribunal does not accept that the applicant would have been able to be concurrently active in two opposing political parties in the way he claims, given the enmity between the two parties, and on his own evidence any attendance at MDC meetings would have compromised the ZANU PF (and in the Tribunal's view the MDC meetings would also have been compromised). For this reason the Tribunal rejects the applicant's

claims to have attended MDC meetings from 2004 and become a member in [2006] as claimed.

37. It follows from these findings that the Tribunal rejects the applicant's claims that there was tension between him and the war veterans and that his grandfather was told to discipline him for attending MDC meetings. And further, it follows that the Tribunal rejects the applicant's claims that in 2006 he was taken to the local police station and subjected to a beating, on account of his involvement with the MDC. In making these findings (that the applicant was not involved in the MDC and that the incident in 2006 did not occur) the Tribunal has taken into account the affidavit of the applicant's aunt. The affidavit does not provide any further insight as to how the applicant would have been able to be involved with both the MDC and the ZANU PF, such that the Tribunal's incredulity is allayed.
38. The Tribunal accepts the applicant's claim that nothing adverse happened to him from 2006-2008.
39. It follows from the Tribunal's findings above that it rejects the applicant's claim that he has a strong political opinion as pro MDC and anti ZANU PF and its tyranny. His actions in supporting his grandfather from [age] in preparing and maintaining lists of ZANU PF supporters in the village who were to receive food aid, and in particular his attendance at fortnightly ZANU PF meetings from [2006] until [2007] are inconsistent with his claim to have a strong anti ZANU PF political opinion. Further the Tribunal would expect that a person who had strongly held political opinions would have maintained his political activism following his arrival in Australia and on the applicant's own evidence, which is accepted by the Tribunal, the applicant has not.
40. Having regard to the Tribunal's findings regarding the applicant's lack of past MDC involvement and his lack of political activism in Australia the Tribunal finds that if the applicant were to return to Zimbabwe now or in the reasonably foreseeable future he would not have any involvement with the MDC, and that this is due to his general lack of interest in politics and not due to him living discreetly to avoid persecution.
41. The Tribunal has considered whether the fact that he was beaten by the ZANU PF in 2000 would mean that he would face a real chance of serious harm if he were to return to Zimbabwe now or in the foreseeable future. Given that it has been 13 years since this event, and given that his grandfather was subsequently persuaded to join the ZANU PF and given the applicant's support of his grandfather and his attendance at ZANU PF fortnightly meetings from [2006] – [2007], and that nothing adverse happened to him from 2006 – 2008, the Tribunal does not consider that the incident in 2000 means that he would face a real chance of serious harm from the ZANU PF if he were to return to Zimbabwe now or in the foreseeable future.
42. The Tribunal has considered whether the applicant may be imputed as being an MDC supporter because of his involvement in the soccer program sponsored by the local MDC MP where the team members were all MDC supporters. Whilst the Tribunal accepts that the applicant was involved in the soccer program as claimed, it notes and accepts his evidence that his grandfather was aware of his involvement in the MDC soccer program and in his view it was not problematic for the applicant to participate in the program whilst he continued to assist his grandfather at ZANU PF meetings. The Tribunal accepts the country information, which was relied upon by the delegate, that low profile MDC members are safe in MDC dominated areas, and the applicant confirmed this and acknowledged that [District 3]

was a safe area for MDC supporters. The Tribunal does not consider that the applicant's involvement in the MDC soccer program would mean that he would face a real chance of serious harm if he were to return to Zimbabwe now or in the foreseeable future.

43. The Tribunal has considered whether the applicant may be imputed as being an MDC supporter because of his mother's claimed pro MDC activist profile in Zimbabwe (prior to her departure for [Country 4] in 2001) and subsequently in [Country 4]. Whilst the Tribunal accepts that the applicant's mother may be active within the MDC, the Tribunal accepts that the applicant has not lived with his mother since he was [age] years old and that he only saw her again when he was [age] years old, and that he was brought up by his grandparents. When asked by the Tribunal whether any members of his family had experienced any problems on account of their politics, the applicant responded that he was the one who had suffered the most in the family on account of politics. The applicant has not made any claims that his mother has experienced any harm in Zimbabwe on account of her political activism. In the circumstances the Tribunal does not consider that the fact that his mother may be an MDC activist means that he would face a real chance of serious harm from the ZANU PF if he were to return to Zimbabwe now or in the foreseeable future.
44. The Tribunal accepts that the applicant's grandfather has since passed away, and that his grandmother continues to reside in [Village 2].
45. The applicant claims that if he returns to Zimbabwe he would be compelled to support the MDC and that he will be perceived as a traitor by the ZANU PF supporters and war veterans who will recall that he left the ZANU PF and associated himself with the MDC. The Tribunal does not accept that the applicant will be compelled to support the MDC upon his return and notes that the applicant has not provided any evidence to support this assertion which the Tribunal considers has no foundation. Given the applicant's evidence, which is accepted by the Tribunal, that nothing adverse happened to him between 2006 – 2008, and given the Tribunal's findings that he was not a member of the MDC nor attended any MDC meetings and given its findings and conclusions in respect of his involvement in the MDC soccer program, the Tribunal does not accept the applicant's claim that he will be perceived as a traitor by the ZANU PF supporters if he returns to Zimbabwe.
46. The Tribunal has considered the applicant's claims to be in the minority in his village as a person associated with ZANU PF. As discussed above, the involvement of the applicant and his grandfather in the ZANU PF is accepted by the Tribunal and the Tribunal therefore finds that the applicant has an imputed political opinion as pro ZANU PF. The applicant has not made any claims to have experienced past harm on account of his involvement in the ZANU PF from the MDC, and given his involvement in the MDC soccer program, and his claims that nothing adverse happened to him from 2006-2008 the Tribunal does not consider that this involvement in the ZANU PF means that he would face a real chance of serious harm from the MDC if he were to return to Zimbabwe now or in the foreseeable future. The Tribunal makes this finding cognisant of the death of the applicant's grandfather in 2010 but notes that the applicant's grandmother continues to reside in the village and that no claims have been made that she has experienced any harm.

Does he have a well-founded fear of persecution in relation to Zimbabwe?

47. Given the Tribunal's findings that the applicant is not a member of the MDC, nor involved in the MDC, the Tribunal has considered the applicant's claims to fear harm on return to Zimbabwe as a returnee from the West. On the basis of the country information set out in

the appendix below which indicates that failed asylum seekers or returnees per se are not considered to be generally at risk, the Tribunal finds that a person with the applicant's profile does not have a real chance of persecution if returned to Zimbabwe now or in the reasonably foreseeable future.

Complementary protection claims

48. Given the Tribunal's finding that the applicant is not a member of the MDC nor been involved with the MDC, and was not detained and beaten in 2006, and that nothing adverse has happened to him from 2006-2008, the Tribunal does not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Zimbabwe, there is a real risk that the applicant will suffer significant harm from the ZANU PF or the authorities as claimed.
49. In respect of the applicant's claims of harm should he return to Zimbabwe as a returnee from the West, based on the country information the Tribunal is not satisfied that there are substantial grounds for believing that the treatment faced by returnees gives rise to a real risk of significant harm as contemplated by section 36(2A) of the Act.
50. Having considered the applicant's circumstances singularly and on a cumulative basis, the Tribunal finds there are no substantial grounds for believing that, as a necessary and foreseeable consequence of him being removed from Australia to Zimbabwe, there is a real risk that he will suffer significant harm.

CONCLUSIONS

51. The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
52. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
53. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

DECISION

54. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Vanessa Moss
Member

ANNEXURE A

RELEVANT LAW

55. 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. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person in respect of whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

56. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
57. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of 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.
58. 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, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.
59. 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.
60. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
61. 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.

62. 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.
63. 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.
64. 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 being persecuted 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.
65. 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. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
66. Whether an applicant is a person in respect of 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.

Complementary protection criterion

67. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').

68. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
69. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

Section 499 Ministerial Direction

70. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – to the extent that they are relevant to the decision under consideration.

ANNEXURE B

COUNTRY INFORMATION

General information

71. The United States Department of State “*Country Reports on Human Rights Practices*” for 2011 (published 24 May 2012) contained these general observations on Zimbabwe:

Zimbabwe is constitutionally a republic, but its authoritarian government was not freely elected and has been dominated by President Robert Mugabe and his Zimbabwe African National Union-Patriotic Front (ZANU-PF) since independence in 1980. Presidential and parliamentary elections held in 2008 were neither free nor fair. While the March 2008 election was generally peaceful--and two factions of the opposition Movement for Democratic Change (MDC) gained a parliamentary majority--violence and intimidation perpetrated by security forces and nonstate actors loyal to ZANU-PF in the months leading up to the June presidential runoff resulted in more than 270 confirmed deaths, thousands of injuries, and the displacement of tens of thousands of persons. Opposing presidential candidate Morgan Tsvangirai withdrew from the runoff contest, and President Mugabe was declared the winner. International condemnation of the presidential runoff election resulted in a mediated solution outlined in the 2008 Global Political Agreement (GPA) signed by ZANU-PF and the two MDC factions led by Morgan Tsvangirai (MDC-T) and Arthur Mutambara (MDC-M). Mugabe retained the presidency, Tsvangirai became prime minister, and Mutambara became deputy prime minister. In January the MDC-M elected Welshman Ncube as its new president at the party’s congress, changing the party’s acronym to MDC-N. Mutambara retained his seat as the deputy prime minister. There were instances in which elements of the security forces acted independently of civilian control.

The most important human rights problems in the country remained the government’s targeting for harassment, arrest, abuse, and torture of members of non-ZANU-PF parties and civil society activists, widespread disregard for the rule of law among security forces and the judiciary, and restrictions on civil liberties.

ZANU-PF’s control and manipulation of the political process effectively negated the right of citizens to change their government. Prison conditions were harsh. Lengthy pretrial detention was a problem. Executive influence and interference in the judiciary continued, and the government infringed on citizens’ privacy rights. Freedoms of speech, press, assembly, association, and movement were restricted, and the government continued to evict citizens, invade farms, and demolish homes and informal marketplaces. The government impeded nongovernmental organization (NGO) efforts to assist those displaced and other vulnerable populations. The government arrested, detained, and harassed NGO members. Government corruption remained widespread, particularly at the local level. Violence and discrimination against women; child abuse; trafficking of women and children; and discrimination against persons with disabilities, racial and ethnic minorities, the lesbian, gay, bisexual, and transgender (LGBT) community, and persons with HIV/AIDS were problems. Government interference with labor-related events occurred. Child labor, including the worst forms of child labor, was a problem.

The government did not take steps to prosecute or punish security force or ZANU-PF supporters who committed abuses, and impunity continued to be a serious problem.

...

There were reports that the government or its agents committed arbitrary or unlawful killings. Police units sometimes organized or participated in political violence. Perpetrators were rarely punished.

....

No action was taken against ZANU-PF party activists responsible for numerous killings in 2010. For example, no action was taken against ZANU-PF party activists and war veterans (veterans of the liberation war in the 1960s and 1970s against the government of Ian Smith) who in April 2010 beat Memory Chaduka and 25 other informal traders in Masvingo for failing to contribute money toward

Independence Day celebrations. Those who failed to make such contributions were accused of being MDC supporters. Chaduka died from complications resulting from her injuries.

During the year trials for a few politically motivated killings from 2009 were heard in court. For example, on September 19, a magistrate's court in Gweru opened the trial of four ZANU-PF activists and two soldiers accused of the 2009 killing of MDC activist Moses Chokuda, who was abducted from his home and beaten to death. On September 26, the High Court convicted the four activists of murder and sentenced each to 18 years in prison. The High Court acquitted the two soldiers of the murder but convicted them of assault; the two received a suspended 18-month sentence.

In 2009 at least 19 citizens died as a result of injuries sustained from political violence that targeted members of the opposition party in 2008, in addition to the more than 270 who died in 2008. The MDC-T released a statement in July 2010 that named approximately 11,000 perpetrators and catalogued them by province. Mashonaland East had the largest number of perpetrators--an estimated 3,700. The killings were primarily committed by members of ZANU-PF, including the party's youth militia; individuals identifying themselves as war veterans; and, to a lesser extent, members of the military and police. At year's end no one had been held legally accountable for the killings.

In August the BBC reported the existence in 2008 of a torture camp run by police and military personnel in the Marange diamond fields. Police and military personnel reportedly recruited civilian workers to illegally dig for diamonds. According to witnesses workers who were caught mining for themselves or who demanded too large a share of the profits were tortured, raped, and sometimes killed. In addition to beatings and sexual abuse, prisoners were mauled by dogs, and at least one woman reportedly died after such a mauling.

On March 8, Human Rights Watch (HRW) released the report *Perpetual Fear: Impunity and Cycles of Violence in Zimbabwe*. The report examined the lack of justice in several cases of political killings, torture, and abductions by government security forces and their allies during and after the presidential election run-off in 2008. In 2008 HRW charged that the ZANU-PF government was responsible, at the highest levels, for widespread and systematic abuses that led to the killing of up to 200 people, the beating and torture of an estimated 5,000 others, and the displacement of approximately 36,000 people.

72. The March 2009 UK Border Agency "*Operational Guidance Note for Zimbabwe*" made the following observations about developments following the power sharing agreement in 2008:

Treatment. Since the party was formed in 1999, many MDC activists have been subjected to restrictions on their freedom of expression, political intimidation, assault, arbitrary arrest and detention, imprisonment, torture, kidnapping, rape and murder. This treatment has mostly been perpetrated by the Government, the security forces, ZANU-PF activists and youth and war veterans groups. Historically, such treatment has escalated around the time of general, presidential and by-elections.²⁰

3.6.3 There was a dramatic increase in political violence and repression in March and April 2007 with hundreds of activists arrested and detained without charge following protests that culminated in Harare on 11 March. However, it was after Morgan Tsvangirai won the presidential poll on 29 March 2008, but according to official figures without the 50% plus one vote he needed for outright victory, that arguably the worst political persecution of recent times in Zimbabwe occurred. The result necessitated a run off which was scheduled for 27 June. ZANU-PF's response was to unleash a whirlwind of violence in which over 150 people, mostly those perceived to be MDC supporters, were killed, thousands injured and at least 36,000 displaced. The violence continued after the election, particularly in rural areas, and even after a Memorandum of Understanding, which included a call for an end to the political violence, was signed by the parties to the talks on 21 July 2008. Shortly after the MOU was signed ZANU-PF reportedly dismantled some of the bases that 'war veterans' had used to launch attacks on MDC supporters after the MOU was signed but some remained, particularly in Mashonaland West, East and Central provinces.²¹

3.6.4 By 22 August 2008, the FCO was reporting that levels of political violence and intimidation had fallen relative to the peak period of electoral violence, with the groups of ZANU-PF youth previously prevalent in the wealthier northern suburbs of Harare having dispersed.²² However, by the end of September there were reports that violence had flared up in the Mbare suburb of Harare when MDC supporters sought to reoccupy properties they had been evicted from during the height of the violence.

According to the FCO, the situation also remained tense in parts of Mashonaland and Manicaland, where the ZANU-PF leadership is exceptionally vicious. Access to the rural areas continued to be restricted by roadblocks, with groups of ZANU-PF youth still present in those areas and the main bases still in place. Attacks, abductions and arrests of perceived MDC activists were still occurring around the country, but at a lower level than April - June. The FCO concluded that while there was a downward trend in violence, the situation remained unpredictable and incidents of violence across the country continued, noting that it could deteriorate further without warning.²³

3.6.5 The situation did deteriorate for a while, with incidents of political violence/human rights abuses against MDC supporters, human rights defenders and others perceived to oppose ZANU-PF increasing between October and December 2008 before falling back again in 2009 to levels broadly comparable to those which have existed in Zimbabwe for the past several years outside periods of heightened tension such as at election times.²⁴

3.6.6 In the October – December 2008 period there were around 30 abductions and prolonged detentions of both high profile and low level MDC activists and human rights defenders. Attempts to secure their release dominated the news through the early months of 2009. Only in March 2009 were most of those who had been detained released but some remained in custody. Also from October to December 2008, demonstrations by students, health workers, women, Zimbabwe Congress of Trade Unions, the National Constitutional Assembly and other human rights groups were brutally broken up. Human rights defenders and journalists experienced heightened levels of harassment. Violence and arrests intensified in the diamond mining area of Marange, Manicaland and sporadically, elsewhere in the country. In several cases, soldiers protested over pay, assaulting people and confiscating goods and money. In Victoria Falls, 120 households were forced to destroy their homes.²⁵

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

73. In respect to the risk of politically motivated violence towards members and supporters of the MDC, DFAT provided the following observations in May 2011:

Ordinary MDC-T and MDC-N members may be vulnerable to targeted politically motivated violence and intimidation, but the risks to ordinary members are not high compared to highly vocal party activists. The degree of risk generally depends how vocal a member is and where that member lives. MDC-T officials have said that at present, individuals who have membership cards but are not vocal supporters, are not likely to be targets of violence. Those at greatest risk are those who are seen to be vocal supporters of the party or who are perceived to be influencing others in their beliefs. Such individuals are not necessarily party members but may be community leaders like teachers who haven't shown themselves to be sufficiently loyal to local ZANU-PF authority. (DFAT report 1272, 12 May 2011)

74. Most recently, DFAT provided this advice based on information from MDC officials:

The officials confirmed the situation for their members had improved a lot in recent years. They believed there may be many instances of people seeking to remain in Australia for economic reasons, rather than concern for their welfare. Zimbabwe's economic situation has improved markedly since 2008, although Australia will continue to remain a much more attractive location for pursuing a career. Every case required separate consideration, with an individual's origins and their history of activism very relevant. Very few of the cases referred to post (and none in recent times) have been prominent activists and many have very dubious - even clearly fraudulent - credentials.

At present, violence and intimidation were concentrated at particular flashpoints where MDC supporters could be targeted. Current triggers for violence were MDC rallies, particularly, in sensitive

areas. At a recent rally in Zvimba, eight people had been injured. While some rallies occur peacefully, problems were more likely to occur in areas that were considered to be ZANU PF strongholds, like the President's home area of Zvimba, or areas that ZANU PF had lost in the last elections and wanted to win back, for example in Manicaland. Poor urban areas in Harare, like the high density suburb of Mbare, were also flashpoints as ZANU PF vied for economic influence.

There were ongoing instances of intimidation but often it was sufficient for ZANU PF to remind people of what happened in 2008. Despite this, there are still many parts of the country, particularly the wealthier areas of Harare, where people can support MDC without being subject to harm. Many MDC politicians and their children, some of whom have returned from university education in Australia, are currently able to lead normal lives, although occasionally face intimidation from their political foes and possible violence at party rallies in sensitive areas.

As we approach elections, currently expected in mid-2013, there is still the possibility of increased violence. This is likely to be targeted towards active party members, or those in areas where ZANU PF feels under threat. Both ZANU PF and MDC face internal power struggles and the risk of intra-party and intra-party violence also remains. However the vast majority of Zimbabwean students in Australia, including genuine MDC members, have no reason for concern in returning to their homeland. (*DFAT Report 1415 – RRT Information Request: ZWE40895*, 21 August 2012).

75. Earlier in that report DFAT had reported:

[MDC officials] said possession of a membership card was not on its own a reliable measure of whether an individual was an active party member and likely to be targeted for harm. Party officials in the relevant area could provide this information. (*DFAT Report 1415 – RRT Information Request: ZWE40895*, 21 August 2012).

Returnees to Zimbabwe

76. Over the past 10 years DFAT has provided several advices on returnees to Zimbabwe which has generally concluded that apart from high profile opposition figures, party officials and organisers, failed asylum seekers or returnees from Australia were not considered to be generally at risk. (See CX61279 DFAT, CIR No. 13/02. *“Treatment of returnees in Zimbabwe”* 18 January 2002). In April 2002 DFAT noted contacts in British and South African High Commissions and airlines from countries which *“ferry the bulk of deportees by air back to the country, have told us they are aware of no incidents where returnees have been taken away by authorities or otherwise subjected to harm on return.”* (See CX 63792 – CIR No. 091/02, 15 April 2002). In October 2007 DFAT updated that advice stating:

We are not aware of difficulties by Zimbabweans returning from study from overseas in countries critical of the Government of Zimbabwe (GOZ) such as Australia, the United States, Canada and the United Kingdom. We have seen no evidence that the simple fact of studying in those countries would attract punitive action by the GOZ. Officers of the Central Intelligence Organisation (CIO) have been working under cover for some time as Immigration Officers at Harare International Airport. If an individual student was active in organisations subject to harassment by the GOZ, such as the Movement for Change (MDC), trade unions or civil society organisations, it is possible that she might be identified on arrival at Harare Airport. If so, any punitive measures taken against her by the GOZ would be the result of such activism, not of simply having studied in Australia. (Department Foreign Affairs and Trade, 2007, DFAT Report No. 717, 23 October 2007)

77. More recently (May 2011) DFAT responded to a Tribunal enquiry, stating:

Post does not consider that there is strong risk a person returning from studying abroad would be imputed with anti-ZANU-PF beliefs in the absence of other factors like prior political activism. Zimbabwe has an exceptionally large Diaspora. While the Diaspora is viewed as pro-MDC, most Zimbabweans of all political persuasions have close family and friends abroad. Many children of those who have attained wealth through their association with ZANU-PF seek to study abroad in countries like the UK, USA and Australia which are still seen as attractive destinations regardless of political persuasion.

Those returning to rural areas may face a higher risks but this risk is similar to that faced by those returning to rural areas after extended periods of time in Harare and Bulawayo, which are seen as pro-MDC urban areas. In some rural areas, those who have spent time abroad or in Harare or Bulawayo may be perceived to have pro-MDC beliefs and may have missed the opportunity to establish their loyalty and win the trust of local power structures. Nonetheless, the majority of Harare residents retain strong ties to their rural home, which they visit frequently without significant problems. (Source: DFAT report 1272 to the MRT/RRT: 12 May 2011).

78. Non-government sources also comment on returnees. In March 2009 the Institute for War and Peace reporting (IWPR) in an article entitled “*ZIMBABWE: Exiles Start to Return*” reported:

Zimbabwean professionals, many of them teachers, are coming home and seeking readmission into the public service, in response to a move by the country's new inclusive government to pay civil servants in foreign currency and relax conditions for rejoining the sector.

The influx is a response to calls from President Robert Mugabe and Prime Minister Morgan Tsvangirai for the more than three million exiles, who sought refuge from their country's chaotic economic situation in Southern African Development Community, SADC, countries and abroad, to return to Zimbabwe to help rebuild the country.

Zimbabwe's public service commission has announced that teachers who resigned between January 2007 and March 1 2009 should be allowed to rejoin the profession. It has also waived existing procedures for re-engaging engineers, surveyors and other public servants.

Beitbridge and Plumtree - the busiest entry posts into Zimbabwe from SADC countries - have reportedly recorded an increase in recent weeks in the number of economic and political refugees returning to Zimbabwe.

Most of them are teachers who fled the country's economic and political crisis and sought refuge, mainly in South Africa and Botswana, where, in desperation, they took menial jobs for paltry salaries. Teachers unions estimate that 70,000 teachers left the profession between 2,000 and 2008.

...

One official, speaking to IWPR on condition of anonymity, said her office was receiving hundreds of telephone calls from Zimbabweans in Botswana inquiring whether they could receive assistance in applying for their former jobs. (IWPR 19 March 2009).

79. In its 20 July 2009 “*Country of Origin Information Report*” for Zimbabwe, the UK Border Agency indicated at that time there was no recent information that identified any particular problems for returning failed asylum seekers, and noted both MDC leader and Prime Minister Morgan Tsvangirai and President Mugabe were reported to be encouraging Zimbabwean expatriates to return (see para 33). That sentiment was repeated in September 2010 UK Border Agency “*Country of Origin Information Report*” for Zimbabwe.

80. A September 2010 UK Border Agency report by a fact finding mission in August 2010 noted:

Political environment

Most organisations interviewed reported that there had been an opening-up of the political environment since the formation of the Government of National Unity in February 2009. However, uncertainty over the future and doubts about the sustainability of the current governing coalition were a concern.

Most organisations reported that the parliamentary constitutional outreach process (COPAC), which is consulting with the public about the content of the new constitution, had led to renewed reports of intimidation and violence. As a result, there were fears that the current situation may deteriorate ahead of national elections which are likely to take place in the next couple of years.

Political violence

All organisations reported that current levels of violence were down on that experienced during 2008. However, all organisations reported that low-level violence, or the threat of violence, continued, particularly in some rural areas, and that this had increased with discussions about the new constitution. Although, a couple of organisations suggested that recent reports of violence may be exaggerated.

While there were some reports of an improvement in the way the police operated, most organisations stated that the police remained politically biased and that they often ignored, or were complicit in, the persecution of Movement of Democratic Change (MDC) supporters and civil society activists.

All organisations reported that politically motivated violence was rare in most urban centres in Zimbabwe. Bulawayo and Harare were noted as being relatively safe, and that they benefited from higher levels of scrutiny by the media, civil society and international organisations than smaller towns and rural areas. However, rural areas, especially areas that had traditionally voted for the Zimbabwean African National Union – Patriotic Front (ZANU-PF) such as the Mashonaland provinces - Central, East and West - and Manicaland, were noted to be particularly problematic. Matabeleland North and South were however considered to be relatively safe.

While some organisations noted that influential MDC supporters could be at risk, ordinary opposition and MDC supporters were not thought to be at any particular risk.

Non-Government Organisation (NGO) activity

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

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

Internal relocation

It was reported that there were no legal requirements or restrictions for those wishing to re-settle in other parts of Zimbabwe. While in theory resettlement to any part of the country was possible, in practice, resettlement to rural areas was reported to be difficult, especially for those considered to be opposed to ZANU-PF. However, most organisations stated that relocation to the country’s main urban centres posed relatively few problems – the main constraint being economic.

Returnees to Zimbabwe

In addition to interviewing international and national NGOs the mission also spoke to seven Zimbabweans who had previously claimed asylum in the United Kingdom but then had returned to the country in 2009 and 2010. While all seven reported that they had decided not to divulge the fact that they had claimed asylum in the United Kingdom upon arrival in Zimbabwe, none experienced any significant problems on return. All chose to resettle in Bulawayo or Harare. UK Home Office, 21 September 2010: “REPORT OF FACT FINDING MISSION TO ZIMBABWE HARARE 9 – 17 AUGUST 2010”).

81. The 2010 UK Border Agency “*Fact Finding Report*” (above) also noted the Zimbabwe Human Rights NGO Forum was unaware of mistreatment of returnees. It stated:

The Forum has not come across any cases of returnees from the UK being mistreated and would expect to know of any such cases because its member organisations are represented across the country. It works closely with the Zimbabwe Association in London and is alerted where there are concerns a returnee might be at risk but has not come across any cases where that is happened. They are unable to

say that there have been no such cases but if there have been they have been isolated examples. They do however have concerns that those who are known to have claimed asylum in the UK would be considered necessarily to have been disloyal to Zimbabwe and may therefore face additional problems reintegrating because the fact that they had claimed asylum would become known. This would not apply to returning economic migrants unless their families were known to be political activists. The Forum considers that the abolition of hate speech against asylum seekers returning from the UK is central to creating a more conducive environment.

82. The most recent UK Border Agency “Country of Origin Report” for Zimbabwe” (13 July 2012) repeats that information, and noted there was a challenge to the accuracy of the observations of the “*Fact Finding Mission*” in proceedings before the UK Immigration and Asylum Chamber Upper Tribunal in March 2011 (*EM and Others (Returnees) Zimbabwe CG [2011] UKUT 98 (IAC)*). That decision indicates the UK IACUT determined:

...the essential thrust of what W80 said to Ms Goodier and Mr Walker is satisfactorily captured in the notes published in the FFM report: that the Forum “has not come across any cases of returnees from the UK being mistreated and would expect to know of any such cases because its member organisations are represented across the country. (paragraph 109)

83. The recent August 2012 UK Border Agency Operational Guidance Note on Zimbabwe notes the decision in *EM and Others* was quashed in July 2012, but does suggest that despite this, *EM and Others* summarises a considerable volume of country information which UK Border Agency accepts as reflecting the current country situation, and suggests its case officers may find it helpful to refer to the country information contained in the determination, even though the judgment itself cannot be relied on. (See p7 of the Zimbabwe OGN v10.0 August 2012)