

Heard at: Field House

On 15 February 2005
Prepared: 16 February 2005

SM and Others (MDC – internal
flight – risk categories)
Zimbabwe CG [2005] UKIAT
00100

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

11 May 2005

Before:

**Mr H J E Latter -Vice President
His Honour Judge G Risius, CB -Vice President
Dr J O de Barros**

Between

Secretary of State for the Home Department

Appellant

and

Respondent

and between

Appellant

and

Secretary of State for the Home Department

Respondent

and between

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the applicants: Mr I Huffer, Counsel, for first and second Applicants
Ms S Widdison, Counsel, for third Applicant

For Secretary of State: Ms L Saunders, Home Office Presenting Officer

DETERMINATION AND REASONS

1. There are three appeals before the Tribunal being heard together with the consent of all the parties. They raise a number of common issues of fact relating to the current situation in Zimbabwe and in particular the categories of those at real risk of persecution from the authorities, Zanu-PF members and war veterans and whether internal relocation is a viable option for those at risk in their home area. These appeals are

reported as country guidance on these issues. Our conclusions are summarised in paragraph 51 of this determination.

The three appeals

2. In the first appeal the Secretary of State appeals against the determination of an Adjudicator, Mrs S M Walker, notified on 19 October 2004, who allowed the appeal by the respondent ("the first applicant") against the decision giving directions for her removal following the refusal of her claim for asylum. In the second appeal the appellant ("the second applicant") appeals against the determination of an Adjudicator, Mr L Saffer, notified on 18 November 2003, who dismissed his appeal against the decision made on 11 August 2003 refusing him leave to enter following the refusal of his claim for asylum. In the third appeal, the appellant ("the third applicant") appeals against the determination of an Adjudicator, Mr J R Gibb, notified on 22 October 2004 who refused her appeal against a decision giving removal directions following the refusal of her claim for asylum.

The facts relating to the first appeal

3. The first applicant is a citizen of Zimbabwe born on 17 September 1972. She arrived in the United Kingdom on 21 December 2002 with a valid visit visa. She subsequently applied for further leave to remain as a student which was refused on 29 July 2003. On 28 April 2004 she applied for asylum. After attending the University of Zimbabwe in Harare, the first applicant started her teaching career in 1996 at Murewa High School in Mashonaland East province. When the Movement for Democratic Change (MDC) was formed in 1999 she hoped that this would prove to be a strong opposition party prepared to turn things round for the better. She became a member of the MDC but at that stage as she had a small child she was not able to attend rallies. In May 2000 she went back to Murewa to continue her teaching career. She encouraged other teachers to become members of the MDC. One night there was a knock at her door and she was dragged from her home by four men. She was taken to an office. One of the men produced MDC cards and asked if she had anything to do with them. She denied this but she was slapped in the face and beaten up. She was then taken back to the school. They went straight to her staff house. The men went in and searched the house destroying her property in the process. She gave up her MDC T-shirt and her membership card. She was told that she had to report to a ZANU-PF office and tell them anything suspicious amongst her colleagues at the school.
4. The first applicant remained in the school but lived in fear of harassment. She had to watch what she was saying all the time. In April 2001 she managed to obtain a transfer to Harare and a place at a different school. She became aware that some teachers were being investigated. She was called into the Headmaster's study and was told by a man she did not know that he knew who she was and where she was coming from. He said that he had come to meet her and warn her that she should mind her own business. The following year the first applicant secured a place on a course at the University of Zimbabwe

and was away for 10 months. When she returned to school she found that the teachers had gone on strike. At her school no one was working so she joined in the strike. The government then announced that all teachers who had gone on strike were fired but people thought this was a joke as the authorities could not fire all the teachers. The next day she went to the school and she was met by war veterans at the school gate. The car she was driving was stoned. When she contacted the Headmaster he said that she would only be safe if she stayed away. She was a target because of her past. He did not want any trouble at the school. Because of these problems it was suggested she should come to the United Kingdom to get away and spend some time with her mother and sister. She obtained a visitor's visa, arriving in this country in December 2002. Subsequently she had received news from home that she was no longer employed by the Ministry of Education even though she had applied for sick leave. Her younger sister had been attacked when she went back to school to collect her results because the attackers believed that she was the first applicant.

5. The Adjudicator accepted that the first applicant had given an honest account of her experiences in Zimbabwe. She also heard evidence from the first applicant's sister and accepted that she was a wholly genuine witness. The Adjudicator was satisfied that the first applicant had experienced persecution in Zimbabwe for her political opinions. She described her as a low key MDC supporter who had managed to avoid trouble by taking a course for 10 months when she was not the subject of unwarranted attention. However, as a teacher she was in a very vulnerable category. She could choose to try and avoid trouble as she had done in the past but as an experienced teacher she should be able to follow her career without fear of persecution and intimidation. Although it was possible that she might avoid trouble on return to Zimbabwe, the adjudicator took the view that there was still a realistic risk of persecution. In these circumstances her appeal was allowed.

The facts relating to the second appeal

6. The second applicant was born on 17 April 1981. His family has homes in Murewa and in Highfield, Harare. His father supported the MDC and the second applicant joined the party in January 2000. His father ran a grocery shop which was in the centre of the village and they assisted in giving out party cards, T-shirts and posters. War veterans came to the house and warned the family telling them to leave the party. His father ignored this. His mother and sister were abducted and beaten up. His father told them to move to Harare for their own safety. On a number of occasions the war veterans threatened to kill his father.
7. After his father's death the second applicant starting running the shop. MDC officials contacted him asking if he was willing to help. The second applicant and a few others travelled round the village on behalf of the MDC. A few weeks before the election a group of war veterans heard about this. The second applicant and his colleagues were the first targets. He was beaten up. He had to leave the area and after the election half his shop was burned down by ZANU-PF youth. The second applicant returned to Harare. In September 2002 he was

abducted by ZANU-PF taken to a torture camp where he was beaten up and forced to watch the rape of a woman. He was able to escape from his captors whilst he was being moved and after making his way to Harare left for the United Kingdom in November 2002.

8. The credibility of the second applicant's account was challenged at the hearing but for the reasons which the Adjudicator gave he found the second applicant's story to be compelling, consistent and credible. He was satisfied that the treatment he had suffered crossed the threshold of simple harassment and amounted to persecution. The Adjudicator described the second applicant as falling fairly and squarely in the category of low level supporters of the MDC who had had problems with ZANU-PF and the war veterans, who the Adjudicator accepted were state agents of persecution given the linkage between them and the government. He went on to consider what was reasonably likely to happen to the second applicant on his return to Zimbabwe. He was likely to be questioned about why he had gone to the United Kingdom. His escape from detention was two months before he fled Zimbabwe. As he had been taken by the war veterans, there would be no record of his detention or escape. There would be no reason to stop him at the airport.
9. The Adjudicator was not satisfied that the Immigration authorities in Zimbabwe would have any knowledge of or interest in the second applicant. He went on to consider whether there would be a continuing risk from the war veterans and local ZANU-PF. He accepted that there was a risk that he would be of interest to them in his village and in Highfield, Harare, but said these were two very localised areas. It had not been established that it was reasonably likely that he would come to the attention of the authorities elsewhere in Zimbabwe. There were many areas controlled by the MDC where the second applicant could safely relocate. It would not be unduly harsh to expect him to do so as he was a single man in good health. The appeal was dismissed on both asylum and human rights grounds.

The facts relating to the third appeal

10. The third applicant was born in May 1983. She is a white woman from a farming family. She arrived in the United Kingdom on 31 August 2002 with entry clearance as a working holiday maker. She was given leave to enter for 2 years in this capacity. On 12 July 2004 she applied for asylum. Her father was a farmer in Centenary growing tobacco and maize on a farm with about 900 employees. War veterans occupied the farm in 2000 and the family were forced out in 2001. The third applicant left the area with her mother and sister before the war veterans arrived. In 2001 her parents moved to a different farm in Mtoroshanga but this farm was also occupied. When her mother became ill, her family took her to South Africa for medical treatment in June 2002. Her father continued to return to Zimbabwe trying to keep the farm running but was forced out in November 2003. Her parents are now living in South Africa.
11. The third applicant was a supporter of the MDC but never attended any demonstrations although the Adjudicator accepted that she had

attended an MDC demonstration in the United Kingdom outside the Zimbabwean Embassy. The Adjudicator accepted that the third applicant was a credible witness. He found that her family were forced off both farms, that her father was a member of the MDC and that she was a supporter. She was also contributing towards the cost of her mother's medical treatment in South Africa. The Adjudicator accepted that if the third applicant were to return to the family farm which had now been abandoned by her parents and made some attempt to argue with those who had occupied it, there would be a real risk of serious harm. This established a risk in her home area arising for a Convention reason.

12. However, the Adjudicator did not accept that there would be a real risk to the third applicant as a young, educated white woman in Harare. However much her situation commanded sympathy, it was his finding that it would not be unreasonable or unduly harsh to expect her to relocate. She had relatives there and should be able to find employment. The Adjudicator accepted that because of the weakness of the Zimbabwean currency she would not be in a position to contribute to her mother's treatment as she could at present but this would not make internal relocation unduly harsh. The appeal was dismissed on both asylum and human rights grounds although the Adjudicator added a recommendation that in the light of her particular circumstances she should be permitted to continue to work so long as she remained in the United Kingdom as a result of the Secretary of State's suspension of removals to Zimbabwe.

The evidence of Professor Ranger: (i) written evidence

13. The Tribunal heard evidence from Professor Terence Ranger. His report is dated 7 February 2005. He has been asked to give evidence relating to
 - a) the assessment of the degree of risk on return to MDC members, supporters and family members
 - b) the risk of white MDC members and supporters
 - c) the risk to teachers
 - d) the nature of the records kept at the airport on the activities of returnees
 - e) the viability of internal flight away from the home area where persecution has previously been suffered in the light of the tribal nature of Zimbabwe and
 - f) the factual issues arising out of the Court of Appeal's judgment in *Ndlovu* [2004] EWCA Civ 1567 as to whether returnees can survive away from their home area because of ZANU-PF's control of the food distribution and its denial to political opponents.
14. Professor Ranger's expertise arises from more than 45 years familiarity with Zimbabwe. He first went there in 1957 and has spent two periods teaching at the University of Zimbabwe between 1957 and 1963 and between January 1998 and June 2001. He has also taught at the University of Dar es Salaam where he was Professor of History and at the University of California. He has been a Professor of Modern History at the University of Manchester and at Oxford University as the

Rhodes Professor of African Studies. All but one of his eight monographs have dealt with the history of Zimbabwe in the 20th century. He has published books dealing with the history of nationalism in Zimbabwe generally and more specifically with rural history in eastern Zimbabwe and the history of both southern and northern Matabeleland. He is the founder of the Britain Zimbabwe Society, an organisation devoted to the interests of the people of Zimbabwe as a whole rather than any regime or party. He is a regular visitor to Zimbabwe. He was last there in August 2004 for the International Book Fair and will be returning again in March 2005. In 1960 he joined the African Nationalist Party, the NDP and later ZAPU. He has known Robert Mugabe and other senior leaders of ZANU-PF for 45 years.

15. In his report Professor Ranger makes the point that the questions he has been asked to consider are very general questions. In his oral evidence he made it clear that he felt happier dealing with the specifics of an individual case rather than writing a general report particularly when the issues raised were so recent. He had attempted to draw on such evidence as there was. Since the re-commencement of forced returns to Zimbabwe it was hard to collect confirmed data on what had happened to returnees. There were abundant rumours. It did seem to be clear that deportees were being held at the airport for prolonged interrogation and that in some cases families of detainees were being charged considerable sums of money to obtain their release. Prior to the suspension of returns by the Secretary of State there was evidence of CIO interrogation of returnees. Since 2002 the risks of interrogation at Harare airport have increased. He referred to a story of one particular returnee who gave an account of being interrogated and asked why he had "sold the country out". The source of this information is a report in *The Observer* of 13 January 2002 about a returnee who subsequently managed to escape out of an airport lavatory window and make his way to south Africa. Since the news that the United Kingdom has resumed deportations, there has been speculation in the state press alleging that the British government will use these to infiltrate a third force into Zimbabwe to commit acts of violence which would be attributed to ZANU-PF so as to discredit the regime.
16. There have also been scare stories that the British government is training hundreds of Zimbabwean recruits to the army holding them in readiness to use in an invasion. A report appeared in the *Herald* on 17 December 2004 where Jonathan Moyo Minister of Information, referred to threats by the United Kingdom to deport about 10,000 Zimbabweans as a cover to deploy elements trained in sabotage and intimidation to destabilise the country both before and during the next Parliamentary elections in March 2005. Similar reports have been carried in a Zimbabwean paper, the *Sunday Mail*. There have been attacks in the Zimbabwean press on those who have claimed asylum abroad describing them as unpatriotic and as denigrating their own country and government. The material in the state press was designed to ensure and justify a permanent large scale CIO presence at the airport searching for British agents and was generally unsympathetic to any asylum seekers.

17. Professor Ranger referred to the only detail he had seen of a CIO investigation as coming from a member of the Zimbabwe Reference Group of the Methodist Church. This described the testimony of someone who was held for 5 hours, questioned and threatened about being involved in political activities. He was asked about political activists and human rights organisers who had fled to Britain. He was told that if he had applied for asylum, he would have been imprisoned as a British secret agent. This source refers to others who have returned and were not as lucky. Several had never re-appeared once they were taken from the plane by CIO agents. The Zimbabwean Community Campaign to Defend Asylum Seekers (ZCCDAS) said that it feared for the fate of several who had disappeared and others who had been beaten and threatened after deportation but there were no names or details available. Professor Ranger could only comment that such assertions were plausible in the present context.
18. Professor Ranger said that there had been an obvious and considerable risk to whites living in the commercial farming areas between 2000 and 2002. At that time the Mugabe government believed that the white farmers were subsidising the MDC and encouraging their farm workers to vote for it. The family experience recorded by the third applicant was typical. However, the situation had since changed very considerably. There was a sense in which local whites living in Zimbabwe have become irrelevant to Zimbabwean politics. The 2005 elections have been declared as being against Tony Blair rather than against white farmers. It is returning black Zimbabweans who are seen as the most likely people to be acting as British agents. Professor Ranger said that he had many white friends resident in Zimbabwe. They were able to return after travelling outside the country without attracting protracted attention from immigration. There were a few individual white activists who had suffered assault and detention for taking part in marches and demonstrations and some white headmasters and headmistresses of private schools had been arrested last year. However, being white in itself did not put people in danger. Recent political violence did not include examples of violence against whites.
19. There had been a falling away of threats to teachers in 2003 and early 2004. However, two processes have been going on which once again exposed teachers to threat. The first was the process of increasing state and party presence within schools. A number of those trained in youth militia camps were now teaching in schools. A new union, the Teachers Union of Zimbabwe had been established which was openly committed to ZANU-PF. Teachers were under pressure to join it. The second process related to the approach of the March general elections. The Zimbabwe Human Rights NGO Forum reports have again begun to report violence against teachers. On 9 January 2005 the Standard reported that scores of teachers were converging on the Education Ministry Office in Mutare seeking transfers because they wanted to get out of the rural areas before the March elections were held.
20. In *FN (Risk – Relocation - MDC) Zimbabwe CG* [2003] UKIAT 00163 the Tribunal held that it was simply going too far to infer that the

Zimbabwean authorities had a record keeping system which would make available to staff at the airport those who had merely been detained without a charge. This appeared to refer to the immigration personnel at the airport. However, according to Professor Ranger the CIO were a different matter. They kept very extensive files on thousands of people including many not charged or detained. It was Professor Ranger's view that few of those files were actually at the airport but they could be summoned up during interrogation. If the CIO thought it necessary it could hold any person and information could be obtained from networks in his or her home area. The war veterans have also compiled lists of MDC sympathisers and these lists have since been used for retribution after elections. Such lists are exchanged between areas. The accounts given by the first and second applicants were consistent with this exchange of information between areas and their account was replicated dozens of times in other asylum narratives Professor Ranger had seen. There was no doubt that an information network existed on the ground in Zimbabwe. War veterans and party youth passed on information from district to district. It was certain that such information was not kept at the airport but it could be obtained.

21. The facts accepted in relation to the first and second applicants indicated the difficulties of internal flight. Both applicants were followed up when they moved from Murewa to Harare. Professor Ranger was aware of cases where war veterans from areas in Mashonaland had followed up people who had relocated as far away as Bulawayo. He did not believe the tribal nature of Zimbabwe was a significant factor particularly in multi-lingual towns. Much more relevant was the question of family networks. People could be followed by means of those networks and it was very difficult to manage in Zimbabwe without kin networks especially for women and children. There would be special difficulties for people who wished to return to previous employment. Teachers had to undergo a period in which enquiries were made by the Ministry about their past activities. Current factors would make relocation difficult. The state press was currently warning that asylum deportees might be scattered about the provinces and they should be watched carefully everywhere they went. In the weeks running up to the election newcomers would be immediately noticed and enquiries made. Whenever an unknown person settled in a town or rural area, enquiries were carried out and contact made with war veterans and party officials in their area of origin.
22. It was common ground that Zimbabwe had suffered a serious shortfall in food production. The NGOs had been prevented from distribution and the Grain Marketing Board (GMB) administered by local authorities was to be responsible for distribution. There were reports that grain was being brought in from South Africa and stockpiled in readiness for a pre-election distribution. The MDC had complained that the hardest hit areas were those which supported the opposition and that in other areas MDC activists were the subject of discrimination. Many international reports suspected that such complaints were well-founded. A number of organisations had come to the conclusion that ZANU-PF interfered with food distribution in

different areas of the country. The GMB were said to exclude MDC sympathisers and ZANU-PF militias assisted in distribution. Local authorities overwhelmingly supported the ZANU-PF and determined who got food.

(ii) Oral Evidence

23. In his oral evidence in chief Professor Ranger confirmed that the new airport in Harare had an arrival lounge. He was referred to a report that there were now three desks; one for returning residents, one for those with visas and one for those in need of a visa. It would not be difficult for there to be structural changes to provide interview rooms for the CIO out of the public area. The questions in the report from the New Zimbabwe were predictable questions. This is a reference to an article of 2 March 2005 detailing an intimidating and oppressive interview of a female returnee. She secured her release as she had an uncle in the army who was able to vouch for her. There had been two recent newspaper reports criticising asylum seekers as those who maligned the country and raising the issue of saboteurs amongst those returning. It was Professor Ranger's view that if the CIO had any reason to suppose that someone was politically active any interrogation would be followed up. Local records could be summoned up. There was a hostile atmosphere for the reception of those who were returned. There was a pattern of violence linked to elections both preceding the election and then a punishment process following them.
24. Teachers and civil servants were assumed to have influenced the votes and there would be a period of post-election retribution. There would be a range of risk for those returning. Some people would have a rough time but get through whereas others particularly if there were arrest warrants outstanding would be detained. At present all cases had to be determined in the context of a very hostile atmosphere on return. So far as food distribution was concerned, the Zimbabwean government had recently announced that it was planning to spend \$8 million to buy corn meal so that needy households could receive bags. Other NGOs and churches had been prevented from distributing food. Local groups would decide how the grain was to be distributed.
25. In response to questions from Ms Widdison Professor Ranger confirmed that a range of files were kept in Zimbabwe. So far as the CIO was concerned if there was any question of whether a file should be opened, it was opened. There was a "Stasi style" collection of files. The disturbing feature was an increasing network of informers amongst teachers and lecturers. The Zimbabwean community in this country was convinced that the CIO operated here. The CIO would have files which war veterans and local militias would not have. The war veterans would draw up lists of families with a view to punishing them. The lists could be connected through party structures. The war veterans kept lists for retribution. Professor Ranger commented that Zimbabwe was a great country for lists at the present time. If there was a file on the third applicant, it would contain information about the farm. Officials at the Embassy did take photographs of demonstrations but this might be an act of intimidation. Professor Ranger had no knowledge of what happened to the photographs. There was a very

recent report that three white farmers had been abducted and killed. This was reported as the activities of a group which was out of control. It would be particularly difficult for black women to relocate although ethnicity was not particularly relevant.

26. The ability to return to a supportive network was relevant. In answer to questions from Ms Saunders, Professor Ranger said that the numbers of returnees identified by the Britain Zimbabwe Association were smaller than those claimed by other campaigning groups. It did attempt to keep a record of those returned, the flights and what happened after return. The Sunday Mail and Herald were state papers. Jonathon Moyo was beleaguered politically but very much in charge of the newspapers. In a smaller town a new arrival would be investigated immediately. The government were committed to transforming the teaching service. There was a specific attempt to control the education system and this had been the main issue in President Mugabe's Heros' Day speech. The files were probably paper files. The CIO did keep extensive files, a practice inherited from the previous regime. Many of the daughters of MDC activists had been targeted by war veterans. They would not have a CIO file but would still be at risk. Teachers and trade unionists probably would have a CIO file. Professor Ranger was not personally aware of instances when files had been called for. This was a matter of inference. The reports tended to show that the interrogators were well informed. People depended on family networks in Zimbabwe. This posed a dilemma. Someone could not operate outside their family network but might well endanger themselves and the network if they were pursued by the war veterans. If someone relocated in a township every one would know about it. It might be possible to relocate in large towns where there was more coming and going but this raised the issue of resources. Human rights reports did refer to government statements that it could not feed those who were disloyal.
27. In answer to questions from the Tribunal, Professor Ranger felt that demanding money from relatives of those held at the airport probably rose from private opportunism. Decisions relating to grain distribution would be decided by local committees including local headmen and party cell leaders. They may well be some in Zimbabwe who really did believe that the United Kingdom might attempt to infiltrate agents through returned asylum seekers.

General submissions on behalf of the first and second applicants:

28. Mr Huffer submitted that those who had attracted persecution by the authorities in Zimbabwe were those who supported or were suspected of being associated with the MDC. These included not only activists but members and supporters and those who had voted or were believed to have voted for the MDC, those belonging to the MDC and their families. There was a heightened risk during election periods. That risk would continue for some time after the conclusion of the March 2005 Parliamentary elections. There was a heightened risk for returnees at present in the light of the assertions by the Zimbabwe government that the decision to return Zimbabweans could be a cover to deploy elements trained in sabotage and to de-stabilise the country

before and during the elections. There was evidence that those returned would be interrogated. There was a particular risk for teachers. There was evidence that all deportees were handed over to the authorities for questioning. Those without a current passport or comparable document but returning with emergency travel documents would put the authorities on notice that they had sought asylum.

29. When assessing the risk on return, Mr Huffer accepted that it should be assumed that returning states had properly discharged their duties under international law and were only returning those not at risk of persecution and that those being interrogated on return would truthfully answer questions as to their political allegiances and activities. There was evidence that extensive files were kept on many people. It was reasonable to assume that those records would be made available to the CIO at arrival if requested. If the risk arose at the point of arrival, internal flight was unlikely to arise. If it did arise, there would be significant difficulties facing those who did not have family networks or where their presence would be revealed as a result of ZANU-PF informants. The discriminatory use of food distribution was used to punish MDC supporting areas at a time when many were close to starving. Mr Huffer did not seek to maintain that all returnees would be at risk but submitted that at the present time in the light of the atmosphere of suspicion and antagonism, all claims should be closely scrutinised as to whether there was a real risk that interrogation would lead to a perception of links to the opposition.

Submissions in respect of the first applicant

30. The first applicant had been found credible after a very thorough examination by the Adjudicator in a careful and considered determination. There was no obvious error of law. The issue of internal flight had not been raised by the Secretary of State and in these circumstances there was no reason for it to be raised by the Adjudicator, who had made clear findings. The first applicant was a teacher who was suspected of MDC links and in fact had links with the MDC. There was clear evidence that she would be at risk on return.

Submissions relating to the second applicant

31. The second applicant had also been found credible by the Adjudicator. He had erred in law in his assessment of internal flight. He had referred to areas controlled by the MDC. There were no such areas even though there may be areas where there were MDC majorities. When assessing internal flight the Adjudicator had not taken into account the risk that inquiries would be made about the second applicant. These would lead to him being identified as an MDC activist. He had attempted to relocate in Harare but had been the victim of violence. The Adjudicator had accepted that he was at risk from state agents. Where there was evidence of a network of information, it would only be in exceptional circumstances that internal relocation was available.

Submissions on behalf of the third applicant

32. Ms Widdison submitted that the Adjudicator had erred in his assessment of the objective evidence. He had failed to take proper account of the evidence relating to the position of whites in Zimbabwe and the fact that President Mugabe had incited his supporters to target the white population and the regime imputed a pro-MDC opinion to Zimbabwean whites. His conclusions were against the weight of the evidence in the light of his acceptance that the third applicant's father was a member of the MDC and she was a supporter. His assessment of internal flight failed to take into account the fact that the CIO kept very extensive files and that the war veterans and party youth movement passed on information from one district to another. In *LS (Persecution – CIO) Zimbabwe CG* [2002] UKIAT 03342 the Tribunal found that CIO interrogators were active and on the facts of that appeal there was a real risk that the appellant would be detained for questioning. The risks of interrogation had increased. It would be difficult for a single woman to relocate in Zimbabwe without kin networks. Her immediate family were in South Africa and she was unaware of the exact whereabouts of her other relatives. The third applicant would be at risk as a failed asylum seeker. There would still be a risk to a white woman returning. The Adjudicator's assessment of Article 8 was flawed. In the light of the Adjudicator's recommendation he should have taken the view that removal would be disproportionate.

Submissions on behalf of the Secretary of State

33. Ms Saunders submitted that so far as any risk on arrival at the airport was concerned there was very little evidence. The account set out in the extract from *New Zimbabwe* was the only documented evidence of a returnee being questioned. The other evidence related to the report in *The Observer* of 13 January 2002 where the returnee had been able to escape from detention. The evidence was not sufficient to suggest that all returnees were at risk or that there was a comprehensive information system available to the CIO at the airport. The evidence relied on was speculative. The evidence of detention and interrogation at the airport did not cross the threshold into persecution. The evidence about disappearances from the Zimbabwe Reference Group and the ZCCDAS provided no names or details. The evidence showed a distinction between the records held by the police and by ZANU-PF and the war veterans. Internal flight would generally be a viable option for those at risk in their home area.
34. So far as the first applicant was concerned, the position for teachers had improved since 2000/2001. The Adjudicator had not referred to this. The Secretary of State had not been able to raise the issue of internal flight before the application to the Tribunal as he had not been represented at the hearing before the Adjudicator. The evidence showed that teachers were now being invited back to their schools. The major problem for the first applicant arose following a strike at her school. There was no evidence of torture following the strike: paragraph 6.134-5 of the CIPU report. The first applicant could return to her husband and relocate to a different area in Zimbabwe.

35. In the appeal relating to the second applicant the Adjudicator had not erred in law. The second applicant had left using his own passport and could return on it. There would be no record of his political activities as his problems were localised. The Adjudicator was entitled to find that he could relocate. If he went to a heavily populated area, there was no reason to believe that enquiries would be made about him. There was no proper basis for a challenge to the Adjudicator's conclusions.
36. The third applicant had been found to be credible. Racial tensions in Zimbabwe had subsided and had remained relatively low: CIPU report paragraph 6.82-4. There may be a problem for some white people but there was no real risk for the third applicant. She had no political background and there was now no reason to believe that she would be of any adverse interest to the authorities on return. In so far as she had attended a demonstration in the United Kingdom there was no evidence that the Zimbabwe authorities would be able to identify her. It was unlikely that there was any file in relation to her. The likelihood was that she would be able to pass through the airport without problems and relocate. There were no exceptional circumstances which justified finding that removal would be disproportionate.

The background to the current situation in Zimbabwe

37. The background to the current situation in Zimbabwe can briefly be summarised as follows. Zimbabwe achieved formal independence from the United Kingdom in 1980. Robert Mugabe's ZANU-PF party won the largest number of seats in the elections in that year. Mugabe became Prime Minister leading a coalition government and has been in power since then. Constitutional changes in 1987 created an executive Presidency incorporating the ceremonial post of President with that of Prime Minister. ZANU-PF won a decisive election victory in 1995. The MDC was formed in September 1999 under the leadership of Morgan Tsvangiri. In February 2000 a referendum was held in a bid to consolidate the President's powers by amending the constitution. Although this was lost, the government party pushed through a constitutional amendment to allow the seizure of white owned farms. Elections were held in June 2000 and there was a systematic campaign of violence towards supporters of potential opposition politicians. Many acts of violence were perpetrated by ZANU-PF militants and war veterans. Politically motivated violence mostly perpetrated by government supporters against the MDC and commercial farmers continued throughout 2001 after the Parliamentary elections and in 2002 in the run up to the Presidential election of March 2002.
38. The government's human rights record remains poor. There is a significant amount of evidence that ZANU-PF supporters have committed numerous acts of abuse against opposition supporters and there is little prospect of redress from the police or authorities. In the determination relating to the second applicant the Adjudicator described the background material as showing that Zimbabwe was a country in chaos where flagrant breaches of human rights sanctioned by the government against supporters and potential supporters of the

opposition have dominated news reports over the past 3-4 years. The incidents set out in the CIPU reports do show a pattern of political intimidation and violence perpetrated by the government using affiliated organisations and supporters. The deteriorating human rights record has led to the European Union imposing sanctions and the Commonwealth suspending Zimbabwe's membership.

39. Because of the situation in Zimbabwe in January 2002 the Secretary of State announced a temporary suspension of the removal of failed asylum seekers. This was in response to concerns at the time about the serious deterioration in the situation in the run up to the Presidential election. According to the statement issued by the Minister of Citizenship and Immigration the government did not regard it as unsafe to return failed asylum seekers but in view of the turbulent political conditions considered that it would be appropriate not to enforce returns. In his statement the Minister said that although there had not been any improvement in conditions in Zimbabwe since enforced removal of failed asylum seekers was suspended the proportion of claimants whose claims were not well-founded had increased markedly and it was clear that the absence of enforced returns increasingly acted as a pull factor for Zimbabweans and others posing as Zimbabweans who did not require international protection. The policy on the return of failed Zimbabwean asylum seekers was to be brought into line with that of every other country and the temporary suspension of enforced returns would be ended. The statement confirmed that there was no doubt that political persecution, abuses of human rights and the denial of basic freedom persisted in Zimbabwe and that asylum decision making and the appeal system would continue to ensure that Zimbabweans who faced persecution and claimed asylum in the United Kingdom would continue to receive the international protection they needed.

Consideration of the issues: (i) political opponents.

40. The Tribunal accept the evidence of Professor Ranger. His expertise and knowledge of Zimbabwe is clear. In his oral evidence he made it clear that there were some sources to which he would attach relatively little weight and others which were more compelling because of the greater care in recording and analysing information. He accepted that much of the information he had collated was speculative but this was inevitable as he was being asked to deal with very recent events.
41. The Tribunal accepts from his evidence and from the news reports in Zimbabwe that those deported to Zimbabwe from the United Kingdom will be subject to interrogation on return. In the light of the interest and comment the resumption of returns has raised in the government press in Zimbabwe it seems to us to be inevitable that this will be the case. If it is being asserted by the Zimbabwe government that returns are being used as a cloak for British agents and saboteurs to be smuggled into the country, it is likely that those returns will be carefully monitored whether for that reason or to identify and intimidate opponents to the regime. The reports in the newspapers in Zimbabwe are consistent with there being an atmosphere of suspicion to those returned. The returnee in the New Zimbabwe report was released

following a telephone call made to an uncle serving in the army but only after an intimidating interview. We take into account that before returns were suspended there was some evidence that returnees were investigated. We have our doubts about the story of the returnee in the article from January 2002 and his escape out of an airport lavatory window at Harare and his subsequent travel to South Africa, but in any event we are concerned with returns at the present time. We also approach with caution the reports that a number of recent returnees have never re-appeared once they were taken from the plane by CIO agents and that others have disappeared. No names or details have been provided and if, as Professor Ranger says the returns have been carefully monitored, we would have thought such details would be available.

42. Nonetheless the Tribunal is satisfied in the light of the statements made by the Zimbabwean authorities that returnees are regarded with contempt and suspicion on return and do face a very hostile atmosphere. This by itself does not indicate that all returnees are at real risk of persecution but that returnees are liable to have their background and circumstances carefully scrutinised by the authorities. We are satisfied that those who are suspected of being politically active with the MDC would be at real risk. We agree with Professor Ranger that if the authorities have any reason to believe that someone is politically active the interrogation will be followed up. There is a reasonable degree of likelihood that this will include treatment sufficiently serious to amount to persecution.
43. In his submissions Mr Huffer argued that those suspected or perceived of being associated with the opposition have included activists, campaigners, officials and election polling agents, MDC candidates for local and national government, MDC members, former MDC members, MDC supporters, those who voted or believed to have voted for the MDC and those belonging to the MDC, families of the foregoing, employees of the foregoing, those whose actions have given rise to suspicion of support for the opposition such as attending an MDC rally or wearing a T-shirt, attending a demonstration, teachers and other professionals, refusal to attend a ZANU-PF rally or chant a ZANU-PF slogan or not having a ZANU-PF membership card. The Tribunal accept that these categories illustrate those who might be at risk but each case must depend upon its own circumstances. In a number of cases the Tribunal has drawn a distinction between low level and high level political activities. The situation in Zimbabwe is arbitrary and unpredictable and in these circumstances such a distinction is not determinative. The phrase "low level activities" is sometimes used as a way of describing someone whose background and profile is such that it is thought that he would not be of interest to the authorities but someone whose political activities may have been at a low level may have become of interest to the authorities. The current position taken by the Tribunal that each case must be decided on its individual facts should be continued. This approach has been endorsed by the Court of Appeal in *Mhute* [2003] EWCA Civ 1029 and *Ndlovu* [2004] EWCA Civ 1567. The factors identified by Mr Huffer are relevant to the assessment of risk but cannot be regarded as by themselves determinative in any particular appeal.

(ii) The election cycle

44. The Tribunal also accept that there is a heightened risk during election periods and their immediate aftermath. This reflects the pattern which has been followed since 2000. Before an election there is intimidation of opposition supporters and those perceived to be encouraging support for the opposition in particular teachers and civil servants. Following an election the phenomenon of post-election retribution is well documented. However, in the current situation in Zimbabwe, in our judgment it is artificial to attempt to draw too clear a distinction between election periods and those periods before the next Parliamentary or Presidential elections. The reality is that there is only likely to be a short break before campaigning starts for the next election, for example, the 2007 Presidential elections.
45. The Tribunal accept that there is a heightened risk at present for teachers because of their profession and the perception that they have supported and encouraged support for the MDC. The risk had fallen away in 2003 and early 2004 but has recently increased because of greater Zanu-PF presence in schools through the new union.

(iii) The existence and use of records.

46. We have heard argument about the use of the records held by the authorities on return at Harare airport. More evidence is available to us than was before the Tribunal in *FN*. The Tribunal accepts that returnees are likely to be closely questioned about what they have been doing in the United Kingdom. However, it is only those who are not at risk of persecution or ill-treatment contrary to Article 3 who are likely to be removed and on this basis interrogation will not reveal anything of adverse interest to the authorities. Any risk arising from the maintenance of records is an integral part of the assessment of whether the applicant in his particular circumstances is at risk on return. The fact that a file has been kept on an applicant does not mean that he or she will be at risk. Professor Ranger told the Tribunal that he knows that the Zimbabwean authorities have a file on him. He confirmed that Zimbabwe is a country where a lot of records are kept. He described it as a "Stasi style" collection of information. We accept that if someone is interrogated there may be information which the CIO are able to call upon whether from their own files or from the local party structures in the returnee's home area. However, the existence of the files and the availability of information does not mean that there is a separate risk on return at the airport which can be differentiated from a general risk whether in the country as a whole or in an applicant's home area. The issue is whether an applicant is of adverse interest to the authorities. The fact that an applicant has a file indicates that he is or has been known to the authorities but without more it does not indicate whether he would currently be of interest. The assessment of risk should focus on what has happened to the applicant and what his current profile is rather than speculation on whether he has a file and if so, what might be in it.

(iv) The risk to white Zimbabweans.

47. The Tribunal accepts Professor Ranger's evidence that the fact of being a white Zimbabwean does not now of itself put an applicant in danger. The issue remains whether the individual in his or her particular circumstances is regarded as a political opponent.

(v) Internal relocation

48. The Tribunal now turn to the issue of whether internal relocation is a viable option for those at risk in their home area. The Tribunal accept that there is a network of information whereby the CIO, ZANU-PF and the war veterans can check up on incomers in a different area. In small towns and in rural areas new arrivals are at risk of being checked. Someone who has been or is at risk in his home area may find that information is forwarded to where he has sought to relocate. In such circumstances relocation will not be a viable option. We are satisfied that in the current situation of excessive hostility towards returnees the issue of relocation does need to be considered with particular care. Someone who has come to the adverse attention of the war veterans or ZANU-PF and who has been noted as a political opponent in his home area in our judgment is unlikely to be able to relocate in safety.
49. If an applicant has been a victim of arbitrary violence in circumstances where his identity is unlikely to have been noted and recorded, then internal relocation would be available. The Tribunal accept that the absence of family networks outside the home area make it difficult to relocate. Even the presence of family networks must be considered with caution because of the propensity of ZANU-PF supporters to take reprisals against family members.

(vi) Grain distribution.

50. The Tribunal heard evidence about the discriminatory use of food distribution to punish MDC supporting areas. However, the evidence is tenuous. The MDC have complained that the hardest hit areas are those which support the opposition and that in other areas MDC activists are discriminated against. According to Professor Ranger many international reports suspect that such complaints are well-founded. In our judgment this factor adds little to the assessment of whether an applicant is likely to be at risk on return. The refusal of food on political grounds in famine conditions is clearly capable of being persecution but on the evidence available relating to the present situation in Zimbabwe the Tribunal is not satisfied that such a claim is made out in respect of the issues of either persecution or internal relocation.

Summary

51. It may be helpful at this stage if we summarise our findings and conclusions on the issues raised in this appeal:

- a) There does continue to be a real risk of persecution for those who are or are perceived to be politically active in opposition to and for this reason of serious adverse interest to the present regime. This can potentially include the categories identified in paragraph 43 but none of these factors by itself is determinative. Each case must be looked at on its own individual facts. Some categories are more likely to be at risk than others such as MDC activists and campaigners rather than supporters but we do not exclude the possibility that in exceptional cases those with very limited political involvement could in their particular circumstances find themselves at real risk.
- b) The risk to political opponents is increased both before and immediately after elections but this fact is of limited importance and is only likely to have any material bearing in borderline cases.
- c) There does continue to be a risk for teachers with an actual or perceived political profile of support for the MDC.
- d) Records are kept by various groups and authorities including the CIO, local police and Zanu-PF party organisations and the war veterans but the existence of these records does not materially add to the assessment of the risk of persecution in an individual case which depends on the applicant's profile and background. It seems to us unlikely that someone who has been caught up in random and intimidatory violence would without more be regarded as of continuing interest to the authorities. However, the fact that these records exist may indicate that an applicant found to be at risk is unlikely to be able to relocate in safety. In this context it will also be important to take into account whether the risk is from the authorities or from a local branch of Zanu-PF or locally based war veterans.
- e) The current atmosphere of hostility to the return of failed asylum seekers does not of itself put at risk those who would otherwise not be at real risk but does serve to reinforce the fact that asylum claims must be considered with care and where there is any uncertainty, any doubts must be resolved in the applicant's favour.
- f) The fact of being a white Zimbabwean does not of itself put an applicant in danger
- g) Where an applicant is at risk in his home area, the assessment of internal relocation must take into account the fact that there is a network of information available to the authorities, ZANU PF and war veterans. An applicant who is regarded as an active political opponent in his home area may not to be able to relocate in safety but this is a question of fact to be assessed in the circumstances of each case.
- h) The use of grain distribution as a way of taking reprisals against political opponents does not arise in this appeal. We do not rule out the possibility of a case succeeding on this ground alone but the evidence would have to be clear and compelling. In so far as this was an issue in *Ndlovu* [2004] EWCA Civ 1567, the case turned on the findings of fact made by the Adjudicator. The Court of Appeal held that the Tribunal was wrong to find that the Adjudicator had erred in law

but also emphasised that the adjudicator's decision did not and could not create a factual precedent of any kind.

- i) There is no general risk for failed asylum seekers of a breach of article 3 as a result of the current hostility towards such returnees.
- j) This determination is to be treated as updating and superseding all previous country guidance cases most of which were decided in 2002. The following cases are therefore no longer to be regarded as providing country guidance: *LS (Persecution – CIO) Zimbabwe* [2002] 03342, *LM (MDC) Zimbabwe* [2002] UKIAT 03916, *BN (MDC) Zimbabwe* [2002] UKIAT 05518, *BS (Liberty Party – CIO airport) Zimbabwe* [2002] UKIAT 06461, *AB (Persecution – CIO) Zimbabwe* [2002] UKIAT 03598 and *FN (Risk –relocation –MDC)* [2003] UKIAT 00163. The Tribunal will now turn to the facts in the three individual appeals.

The first applicant

- 52. This is an appeal by the Secretary of State. The Adjudicator found the first applicant to be a credible witness. In the light of what had happened to her in the past and the fact that she is a teacher, the Adjudicator was satisfied that there would be a real risk of persecution on return. The grounds argue that although the Adjudicator accepted the credibility of the account, she failed to address whether there would be a viable internal flight option. The grounds refer to the Tribunal decision in *FN* making it clear that there is no evidence to show that the Zimbabwean authorities have a record keeping system of previous detentions which can be used against returnees at the airport. The grounds also rely on the April 2004 CIPU report that unlike in the previous year there had been no reports that schools were shut down as a result in the torture of teachers who supported the MDC and although teachers still faced intimidation there were no reports that ruling party supporters attacked teachers suspected of supporting the opposition. It is argued the Adjudicator had failed to take this information into account when assessing whether the first applicant would have a well-founded fear of persecution.
- 53. The Tribunal is not satisfied that there is any adequate basis for a challenge to the Adjudicator's assessment of risk on return. An appeal can now only be brought on a point of law. She has considered the position of teachers and there is no reason to believe that she left out of her account those parts of the report dealing with the relatively slight improvement in the situation faced by teachers. Her findings on the issue of risk were properly open to her and cannot be categorised as unreasonable. There is no substance in the second ground. The first ground of appeal argues that the Adjudicator failed to consider the issue of internal flight. The issue was not raised before her and had not been raised in the reasons for refusal letter. The Secretary of State was not represented at the hearing. In these circumstances the tribunal is not satisfied that this issue should be raised on appeal: paragraphs 33-4 of the judgment of Lord Woolf CJ in *P & M v Secretary of State* [2004] EWCA Civ 1640. The Tribunal is not satisfied that the Adjudicator erred in law by failing to deal specifically with this issue.

54. The Tribunal would accept that just as an Adjudicator should take obvious points in favour of an appellant, it is in the public interest that he should take points obviously against the appellant as it would be against the public interest for those not entitled to asylum to be granted asylum. However, on the facts of this case the issue of internal relocation is not something which the Adjudicator should obviously have considered. For the reasons the Tribunal have ready set out, we are not satisfied that someone in the first applicant's circumstances whose risk arises because of her activities for the MDC and the fact that she is a teacher would be able to relocate in safety elsewhere in Zimbabwe. The appeal by the Secretary of State is dismissed.

The second applicant

55. The appeal of the second applicant turns substantially on the issue of internal relocation. The Adjudicator found that he had given a true account of events in Zimbabwe and that he would be at risk from ZANU-PF and war veterans in his home areas of Murewa and Highfield, Harare. The Adjudicator accepted that he was at risk from state agents. He found that there would be no reason for him to be stopped at the airport and that he could avoid the risk in his home area by relocating elsewhere. The Adjudicator referred to many areas as controlled by the MDC where he could safely relocate. There are certainly areas where the MDC are in a majority in the sense that they have MDC representatives in Parliament but no areas which can be described as controlled by the MDC in that those who reside there would be safe from the ZANU-PF or war veterans. There was no evidence on which such a finding of fact could be made.
56. For this reason, the Tribunal is satisfied that the Adjudicator did err in law in his approach to the assessment of internal flight. In our view the proper course is for the Tribunal to reassess this issue in the light of the evidence currently available. The likelihood is that on relocation inquiries would be made about the second applicant which would lead to information being obtained about his activities in his home area. These activities include active support for the MDC by himself and his father. The second applicant has been the victim of violence and his shop was partially burned down by ZANU-PF youth. This is consistent with a reprisal raid following the election. Subsequently he was detained by ZANU-PF supporters and was able to escape from that detention. His activities on behalf of the MDC are such that there is a real risk that he would be regarded as an active supporter and a political opponent. The Tribunal is not satisfied that internal relocation is a viable option for the second applicant. In the present atmosphere in Zimbabwe in our judgment he is unable to relocate in safety. The issue of undue harshness does not therefore arise. The appeal by the second applicant will be allowed.

The third applicant

57. It is submitted on behalf of the third applicant that the Adjudicator failed to take proper account of the background evidence and also failed to consider the issue of internal relocation. It is argued that she would be perceived as a political opponent and in these circumstances would

be at real risk of persecution. It is clear that the Adjudicator sympathised with the third applicant but, for the reasons he gave, was not satisfied that she would be at real risk of persecution on return. In our judgment the Adjudicator's findings were properly open to him on this issue. It is unlikely that the third applicant would seek to return to the family farm in any event. She is not someone who has any record of political activity in Zimbabwe. Although her father was a member of the MDC and made financial donations to the party and the third applicant was a supporter, she never took any active part in politics in Zimbabwe and has never herself come to the attention of ZANU-PF or the war veterans. Even if the CIO does have a file, which in our view is very unlikely, there are no reasonable grounds for finding that she would now be of any adverse interest to the CIO.

58. The Adjudicator considered the issue of internal protection on the basis that if the third applicant returned to her home area she would be at risk. He found that it would not be unreasonable or unduly harsh to expect her to relocate in Harare. He was entitled to conclude that it was not unreasonable to expect her to do this as she was educated and in all likelihood would be able to find employment. The Tribunal is not satisfied that there would be anything on the files or any information network which would put her at risk. The evidence from Professor Ranger which the Tribunal accept is that being white by itself would not now put her at risk. The fact that a photograph has been taken outside the Embassy does not provide a sufficient basis for a finding that she would be at risk on return. In the light of the evidence about the number of photographs taken and the records kept by the authorities it is unlikely that she would be identified on return from the photograph and even less likely that the authorities would regard her as an active opponent of the regime. The risk is so small that it can reasonably be discounted. Compassionate though the third applicant's circumstances are, the Tribunal is not satisfied that the Adjudicator erred in law in his assessment of the risk on return or on the issue of internal relocation.

Decisions

59. For the reasons the Tribunal have given, the appeal by the Secretary of State in respect of the first applicant's appeal is dismissed, the appeal by the second applicant is allowed and the appeal of the third applicant is dismissed.

H J E Latter
Vice President

Appendix 1: Expert Evidence

Report from Professor Ranger dated 7 February 2005

Appendix 2: Documents

First appeal

Teachers in Zimbabwe: We are very afraid 19 August 2004
BBC News Report (Teachers Targeted) 8 February 2002
Mugube Bends Minds in Hatred Camps – The Sunday Times
9 February 2003
Teaching them a lesson report on the attack on the Zimbabwean teachers.
Zimbabwean Human Rights NGO Forum 20 September 2002
Zimbabwe fear spreads BBC News 6 June 2000
Zimbabwe Atol of Impunity Amnesty International

Second Appeal

CIPU Report October 2004
Human Rights Watch World Report 2005 Zimbabwe 13 January 2005
Zimbabwe Human Rights NGO Forum Political Violence Report
October 2004
Zimbabwe Human Rights NGO Forum Political Violence Report
September 2004
Zimbabwe Human Rights NGO Forum Political Violence Report
August 2004
The Guardian : Mugube accused of election torture – 19 August 2004
US Department of State Country Reports 2003

Third appeal

Telegraph Report Forces more whites out of Zimbabwe – 10 July 2004
Telegraph Report Rape Gangs Targetting Whites in Zimbabwe
7 February 2004
ZW News Government Intensifies Farm Evictions – 2 February 2005
ZW News Zimbabwe Agricultural Welfare Trust – 2 February 2005
BBC News Mugube warns white Zimbabweans – 13 December 2002
BBC News Mugube threatens White Farmers – 7 April 2000
Africa News Mugube threatens Zim Whites – 2 July 2001
The Zimbabwe Situation (extracts)
US State Department Report 2003

Documents produced by Secretary of State

CIPU report October 2004
UK Home office IND Zimbabwe Bulletin 2/2004

Other documents produced at the hearing

Amnesty International Report 2004 Zimbabwe 26 February 2004
A Gustapo Welcome for Zimbabwe Deportees from New Zimbabwe
To March 2005
SW Radio Africa – 4 February 2005

Appendix 3:

Cases cited or referred to
MN (Risk – MDC) Zimbabwe [2002]UKIAT 02246
BN (MDC) Zimbabwe CG [2002] UKIAT 05518
FN (Risk – relocation –MDC) Zimbabwe CG [2003]UKIAT 00163
LS (Persecution – CIO) Zimbabwe CG [2002] UKIAT 03342
P & M v Secretary of State [2004] EWCA Civ 1640
Mhute [2003] EWCA Civ 1029
Ndlouu [2004] EWCA Civ 1567

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