

**1002650 [2010] RRTA 595 (14 July 2010)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1002650

**DIAC REFERENCE(S):** CLF2009/167595

**COUNTRY OF REFERENCE:** Zimbabwe

**TRIBUNAL MEMBER:** Suzanne Leal

**DATE:** 14 July 2010

**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (ii) that the second named applicant satisfies s.36(2)(b)(i) of the Migration Act, being a member of the same family unit as the first named applicant.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The primary visa applicant, who claims to be a citizen of Zimbabwe, arrived in Australia [in] September 2007. The secondary visa applicant, who also claims to be a citizen of Zimbabwe, arrived in Australia [in] October 2009. The visa applicants applied to the Department of Immigration and Citizenship for Protection (Class XA) visas [in] December 2009. The delegate decided to refuse to grant the visas [in] March 2010 and notified the applicants of the decision and their review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the first named applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicants applied to the Tribunal [in] April 2010 for review of the delegate's decisions.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicants have made a valid application for review under s.412 of the Act.

### **RELEVANT LAW**

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Migration Regulations 1994 for the purposes of the definition.
9. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

## Definition of 'refugee'

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

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
11. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
12. 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.
13. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
14. 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.
15. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
16. 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.

17. Fourth, an applicant's fear of persecution for a Convention reason must be a "well-founded" fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a "well-founded fear" of persecution under the Convention if they have genuine fear founded upon a "real chance" of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A "real chance" is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
18. 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.
19. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

#### **CLAIMS AND EVIDENCE**

20. The Tribunal has before it the Department's file relating to the applicants in addition to the Tribunal's own file.
21. The applicants appeared before the Tribunal [in] May 2010 and again [in] June 2010 to give evidence and present arguments. The Tribunal also received oral evidence from the primary visa applicant's [Relative 1].
22. The applicants were represented in relation to the review by their registered migration agent.
23. Included on file is the following material:
  - Birth certificate for [Applicant 1], showing her to be the child of [name deleted: s.431(2)], stating her date of birth to be [date deleted: s.431(2)] and her place of birth to be [hospital deleted: s.431(2)], Bulawayo;
  - Certificate of marriage for [Applicant 2 and Applicant 1] dated [in] November 2009;
  - Copy of Zimbabwean passport for [Applicant 1];
  - Copy of Zimbabwean passport for [Applicant 2];

#### **Visa application form**

24. In her visa application form, [Applicant 1] explained why she left Zimbabwe:

I used to be an MDC [*Movement for Democratic Change*] youth leader during my time of stay in Zimbabwe. I used to organize rallies for MDC conference and how to fight our enemy. During that time, I used to be harassed, abused. Sometimes ZANU-PF youth thugs almost got to a point of raping me. I was really disturbed in my education. At that time I was in Bulawayo where [Relative 1] was an active member

of MDC, [Relative 1] is my legal guardian since the death of my mother in 1989 when my mother died due to injuries and stress she incurred during the ZANU-PF Gukurahundi genocide. [Relative 1] sneaked out of the country because the persecution was getting worse by the ZANU-PF thugs. When [Relative 1] migrated to Australia, the situation got worse because the thugs were constantly coming to our house which they later destroyed. I fled to Harare to stay with [Relative 2] but they later found me and started to harass me about the whereabouts of [Relative 1].

At that time, [Relative 1] organized a sponsor for me to migrate to Australia .

If I go back to my country I will be killed, tortured, harassed, abused or even killed by the ZANU-PF thugs by not supplying information about the whereabouts of my [Relative 1]. I won't be able to handle any more of the scene, I experienced during my stay in Zimbabwe and it affected me psychologically and I am finding it hard to forget all what happened at [Relative 1]'s house, it still haunts me.

25. The applicant wrote of her fears should she return to Zimbabwe:

I fear to go back because I feel not safe since my family ([Relative 1]) fled the country. I fear to be raped, harassed, abused, tortured or even killed by the ZANU-PF thugs since there is no security from the police and the police are loyal to the ZANU-PF thugs. I fear that the ZANU-PF things and militia are the most dangerous people in Zimbabwe.

If I got back, my chances of being killed or missing are very high. Anything can happen because some people went missing after visiting their families. As I was an MDC member they might want to revenge since we used to clash at the rallies and I witnessed a lot of bloodshed during those clashes and I don't want to see it again. I am leaving with negative memories and I find it hard to forget. There is no rule of law in Zimbabwe. I fear myself going back because all ZANU-PF officials are thugs and the youths are the most dangerous to an extent that they might not want to see me.

The authorities will not protect me because when [Relative 1]'s house was destroyed, the authorities did nothing and no action was taken up to now. Some of the senior authorities organize some youth to come and destroy our house. Since we started supporting MDC they never talked to us and plotting criminal things upon us. They want to see us in pain, suffering then they will be happy. There is no protection since the authorities are sponsoring the ZANU-PF youth and Border Gezi to terrorise people. They don't want to listen to your problems because they say you are an MDC supporter.

26. According to her visa application form, [Applicant 1] lived in Bulawayo from her birth until 2000 and in Harare from 2000 to 2007, when she left Zimbabwe for Australia.

### **Departmental interview**

27. [In] February 2010, [Applicant 1] took part in an interview with a delegate of the Department of Immigration. She confirmed that her mother died in 1989 as a result of injuries sustained during an attack and that her father disappeared after that, leaving her and her sister to be raised by [Relative 1].
28. She told the delegate that [Relative 1] had been attacked in her house and that one of her fingers had been severed. [Applicant 1] agreed that her fear of persecution was because of [Relative 1]. She told the delegate that she didn't feel that it was safe for her

to return to Zimbabwe, 'because the situation never changed there. They are still beating people, they are still killing people.'

29. She confirmed her previous position as one of the leaders of MDC youth and stated that she believed she had been elected to the position in part because [Relative 1] had been such an active member within the party. She told the delegate that despite having stopped her active involvement with the MDC in 2000, she has remained a member and supporter of the party.
30. She told the delegate that in 2007, people came to [Relative 2]'s house looking for [Relative 1]. It was at that point [Relative 1] told her to come to Australia because it was not safe for her to remain in Zimbabwe.

### **Tribunal hearing**

31. [Applicant 1] told the Tribunal that she arrived in Australia on a Student visa and has completed her Certificate III and IV in disability studies. [Relative 1] paid for her fees. When asked by the Tribunal why she had waited so long to apply for protection, she told the Tribunal that she had been unaware of the protection visa system and only found out about it last year in December. She told the Tribunal that she hadn't discussed the possibility of applying for protection with [Relative 1].
32. When asked why she feared returning to Zimbabwe, [Applicant 1] told the Tribunal:

I used to be attacked by the ZANU-PF and the police because I was a MDC member and because they were looking for [Relative 1].
33. [Applicant 1] was unable to show her MDC membership card to the Tribunal as she left it in Zimbabwe because she hadn't anticipated needing it in Australia. She left her membership card at [Relative 2]'s place where she had been living.
34. Her involvement with the MDC party began prior to the 2000 referendum in Zimbabwe. [Applicant 1] told the Tribunal that she became a member of the MDC when it was first formed. She explained that the MDC had evolved from the Zimbabwean Congress of Trade Unions and was attractive to Zimbabweans who wanted to stand up for a change because Robert Mugabe had been president for a long time and 'things were starting not to go well.' The applicant had just finished her O levels and became interested in becoming part of the MDC. She named [Person A], now a councillor on the Bulawayo City Council, as one of the people who influenced her decision to join the MDC and who she came to know as a leader of rallies held by the MDC. At that time, [Applicant 1] had been living in Bulawayo in Matabeleland North. [Applicant 1] became involved in distributing flyers: she and other MDC supporters would be driven in a van to their destination where they would distribute flyers for the party. [Person A] would sometimes come on these trips and although [Applicant 1] spoke of seeing him, she said she hadn't spoken to him personally. She described one rally which had taken place in a stadium in Pelandaba in Bulawayo.
35. When voting took place for the referendum, the applicant worked for the MDC as a monitor in [ward deleted: s.431(2)]. She told the Tribunal that her job was to walk around and check that there was no violence taking place. [Applicant 1] would report any violence to the police.

36. [Applicant 1] told the Tribunal that she was attracted to the MDC because she wanted a change – and the MDC was offering such a change. [Applicant 1] wanted a change because food prices kept on rising, unemployment was on the rise and the country was deploying soldiers to the Democratic Republic of Congo. She didn't agree with the money being spent on the deployment of soldiers when there was so much unemployment in Zimbabwe.
37. At that time, her views of Robert Mugabe were that:
- He was old and considering that he has been a president for a long time, he was meant to step down and give the power to someone else. I thought he should have done that.
38. [Applicant 1] told the Tribunal that [Relative 1] and sister were also involved with the MDC. The applicant's sister remains a member of the MDC and is living in Bulawayo with her children. According to [Applicant 1], her sister is not safe while she remains living in Bulawayo or in Zimbabwe generally. [Applicant 1] explained that because her sister is not a member of the ZANU-PF, she is denied access to food for her children and is unable to have them immunised. This is because the production of a ZANU-PF card is required before food is handed over or before medical services can be accessed.
39. [Applicant 1] told the Tribunal that [Relative 1] had been actively involved in the MDC and had become a target for the ZANU-PF. [Relative 1] is the [relationship deleted: s.431(2)] of the applicant's late mother. Because the applicant's father 'disappeared', the applicant took her mother's surname, [name deleted: s.431(2)]. This is why she and [Relative 1] share the surname.
40. After the 2000 elections, young people were forced to attend training at the Border Gezi site. Because [Relative 1] heard that girls who attended the training were returning pregnant, she forced the applicant to go to Harare to stay with [Relative 2] so she could avoid doing the training.
41. The applicant told the Tribunal that during this time, she had been kidnapped by the ZANU-PF:
- They came to our home and knocked. No-one answered and they forced their way in. One of them hit me. One boy hit my sister with a bottle.
42. She was taken to a place 'where the ZANU-PF torture people and other MDC people – and hit me on the bottom on my feet.' The applicant became upset at this time and the Tribunal decided to adjourn the hearing to a later date.
43. The Tribunal hearing was continued [in] June 2010. [Applicant 1] told the Tribunal that she had been detained for over two weeks. She was taken from her home to a farm. She had been blindfolded so she was unable to describe the location of the farm. When she was released, she was still wearing the skirt and blue blouse she had been wearing when she had been detained. The day of her release, she was driven to a nearby town and left to make her own way home. Someone stopped for [Applicant 1] and gave her a lift to Bulawayo. Once she got to Bulawayo, she took a combi van bus home. Because she had no money with her, she was allowed to ride without paying.
44. At [Relative 1]'s insistence, [Applicant 1] moved to Harare in 2000. For [Applicant 1]'s safety, [Relative 1] asked her not to remain active in the MDC. From this point,

[Applicant 1] stopped her active involvement in the party but retained her membership of the party.

45. [Applicant 1] came to Australia on a student visa which had been arranged by [Relative 1] who had moved to Australia in 2003.
46. [Relative 1] has since returned to Zimbabwe on two occasions: once in 2006, to visit [Applicant 1] and her sister, and again in 2009 to be involved in the funeral arrangements for [Relative 2].
47. [Applicant 1]'s sister remains living in Bulawayo with her young family. She is finding it difficult to get enough food to feed her children. This is because food is not distributed to people like her who hold a MDC card instead of a ZANU-PF card. Without a ZANU-PF card, it is also difficult to access water, medication and medical treatment. [Applicant 1]'s sister is not prepared to become a member of the ZANU-PF in order to gain better access to supplies and services.
48. [Applicant 1] told the Tribunal that she fears being killed if she were to return to Zimbabwe. She is particularly concerned for her welfare given the likelihood of presidential elections in 2011. She is worried that if she were to return now, given her former political profile, she would be seen to be returning to support the MDC in preparation for the upcoming elections.
49. [Applicant 1] told the Tribunal that:

Everywhere they are asking for ZANU-PF cards. Everywhere, we won't be able to access services.
50. [Applicant 1] was familiar with recent developments within the MDC and was able to direct the Tribunal to the NGO activists' website [kubatana.net](http://kubatana.net).
51. Her hope for Zimbabwe is that next year's elections are peaceful, no matter what the outcome, and for people not to be told how to vote. She remains supportive of the MDC because

They are looking for investment. It doesn't matter whether you are black or white, it doesn't matter who you are and where you come from: that's how a nation should be.
52. [Applicant 1]'s husband, [Applicant 2] also gave evidence before the Tribunal. He confirmed that he came to Australia in October 2009 as a dependent of [Applicant 1]. They married in Australia [in] November 2009.
53. [Applicant 2] joined the MDC in January 2005. He explained his decision to join the party:

Things in Zimbabwe were not good and the MDC was the only party with better policies. I wanted to support them with the economic recovery. In Zimbabwe, the inflation had gone so high. The MDC were going to look for investments. The current president has lost all investors, there are no activities in industry, in education, there was no production. The MDC wanted to encourage investments.
54. He told the Tribunal that as a MDC member, he had trouble getting through territory with a ZANU-PF stronghold. He would be asked to show a ZANU-PF card and then would be questioned at length as to why he didn't have one.



55. Although [Applicant 2] accepts that there is now a power-sharing agreement in place in Zimbabwe, he remains concerned that the police, armed forces and security forces remain in the hands of the ZANU-PF. Because of this, there is no state protection for MDC members and the rule of law has no effect. If he were to return to Zimbabwe, [Applicant 2] fears persecution from members of ZANU-PF because he is a member of the MDC, particularly in the light of the next presidential elections, and because the country's security is in the hands of the ZANU-PF.
56. [Applicant 2] believes that he and [Applicant 1] would be viewed with particular suspicion on their return to Zimbabwe because they have been living in Australia
- The moment you start to associate with westerners, there is a mentality that we are sending money back to the MDC in Zimbabwe; they will think we are saving funds for MDC.
57. [Applicant 2] told the Tribunal that [Applicant 1] had previously been active in the MDC but had stopped her activism in the party. However, unless she renounces her membership, she is still seen to be a member of the MDC and so remains subject to persecution. He told the Tribunal that he wishes to continue as a member of the MDC because he wants to see improvements in Zimbabwe.
- The ZANU-PF are self-centred. They want everything for themselves. Everyone should have access to education, everyone should have freedom. ZANU-PF doesn't offer that. With the MDC, their rallies are peaceful. I still believe the MDC will encourage investment in Zimbabwe.
58. [Applicant 2] explained how his family is affected by the shortages of supplies in Zimbabwe:
- My family rely on our support. When it comes to buying things, there are problems when there are shortages of food. That is when you have to present your ZANU-PF card. If you have no card, you have no access to education or medical treatment. My mother has a problem with her leg but she has no medical help and no medication. Most of the clinics are government run and to get that work, most of the employees are from the ZANU-PF. If you are a ZANU-PF member, you get what you want; if not, you can die out here
59. [Relative 1],[name deleted: s.431(2)], gave evidence to the Tribunal by telephone. She was reluctant to speak about her time in Zimbabwe telling the Tribunal, 'when I came here, I actually tried and worked hard to close the topic you want to ask me about.' She describes her relationship with [Applicant 1] as being a mother-daughter type relationship. She confirmed that when she was in Zimbabwe, she had been a covert member of the MDC, and that she had to be careful not to publicise her role in the party because of her job as a public servant. She described the trade union origins of the party and spoke of the early role of Morgan Tsvangirai in the movement.
60. She confirmed that [Applicant 1] had been active within the party and that her activities included attending rallies, putting up posters and general campaigning. She also stated that after the referendum when the situation began to deteriorate in Zimbabwe, she had advised [Applicant 1] to stop her involvement with the party.
61. In reply to the Tribunal's question as to what it is like to live in Zimbabwe, [Relative 1] said:

It's hard to tell but in Zimbabwe you can't predict what would happen for you. I don't know whether it would be safe or not, it's hard for me to say. I heard about an attack on a woman recently. I feel that it is not safe.

62. She told the Tribunal that when she returned to Zimbabwe, she stayed away from Harare and Bulawayo. She told the Tribunal that there is difference between returning to Zimbabwe for a holiday and returning there to live.

To go back there permanently, I fear everything. It's different to here, there is no rule of law. I hope the MDC might get into power and things might change.

## **INDEPENDENT EVIDENCE**

### *Political situation in Zimbabwe*

63. The Zimbabwean Government and the ZANU-PF, the party led by President Robert Mugabe, have a record of past and continuing human rights abuses. There was considerable violence associated with presidential and parliamentary elections in 2008, as outlined in the following summary from the US Department of State:

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

The government continued to engage in the pervasive and systematic abuse of human rights, which increased during the year. The ruling party's dominant control and manipulation of the political process through violence, intimidation, and corruption effectively negated the right of citizens to change their government. Unlawful killings and politically motivated abductions increased. State-sanctioned use of excessive force increased, and security forces tortured members of the opposition, student leaders, and civil society activists with impunity. Security forces refused to document cases of political violence committed by ruling party loyalists against members of the opposition. Prison conditions were harsh and life threatening. Security forces, who regularly acted with impunity, arbitrarily arrested and detained the opposition, members of civil society, labor leaders, journalists, demonstrators, and religious leaders; lengthy pre-trial detention was a problem. Executive influence and interference in the judiciary continued. The government continued to evict citizens

and to demolish homes and informal marketplaces. The government continued to use repressive laws to suppress freedoms of speech, press, assembly, association, academic freedom, and movement. Government corruption remained widespread. High-ranking government officials made numerous public threats of violence against demonstrators and members of the opposition. A nearly three-month ban on the activities of nongovernmental organizations (NGOs) exacerbated food insecurity and poverty. After the ban was lifted, security forces, war veteran groups, and provincial governors continued to interfere with NGO operations, hampering food distributions. Tens of thousands of citizens were displaced in the wake of election-related violence and instability, and the government impeded NGOs' efforts to assist them and other vulnerable populations. The following human rights violations also continued: violence and discrimination against women; trafficking of women and children; discrimination against persons with disabilities, ethnic minorities, homosexuals, and persons living with HIV/AIDS; harassment and interference with labor organizations critical of government policies; child labor; and forced labor, including of children. (US Department of State 2009, 2008 Country Reports on Human Rights Practices: Zimbabwe, 25 February)

64. As a result of the 2008 general elections, the political situation in Zimbabwe remains complex. A unity government, comprised of two opposing political parties - the Zimbabwe African National Union Patriotic Front (ZANU-PF) and the Movement for Democratic Change (MDC) are now engaged in a power sharing arrangement through the Global Political Agreement (GPA). Under this agreement, Robert Mugabe, leader of the ZANU-PF, remained the President of Zimbabwe whilst Morgan Tsvangirai, leader of the MDC, became the Prime Minister. This power sharing agreement between ZANU-PF and MDC “marks a sort of resolution to a political crisis that has been ongoing in the country since the disputed 2008 elections.”<sup>1</sup>
65. However, under the GPA, the MDC and ZANU-PF were unable to reach agreement on several issues including the distribution of portfolio ministries between the parties. Therefore, the GPA did not create a government of unity but instead has led to a political stalemate due to the fact that the ZANU-PF has retained most of its power and continues to dominate the Zimbabwean government. Further, factions of the ZANU-PF still engage in politically motivated violence against Movement for Democratic Change (MDC) supporters and any other people perceived to be opponents to their party.
66. According to the most recent US Department of State Report:

Security forces, the police, and ZANU-PF-dominated elements of the government continued to engage in the pervasive and systematic abuse of human rights. ZANU-PF’s dominant control and manipulation of the political process through trumped-up charges and arbitrary arrest, intimidation, and corruption effectively negated the right of citizens to change their government.<sup>2</sup>
67. According to a Stratfor Global Intelligence article published in 2009, “the move does not mean that actual power is being transferred from ZANU-PF to the MDC,

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<sup>1</sup> ‘Zimbabwe: A Power-Sharing Deal with No Real Sharing of Power’ 2009, Stratfor Global Intelligence website, 30 January <http://www.stratfor.com> – Accessed 8 April 2010.

<sup>2</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Zimbabwe*, US State Department website, 11 March <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135984.htm> – Accessed 23 March 2010.

however...the power-sharing agreement is structured in such a way that ZANU-PF has not really given up much actual power to the opposition.”<sup>3</sup>

68. Human Rights Watch (HRW) reported that the signing of the GPA has not brought to an end the ZANU-PF’s attacks on its opponents and critics. It continued to use state institutions against MDC supporters, civil society activists and human rights defenders.<sup>4</sup> Further and notwithstanding the implementation of this power sharing agreement, HRW in February 2010 reported that: “there has been no meaningful political transition, and that ZANU-PF continues to engage in political violence against perceived opponents.”<sup>5</sup>

69. According to a further Human Rights Watch report, *False Dawn – The Zimbabwe Power-Sharing Government’s Failure to Deliver human rights improvements*:

Since the formation of the power-sharing government, a pattern has developed in which MDC legislators and activists are targeted for arrest by the police and the Office of the Attorney General on apparently baseless charges.

...the police in Zimbabwe continue to harass members of the media and to improperly limit the right to free expression.

...While police have been quick to make these kinds of arrests based on politically motivated charges, no action has been taken against those who attack MDC members and supporters.<sup>6</sup>

#### *Movement for Democratic Change (MDC)*

70. According to the website for the Movement for Democratic Change (MDC), the party was formed in 1999 as a result of the “need for a political movement to directly and politically confront the ZANU-PF Government with a view to seeking the people’s mandate to form an alternative government”.<sup>7</sup> The party has its roots in Zimbabwe’s labour movement, but is also “backed by business, church, women’s organisations, students, human rights and civic groups, the impoverished rural population and the urban poor.”<sup>8</sup>

71. According to the US Department of State’s Background Report on Zimbabwe for 2009:

The MDC’s first opportunity to test opposition to the Mugabe government came in February 2000, when a referendum was held on a draft constitution proposed by the government. Among its elements, the new constitution would have permitted President Mugabe to seek two additional terms in office, granted government officials immunity from prosecution, and authorized government seizure of white-owned land. The referendum was handily defeated. Shortly thereafter, the government, through a

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<sup>3</sup> ‘Zimbabwe: A Power-Sharing Deal with No Real Sharing of Power’ 2009, Stratfor Global Intelligence website, 30 January <http://www.stratfor.com> – Accessed 8 April 2010.

<sup>4</sup> Human Rights Watch 2009, ‘Crisis without Limits: Human Rights and Humanitarian Consequences of Political Repression in Zimbabwe’ January [www.hrw.com](http://www.hrw.com) Part V p.24.

<sup>5</sup> Human Rights Watch 2010, ‘Zimbabwe One Year On, Reform a Failure’ 2010, 12 February <http://www.hrw.org/en/news/2010/02/12/zimbabwe-one-year-reform-failure> – Accessed 23 March 2010.

<sup>6</sup> Human Rights Watch 2009, *False Dawn – The Zimbabwe Power-Sharing Government’s Failure to Deliver human rights improvements*, August 31 <http://www.hrw.org/node/85306> – Accessed 14 April 2010 –

<sup>7</sup> ‘About MDC’ (undated), Movement for Democratic Change website <http://www.mdczimbabwe.org/About/about.htm> – Accessed 23 March 2007.

<sup>8</sup> ‘About MDC’ (undated), Movement for Democratic Change website <http://www.mdczimbabwe.org/About/about.htm> – Accessed 23 March 2007.

loosely organized group of war veterans, sanctioned an aggressive land redistribution program often characterized by forced expulsion of white farmers and violence against both farmers and farm employees.

Parliamentary elections held in June 2000 were marred by localized violence, and claims of electoral irregularities and government intimidation of opposition supporters. Nonetheless, the MDC succeeded in capturing 57 of 120 seats in the National Assembly.

The March 2002 presidential election was preceded by months of intensive violence and intimidation against MDC supporters, and more than 50 people, mostly opposition supporters, were killed. President Mugabe was declared the winner over challenger Morgan Tsvangirai by a 56% to 42% margin. Most international observers condemned the election as seriously flawed - the pre-election environment was neither free nor fair, and the election itself was marred by significant fraud and rigging - but regional opinions were mixed. Soon after the election, the MDC filed a petition challenging Mugabe's victory, citing flaws in electoral laws, electoral irregularities and pre-election violence. As of the end of 2004, the case had not yet been decided.<sup>9</sup>

72. The *Political Handbook of the World – Zimbabwe*, states that:

The MDC was an outgrowth of the Zimbabwe Congress of Trade Unions and the National Constitutional Assembly ZCTU/NCA. Its core components included workers, students, middle-class intellectuals, civil rights activists, and white corporate executives opposed to the perceived corruption of the ZANU-PF government as well as its management of the economy...The MDC was the first opposition party to have broad inter-ethnic appeal and challenge the ruling party for every elected seat. Party leader Morgan Tsvangirai narrowly lost to President Mugabe in the controversial 2002 presidential election.”<sup>10</sup>

73. In October 2005, the MDC split into two factions known as MDC-T and MDC-M for their respective leaders, Morgan Tsvangirai and Arthur Mutambara. Over time, both factions realised that their common goal was to defeat the ZANU-PF and so they contested the 2008 elections as a coalition.

74. The March 2008 election was a volatile time in Zimbabwe as stated by the *Political Handbook of the World– Zimbabwe*:

Leading up to the 2008 elections, tensions heightened within the MDC when Tsvangirai supporters attacked the Matibenga faction during a march on MDC headquarters in November...Before the presidential election in March and the runoff in June 2008, violence against the MDC increased but ultimately, the MDC won the most seats in the assembly, despite weakening party alliances and alleged intimidation by ZANU-PF.<sup>11</sup>

75. Against a background of continuing violence, increased efforts by SADC [Southern African Development Community] to find a political settlement between ZANU-PF

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<sup>9</sup>(<http://www.state.gov/g/drl/rls/hrrpt/2009/af/135984.htm> - accessed 6 July 2010)

<sup>10</sup>Banks, Arthur & Muller, Thomas C. (eds) 2009, 'Zimbabwe', *Political Handbook of the World Online Edition*, CQ Press, Washington DC <http://library.cqpress.com/phw/index.php> – Accessed 23 March 2010.

<sup>11</sup> Banks, Arthur & Muller, Thomas C. (eds) 2009, 'Zimbabwe', *Political Handbook of the World Online Edition*, CQ Press, Washington DC <http://library.cqpress.com/phw/index.php> – Accessed 23 March 2010.

and the two formations of the MDC resulted in a political agreement signed in September 2008.<sup>12</sup>

76. The International Crisis Group reported in March 2010 on the apparent dysfunction of the unity government currently operating in Zimbabwe. The report states that:

As Zimbabwe enters its second year under a unity government, the challenges to democratic transformation have come into sharp focus. Despite reasonable progress in restoring political and social stability, ending widespread repression and stabilising the economy since February 2009, major threats could still derail the reform process.

...But major concerns undermining the transition process have come to the fore. Hardline generals and other Mugabe loyalists in ZANU-PF are refusing to implement the government's decisions, boycotting the new national security organ and showing public disdain for Tsvangirai.<sup>13</sup>

77. Sources suggest MDC members were at risk of violence and harassment for their activities in 2009.

78. *SW Radio Africa* reports on the December 2009 attacks on an MDC rally by ZANU-PF militias which resulted in several supporters being injured:

A truck carrying MDC supporters to a rally in Uzumba, Mashonaland East province, was attacked by stone throwing ZANU-PF militias in the area on Sunday.

...Several MDC supporters were injured in the skirmish and one of them, Daniel Makaranga, had to be rushed to hospital for treatment following the unprovoked attack. At least two people were arrested.

The weekly MDC newsletter, *The Changing Times*, said their supporters were travelling in an open truck when it was ambushed at Katiyo shopping centre.

'The mob pelted the T-35 truck with stones, injuring the passengers who were on their way to Nhakiwa Business Centre where they were going to an MDC rally,' the newsletter said.

...The attack was reportedly engineered by a ZANU-PF youth chairman for Uzumba district, identified as Mbizi. He's reportedly in charge of five bases in Uzumba, namely at Katiyo, Mashambanhaka, Mtawatawa, Nhakiwa and Rukariro<sup>14</sup>

79. *The Zimbabwe Standard* states in October 2009 that "[w]ar veterans and ZANU-PF militants have intensified attacks against MDC-T supporters in the rural areas following the party's disengagement from dealing with ZANU-PF ministers in the inclusive government":

War veterans and ZANU-PF militants have intensified attacks against MDC-T supporters in the rural areas following the party's disengagement from dealing with ZANU-PF ministers in the inclusive government, the party has said. The MDC-T said ZANU-PF militias were

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<sup>12</sup> UK Home Office 2009, *Country of Origin Information Report: Zimbabwe*, 23 December, p.22 <http://www.homeoffice.gov.uk/rds/pdfs09/zimbabwe-231209.doc> – Accessed 23 March 2010.

<sup>13</sup> International Crisis Group 2010, 'Zimbabwe: Political and Security Challenges to the Transition', 3 March <http://www.crisisgroup.org/home/index.cfm?id=6554> – Accessed 9 April 2010.

<sup>14</sup> Sibanda, T. 2009, 'Zimbabwe: MDC Supporters Attacked by ZANU-PF Militia in Uzumba', *All Africa Global Media*, source: SW Radio Africa, 8 December <http://allafrica.com/stories/200912080979.html> - Accessed 4 January 2010

holding political meetings where they branded MDC-T supporters “enemies of the state” who must be crushed because they had severed links with government.

...MDC-T secretary for social welfare Kerry Kay expressed concern over the new wave of attacks against the party’s activists and supporters. She said ZANU-PF has “re-activated” its terror squads and camps in the rural areas, blamed for murder, rape, plunder and general violence in last June’s election.

“What they are doing is shocking,” Kay said. “They are attacking our supporters on the basis that we withdrew from the unity government, which is not true. I fear this could degenerate into chaos to the levels of last year”.<sup>15</sup>

80. A 28 October 2009 article also indicates that “[v]iolence and intimidation against members of the Movement for Democratic Change (MDC) increased sharply within days of the party ‘disengaging’ from Zimbabwe’s unity government, MDC spokesman Luke Tamborinyoka told IRIN.” The article continues:

“We have received reports of our supporters being beaten up and having their homes set on fire, allegedly by ZANU-PF supporters led by war veterans and members of the army,” Tamborinyoka said. President Robert Mugabe is the leader of ZANU-PF, the other wing of the unity government formed in February 2009.

...Violence has erupted in Mashonaland Central Province, once a ZANU-PF stronghold in the north of the country. “The violence has intensified in rural areas ... Also affected are close to 100 teachers who have fled from the province,” Tamborinyoka said.

...At the weekend, heavily armed police and soldiers raided a house used by MDC officials and accused the group of stealing weapons from army barracks in Harare. Tamborinyoka said recent events showed all the hallmarks of a crackdown on the MDC and its supporters. “Recently, a brigadier-general pointed a gun at one of our members of parliament and threatened to shoot him”.<sup>16</sup>

81. A report dated 24 August 2009 by the Zimbabwe Human Rights NGO Forum on political violence in Zimbabwe for June 2009 indicates that:

As intimidation and fear continue to grip many parts of rural Zimbabwe, groups of ZANU-PF youths are still reported to be harassing members and suspected members of the MDC , more than a year after the disputed presidential run-off election. Retributive attacks on those who sought legal assistance and want redress for crimes committed during the 2008 electoral violence have been reported in some parts of the country. Intimidation of MDC members by state agents has also continued. This report documents how three MDC members who were part of the group of those abducted between October and December 2008, were forcibly taken from their homes to the Attorney General’s Office. The violence, intimidation and mistrust across the political divide continues against the sentiments of commitment to national healing expressed publicly by the leaders of the three parties to the GPA (Zimbabwe Human Rights NGO Forum 2009, Political Violence Report for June [2009] , 24 August).

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<sup>15</sup> Chimhete, C. 2009, ‘Violence intensifies after MDC-T pull out’, *The Zimbabwe Standard*, 31 October

<sup>16</sup> ‘Violence Spikes After MDC’s Withdrawal From Government’ 2009, *All Africa*, source: UN Integrated Regional Information Networks, 28 October

## *Returnees to Zimbabwe*

82. A *ZWNews* August 2009 article cites a call by Tsvangirai to Zimbabweans who have fled the country to return and be part of the rebuilding effort<sup>17</sup>. Subsequently, in October 2009, SW Radio Africa states that a UK based Zimbabwean asylum seeker charity had claimed that “some Zimbabweans who have voluntarily returned to the country this year have ‘regretted their decisions’, which came after Prime Minister Morgan Tsvangirai earlier this year appealed for Zimbabweans to return home”:

Harland explained that one teacher who recently returned is now “lying low for fear of victimization”, after the teacher was harassed, victimised and punished upon returning to Zimbabwe, “merely for being away in the UK.” Harland also explained that one returnee from South Africa, Edwin Chingami, was murdered in August by ZANU-PF youths, shortly after his return from the UK, “for being a ‘sell-out’”<sup>18</sup>.

83. In 2008, the advocacy NGO ‘Refugees International’ called on neighboring countries not to forcibly return Zimbabweans fleeing their country, claiming that “forced repatriation to Zimbabwe in the current climate could endanger the safety of all Zimbabweans living abroad”.<sup>19</sup>

## *State protection*

84. In general, sources indicate that the police and other state agents failed to provide protection for victims of violence, and even instigated and directed some of the violence against people they perceived to be members and supporters of the opposition. People perceived to be supporters of the MDC have been targeted both before and after the election for assault, harassment, intimidation and a range of other human rights violations. A Human Rights Watch report from March 2008 noted prior to the 29 March 2008 elections that “Incidents of political violence perpetrated by the police and other state agents against human rights defenders, journalists, and opposition members have intensified the climate of fear that already existed in the country, and affected the ability of the opposition to build its party structures and prepare for the elections”<sup>20</sup>
85. Sources indicate that violence increased in the post-election period, and MDC members and supporters continued to be targeted. A Zimbabwe Peace Project report noted that “The majority of the victims of violence were from the MDC-T, supporters of independent candidates and in some cases from United People’s Party”. Similarly, a Human Rights Watch report indicated that the campaign of violence in Zimbabwe was aimed at destroying support for the opposition and “systematically and methodically targets Movement for Democratic Change (MDC) activists and perceived MDC

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<sup>17</sup> ‘Tsvangirai urges exiles to return to Zim’ 2009, *ZWNews*, 1 August 2009

<sup>18</sup> ‘Concern Raised as UK Threatens Deportations’ 2009, *All Africa*, source: SW Radio Africa, 31 October –

<sup>19</sup> Refugees International 2008, ‘Refugees International calls on African nations to protect Zimbabweans fleeing violence’, 25 June

<sup>20</sup> Human Rights Watch 2008, *All Over Again: Human Rights Abuses and Flawed Electoral Conditions in Zimbabwe’s Coming General Elections*, Vol. 20, No. 2(A), March, pp.10,22

<http://www.hrw.org/reports/2008/zimbabwe0308/zimbabwe0308webwcover.pdf>; Amnesty International 2008, *Zimbabwe: A trail of violence after the ballot*, 3 June, pp.1-3

<http://www.amnesty.org/en/library/asset/AFR46/014/2008/en/38638bc6-323b-11dd-adb0-a55f274f1a5a/afr460142008eng.pdf>



supporters”, and of the nearly 2000 recorded victims of violence. Nearly all were MDC activists or people perceived to have voted for the MDC”<sup>21</sup>

86. An article dated 20 October 2009 sourced from SW Radio Africa (London) refers to “Elliot Mutizhe, who stood as an MDC candidate in the 2008 harmonized elections... recuperating in a private hospital in Mutare” after being “severely assaulted and left for dead, by a group of ZANU-PF militias in Makoni South, Manicaland province.” The “MDC MP for Makoni South, Pishai Muchauraya,” said that “while the attack might have been an isolated incident, there are fears militias were regrouping to try to enforce the ZANU-PF favoured, Kariba draft constitutional document.” Muchauraya “said there was a campaign already underway in most of the wards in his constituency, to reject a people driven constitution”<sup>22</sup> The Human Rights Watch report dated August 2009 includes information on instances of police not assisting MDC supporters who had been assaulted, and on the prosecution of MDC legislators and activists, often by officials loyal to ZANU-PF. It is stated in the report that:

On July 13, 2009, a well-organized group of ZANU-PF supporters and “war veterans” beat up scores of MDC supporters and disrupted a national constitutional conference in the capital, Harare. No arrests were made despite a heavy police presence. The police remain under the leadership of Augustine Chihuri, a self-proclaimed ZANU-PF supporter.

...On August 1, 2009, three soldiers assaulted Finance Minister Tendai Biti’s gardener at Biti’s home in Harare. The victim, Howard Makonza, was rushed to the hospital. While Makonza was reporting the assault at a police station, one of the soldiers who had assaulted him threatened—in the presence of the police—to assault Makonza again. The Zimbabwe Defense Forces remain under the control of generals who support ZANU-PF, and in all the above cases, police either refused or failed to investigate these attacks despite credible allegations of criminal actions. This kind of police and army misconduct is consistent with previous Human Rights Watch findings in recent years. Biti himself recently told the media that he has been the target of death threats, including having received a bullet in the mail at his home.

...Since the formation of the power-sharing government, a pattern has developed in which MDC legislators and activists are targeted for arrest by the police and the Office of the Attorney General on apparently baseless charges. This pattern points to a drive by ZANU-PF to overturn MDC’s slender majority in Parliament. At the time of writing, at least 16 MDC legislators have been arrested by police on charges ranging from public violence to kidnapping and rape; seven of whom have already been tried and convicted in unfair trials in which the judges are known ZANU-PF loyalists. Of the seven already convicted, four have since been suspended from Parliament under laws that provide that members of parliament (MPs) sentenced to

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<sup>21</sup> Zimbabwe Peace Project 2008, *Post March 29th 2008 Elections Violence Report No. 1: “Beaten, wounded, bleeding and even lost life for exercising my right to vote”*, Sokwanele website, May, pp.8, 35 [http://www.sokwanele.com/system/files/zpp\\_post\\_elec\\_viol\\_report\\_1\\_0805.pdf](http://www.sokwanele.com/system/files/zpp_post_elec_viol_report_1_0805.pdf); Human Rights Watch 2008, *“Bullets for each of you”: State-sponsored violence since Zimbabwe’s March 29 elections*, June, pp.1,16 <http://hrw.org/reports/2008/zimbabwe0608/zimbabwe0608webwcover.pdf>.

<sup>22</sup> Sibanda, T. 2009, ‘MDC Activist Left for Dead by ZANU-PF War Veterans in Makoni’, *All Africa*, source: SW Radio Africa (London), 20 October <http://allafrica.com/stories/200910201168.html> - Accessed 5 November 2009.

six or more months of imprisonment shall immediately cease to exercise their parliamentary functions.

...Politically motivated prosecutions of MDC legislators and the failure to prosecute MPs from ZANU-PF implicated in violence or other serious crimes demonstrate that the Office of the Attorney General and sections of the police under ZANU-PF control continue to abuse the judicial system for political ends (Human Rights Watch 2009, *False Dawn: The Zimbabwe Power-Sharing Government's Failure to Deliver Human Rights Improvements*, August, pp. 5-8 <http://www.hrw.org/sites/default/files/reports/zimbabwe0809webwcover.pdf> - Accessed 2 October 2009).

87. The United States State Department (USSD) includes the following in the Zimbabwe section of its 2009 Annual Report on Human Rights Practices, published on 11 March 2010 and available at <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135984.htm>:

The government or its agents committed politically motivated, arbitrary, and unlawful killings during the year. By year's end at least 19 citizens had 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 200 who died in 2008. At least three persons were killed as a result of politically motivated violence during the year. The MDC-T continued to claim that approximately 200 other members and supporters were missing and presumed dead in the wake of election-related violence in 2008. The killings were primarily committed by members of ZANU-PF, ZANU-PF youth militia, war veterans, and, to a lesser extent, members of the military and police. NGOs also estimated security forces killed at least 40 persons in the Chiadzwa diamond fields in Manicaland Province during the year.

Security forces killed opposition members during the year. On August 30, MDC-T activist Godknows Dzoro Mtshakazi was beaten to death by four soldiers in Shurugwi, Midlands Province, after being accused along with several other MDC-T members of organizing an MDC-T rally and playing a pro-MDC-T song in a bar. The four soldiers assaulted the group before taking Mtshakazi to a nearby army base, where he was beaten further and killed, according to witnesses. The soldiers subsequently sent word to Mtshakazi's wife to collect her husband's body. There was no further investigation by year's end

There were killings by political party supporters during the year. For example, on July 30, 16-year-old Arnold Mosterd died after being beaten by ZANU-PF supporters in Macheke, Mashonaland East. Mosterd was reportedly killed after he asked for outstanding wages from a local ZANU-PF chairman, Harry Munetsi. According to villagers, seven suspects who had previously accused Mosterd of supporting the MDC, tied Mosterd, cut his chin with a knife, and pierced his stomach with hot iron bars before carrying his dead body in a wheelbarrow to the road. The suspects were arrested, but Minister of State in the President's Office Didymus Mutasa reportedly ordered the release of the suspects on bail three days later. Mutasa also allegedly told villagers to "deal with" strangers who visited the area inquiring about the killing, as they would be MDC supporters. No further action was taken by year's end.

There were numerous credible reports of politically motivated abductions and attempted abductions during the year. MDC leaders reported that state security agents and ZANU-PF party supporters abducted and tortured dozens of opposition and civil society members, as well as student leaders, as part of an effort to intimidate MDC supporters and civil society members and leaders. In the majority of cases, victims were abducted from their homes or off the streets by groups of unidentified assailants,

driven to remote locations, interrogated and tortured for one or two days, and abandoned. In some cases the abducted person was located in police custody days or weeks later.

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

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

## **FINDINGS AND REASONS**

### *Country of nationality*

88. [Applicant 1] claims to be a national of Zimbabwe. The Tribunal accepts that she is a holder of a Zimbabwean passport, a copy of which is contained on file. On this basis, the Tribunal is satisfied that she is a national of Zimbabwe and has assessed her claims against that country.

### *Credibility*

89. The Tribunal found that the primary visa applicant's evidence to be open and credible. She did not seek to over emphasise her political role in Zimbabwe, admitting that on [Relative 1]'s advice, she had stopped being actively involved in the MDC in 2000 but has retained her membership of the party.
90. The Tribunal accepts that following the death of their mother in 1989 and the subsequent disappearance of their father, [Applicant 1] and her sister were raised by [Relative 1].
91. The Tribunal accepts that [Relative 1] was an activist in the Movement for Democratic Change (MDC) and that prior to her migration to Australia, she was attacked in the family home by members of the ZANU-PF as a result of which one of her fingers was severed.
92. The Tribunal is satisfied that [Relative 1]'s involvement in the MDC prompted [Applicant 1]'s own political activism. The Tribunal accepts [Applicant 1]'s evidence that from 1998 to 2000, she had a leadership role within the youth wing of the MDC.
93. [Person A's] political involvement in Bulawayo is mentioned in several Zimbabwean websites and the Tribunal accepts [Applicant 1]'s evidence that he was influential in her involvement in the MDC.
94. [Applicant 1] was able to describe the background to the MDC party and was able to give detailed evidence as to her role in the party in the lead up to the 2000 referendum and subsequent elections. The Tribunal accepts that [Applicant 1] had an active role in the MDC during this period.

95. The Tribunal accepts that [Applicant 1] moved to Harare in 2000 at the behest of [Relative 1] who was concerned that [Applicant 1] would be forced to attend Border Gezi youth camps, which are stated to have been indoctrination camps run by the ZANU-PF and from which, [Relative 1] had been told, many of the girls returned pregnant.
96. Although there was no corroborative evidence before the Tribunal and although the dates provided by the applicant in this regard were somewhat inconsistent, the Tribunal is prepared to accept that [Applicant 1] was, on one occasion, taken away and detained at a farm by members of the ZANU-PF where she was beaten. Her demeanour at hearing when describing this event was consistent with having experienced such an ordeal.
97. The Tribunal accepts that in 2000, [Applicant 1] moved to [Relative 2]'s place in Harare where, at [Relative 1]'s insistence, she was no longer actively involved in the MDC although she remained a member of the party.
98. The Tribunal accepts [Applicant 1]'s evidence that the situation of her sister, who remains in Bulawayo, is precarious given that she is denied access to supplies and services, including medical treatment and education, because of her support for the MDC. The Tribunal accepts the evidence of [Applicant 2] that his family are experiencing similar privation.
99. The Tribunal is mindful of the delegate's concerns in relation to [Applicant 1]'s delay in applying for protection. The Tribunal is not satisfied by [Applicant 1]'s evidence that she would have remained unaware that she could seek protection up until the lodgement of her application in December last year. It is more likely, in the Tribunal's view, that she delayed lodging her application for protection until the arrival of her husband, [Applicant 2], in Australia.
100. The Tribunal accepts, however, that the applicant held a valid subclass 572 visa from [a date in] September 2007 which was renewed [in] November 2008 and was valid until [a date in] March 2010, which meant that she had no compelling need to regularise her migration status. Given that the applicant's claims are generally plausible and supported by the general country information, the Tribunal draws no adverse inference from the delay associated with the lodgement of her protection visa application.

*Risk of serious harm capable of amounting to persecution*

101. The applicant claims to be at risk of persecution for the convention reason of her political opinion.
102. The applicant fears persecution on her return to Zimbabwe in part as a result of [Relative 1]'s previous high profile membership of the MDC. In the Tribunal's view, the fact that [Relative 1] has been able to return to Zimbabwe, without incident, in both 2006 and 2009, lessens [Applicant 1]'s claim of persecution on the basis of [Relative 1]'s high profile with the MDC.
103. [Applicant 1] also fears persecution on her return as a member of the MDC in her own right. She fears being denied access to food supplies, medication, education and medical services on the basis of her membership of the MDC.

104. The country information set out above supports the evidence given by [Applicant 1] that Zimbabweans without a ZANU-PF membership card risk being denied basic supplies and services, including food supplies and access to medications, medical supplies and medical treatment.
105. Under s91R(1)(b) of the Migration Act, the persecution feared by an applicant must involve serious harm to the person. 'Serious harm' may include a threat to a person's life or liberty; a significant economic hardship that threatens the person's capacity to subsist or the denial of access to basic services, where the denial threatens the person's capacity to subsist.
106. Although the Tribunal recognises that the Global Political Agreement between the ZANU-PF and the MDC remains in place in Zimbabwe, the country information confirms the evidence given by [Applicant 1] that this agreement has not put an end to the targeting of MDC members by members of the ZANU-PF. The Tribunal accepts the evidence of [Applicant 1 and Applicant 2] that their families have been subjected to harassment and to the denial of food and services when they have been unable to show evidence of their membership of the ZANU-PF.
107. The country information also documents reports of Zimbabweans returning from abroad who have been victimised and harassed once back in Zimbabwe merely for having lived abroad or because they are seen as having sold out. In the light of this information, the Tribunal accepts the possibility of [Applicant 1] being viewed with suspicion upon her return because of both her prior activism in the MDC, and because of her now lengthy absence from Zimbabwe. Given the violence that occurred at the previous national elections in 2008, the Tribunal accepts that [Applicant 1]'s fear of renewed violence and security threats and denial of services in the lead up to the next elections (expected to be held in 2011) is one that is well-founded.
108. On the totality of the evidence before it, the Tribunal is satisfied that in light of [Applicant 1]'s prior activism in the MDC, her continued membership in the MDC and her now lengthy absence from Zimbabwe, she would be at risk on her return of harassment, discrimination and the denial of basic services, including medical treatment, such as may threaten her capacity to subsist. The Tribunal is satisfied that such treatment would constitute persecution involving serious harm to [Applicant 1].
109. In light of its acceptance of [Applicant 1]'s claims and in view of the country information before it, the Tribunal finds that if [Applicant 1] returns to Zimbabwe, there is a real chance that she will experience serious harm in the reasonably foreseeable future capable of amounting to persecution for the purposes of s91R of the Act.
110. Having regard to the country information before it, the Tribunal also finds for the purposes of s91R(1) that any such serious harm would involve systematic and discriminatory conduct.

*Convention nexus*

111. [Applicant 1] is claiming protection on the basis that she is a member of the political party, MDC.

112. The country information, as set out above, describes continued attacks against MDC supporters throughout Zimbabwe. The information suggested that such attacks are not simply part of generalised violence within the country but amount to persecution on the basis of political opinion and as such fall within the scope of the Convention.
113. The Tribunal finds that for the purposes of s91R(1)(a) of the Act, the essential and significant reason for the persecution faced by [Applicant 1] is on the basis of her political opinion, as a supporter of the MDC.

#### *State protection*

114. On the basis of the country information before it, the Tribunal is satisfied that threats faced by [Applicant 1] on her return to Zimbabwe would come from ZANU-PF supporters including those in charge of Zimbabwean state controlled security. Despite the GPA which has resulted in the MDC leader, Morgan Tsvangirai, being installed as Prime Minister of Zimbabwe, the ZANU-PF leader, Robert Mugabe, remains president and the police and armed forces remain under his control as they are comprised, overwhelmingly, of ZANU-PF supporters. The Tribunal accepts the findings of the country information, as set out above, that this effectively denies state protection to MDC supporters.
115. The Tribunal therefore finds that state protection in accordance with international standards would not be available to [Applicant 1] on her return to Zimbabwe.

#### *Conclusion on persecution*

116. The Tribunal concludes that [Applicant 1] has a well-founded fear of persecution for the purposes of s91R(1) of the Act in the event that she returns to Zimbabwe in the reasonably foreseeable future, on the basis of her political opinion.

#### *Internal relocation*

117. The Tribunal is satisfied that [Applicant 1] would be at risk of persecution in Zimbabwe generally. The Tribunal accepts the country information that security remains poor throughout Zimbabwe as does the economic situation. The Tribunal is satisfied that it would be neither safe nor reasonable for [Applicant 1] to re-locate within Zimbabwe.

#### *Safe Third Country*

118. There is no evidence before the Tribunal which might suggest that the applicant has a presently existing, legally enforceable right to enter and reside in any safe third country. Accordingly, the Tribunal finds that the Australia's protection obligations are not excluded under s 36(3) of the *Migration Act 1958*.

## **CONCLUSIONS**

119. The Tribunal is satisfied that the first named applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the first named applicant satisfies the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such a visa, provided she satisfies the remaining criteria for the visa.

120. The second named applicant, [Applicant 2], only completed Part D in [Applicant 1]'s application for a protection visa, applying as a member of [Applicant 1]'s family unit rather than as a refugee in his own right. He has therefore been assessed by the Tribunal on this basis alone. On this basis, the Tribunal is not satisfied that [Applicant 2] is a person to whom Australia has protection obligations. Therefore he does not satisfy the criterion set out in s.36(2)(a) for a protection visa. The Tribunal is satisfied that [Applicant 2] is the applicant's husband and is a member of the same family unit as the first named applicant for the purposes of s.36(2)(b)(i). As such, the fate of his application depends on the outcome of the first named applicant's application. As the first named applicant satisfies the criterion set out in s.36(2)(a), it follows that [Applicant 2] will be entitled to a protection visa provided he meets the criterion in s.36(2)(b)(ii) and the remaining criteria for the visa.

## **DECISION**

121. The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (ii) that the second named applicant satisfies s.36(2)(b)(i) of the Migration Act, being a member of the same family unit as the first named applicant.