

**071637813 [2007] RRTA 336 (3 December 2007)**

**DECISION RECORD**

**RRT CASE NUMBER:** 071637813

**COUNTRY OF REFERENCE:** Zimbabwe

**TRIBUNAL MEMBER:** Paul Fisher

**DATE DECISION SIGNED:** 3 December 2007

**PLACE OF DECISION:** Melbourne

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

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be a citizen of Zimbabwe, arrived in Australia in early 2000s and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa a few years later. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.

The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.

The applicant applied to the Tribunal for review of the delegate's decision.

The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

### **RELEVANT LAW**

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.

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 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).

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

#### **Definition of 'refugee'**

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.

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.

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.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

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.

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.

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.

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.

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.

Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

## **CLAIMS AND EVIDENCE**

The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources, including departmental movement records and related departmental and Tribunal files of both the applicant and a third party.

### **Background**

The applicant is a man from Zimbabwe. He first arrived in Australia on a valid visa. He was subsequently granted another valid visa some months later. However, his application for a further valid visa was refused on the basis that the applicant had not been able to meet certain visa criteria.

A purported application for review of that decision was made out of time, and the Migration Review Tribunal, differently constituted and in a separate decision, found that it had no jurisdiction to consider the review application.

Meanwhile, the applicant purported to apply for a protection visa. The application was incomplete, and all of the relevant parts of the application form were not received by the Department until several weeks later, at which point the applicant was found to have made a valid application for a protection visa.

The applicant's protection claims were set out in response to questions 39 to 44 of Part C of that application as follows:

In response to question 39, the applicant stated that he is seeking protection in Australia so that he does not have to go back to Zimbabwe.

In response to question 40, *why did you leave that country?* the applicant stated as follows:

*[Information about the applicant's response amended in accordance with s.431 as it may identify the applicant].*

I left my country Zimbabwe due to political reasons which caused my migrating to Australia in fear of losing my life due to supporting of the opposition party (MDC) Movement for Democratic Change lead by Morgan Tsvangirai, which my family financially supported. In the early 2000s, our family were involved in an incident because of our involvement. During that period a lot of threats were being made, we moved from house to house in fear of being captured. In the early 2000s my father decided to get us out of the country and was able to obtain a valid visa for me to get out of the country, after being on the run from Mugabe's people for a long time. Living each day in fear had to stop and that ended me in Australia. During the time I was back home one of my siblings and I were beaten up so badly, my sibling stayed in hospital for a while. I experienced many injuries that were a warning that next time it will be death if we don't change sides. It was traumatising and caused me to think terrible about going back to be tortured for what you stand for. I left my country to

have a better life and peace than to live under a heavy-handed Mugabe. I have nothing at home I don't know where my family is. The last I spoke to them or seen them was when I left. I have nothing and my only home now is Australia where I seek your protection.

In response to question 41, *what do you fear may happen to you if you go back to that country*, the applicant replied as follows:

The most thing I fear to go back is being killed. I fear for my life looking at the situation down there it is not good at all. Exposing myself home will get me into trouble of coming back to try and fight against the government. I have seen a lot while I was young and going back to that life of selfishness and killing for power I say no. Each time I think about it I grow more to fear. If I go back there is no-one I can go to, relatives have kicked us out of their lives in fear of being the helpers in hiding of MDC supporters. I have no idea where my parents are. I have tried to get my friends who go back home to try and locate them but all has made me loss hope of seeing them again. Looking at the way the economy of Zimbabwe is, where inflation is 1700 percent and unemployment 80 percent under Mugabe's rule I have no future at all.

In response to question 42, *who do you think may harm/mistreat you if you go back?* the applicant replied as follows:

The CIO department of Central Intelligence that is under Mugabe and their job is to suppress any opposition or anyone involved. The police and the army are the most brutal of them. They put you in their custody as soon as they arrest you and beat you up. I am also scared of being mistreated by those I will try to seek revenge in.

In response to question 43, *why do you think this will happen to you if you go back?* the applicant stated as follows:

I have no-one to protect me at all because I am all alone no parents or friends I could put my life to depend on them. If our own leaders are being attacked what will stop them from doing what they want in order to make our lives hard each day. Attached is an article from the papers showing the brutality being inflicted.

The article in question is from the *Herald Sun* dated 15 March 2007. It is headed "Opposition leader in intensive care – face of freedom battered" and shows a picture of opposition leader Morgan Tsvangirai.

In response to question 44, *do you think the authorities of that country can and will support you if you go back? If not, why not?*, the applicant responded:

I support Tsvangirai who is trying so hard to bring democracy to Zimbabwe and to have fair rule. I can't get protection from the authorities and the authorities are run by Mugabe's people that will be leading to my being arrested by them of my being an MDC supporter.

The applicant was invited to attend an interview in the early 2000s with the departmental officer processing his application. Despite having confirmed his availability, the applicant did not attend the scheduled interview. However, a few days later he called to say that he had not been able to attend and a new appointment was made for a few days later, which he did attend.

At the interview he provided additional information which was missing for his protection visa application, namely details of his family members, including his parents and his siblings, in respect of whom he indicated that he did not know their country of residence, and some siblings said to reside in Country 1.

The applicant also claimed that his father had joined the MDC in 2001 when it was formed, because he supported equality and had witnessed the treatment of a white neighbour and friend. The applicant's father was well-off financially so he financially supported MDC, and was involved in political activities. The applicant himself said that he had become involved in the MDC when he was younger, helping his sibling in certain activities, and in the early 2000s his sibling and he were attacked by a group of thugs during one of their activities. His sibling required hospitalisation, but the applicant did not. The applicant attended only one MDC meeting, a couple of months later, just after he and his sibling had been beaten. He stated that his role with the MDC [*information deleted s.431*] The applicant stated he discontinued his involvement with the MDC after some months. However, he also stated that he became a member several months later. When he was queried about joining the party after he discontinued his involvement with it, he stated that becoming a member of the MDC did not involve undertaking any activities on behalf of the group.

The applicant stated that his father was injured in the early 2000s as he got out of the vehicle to go to the family home. The applicant and other family members were also in the vehicle at the time. He stated that following this incident his father took the family to a family farm in Town M, and later they moved to a family house in Town N while the visa application was processed.

The applicant stated that he last spoke to his father when he left Zimbabwe, and he last spoke to his mother for a short period in the early 2000s. He was subsequently unable to get through to his family as the phone lines were no longer working and he is now unaware of their whereabouts. The applicant has some siblings who reside in Country Z and he claimed that they are also unaware of their parents' whereabouts.

The application was refused in the early 2000s. The delegate did not accept the applicant's claims for various reasons, including that it did not make sense that he would join the MDC only after ceasing his activities on their behalf, that being involved in that party would not have given rise to expectations of participating in any party activities, that the applicant's evidence was in any case that he only attended one MDC meeting in the early 2000s, that there were inconsistencies in his claims between his written application which said that the family had an incident several months earlier and his evidence at interview that this incident was when he and his sibling were assaulted when they involved in MDC activities and that the incident occurred some months later, and that the applicant seemed to know little about the MDC or the background of its leader Morgan Tsvangirai. The delegate took into account the fact that the applicant had provided no evidence to support his claims, [*information deleted s431*]. The delegate did not accept this and felt it was reasonable to expect that, as the claimed he specifically came to Australia to seek refuge, he would have brought some evidence to support his claims. The delegate also placed weight on the delay in lodging the protection visa application, noted that although the applicant said his father obtained a valid visa specifically to enable him to get out of the country after being on the run from Mugabe's people for a long time and having been assaulted and his family's incident, despite being granted a valid visa in the early 2000s and arriving in Australia the same month, it was a number of years before the applicant applied for a protection visa. Also, the timing of the application seemed coincidental with an event in Zimbabwe and the applicant's passport was issued prior to the occurrence of the problems which he claimed gave rise to the decision to depart Zimbabwe and at a time when according to country information people in opposition to Mugabe would very likely have experienced difficulties in obtaining a passport. The delegate considered that these concerns undermined the applicant's credibility to such an

extent that she concluded that the claims had been fabricated. The delegate also considered whether the applicant would be at risk of persecution on return to Zimbabwe simply on account of being a failed asylum seeker, but concluded that he would not. The delegate found that the applicant was not owed protection obligations by Australia.

### **Review Application**

An application for review of the delegate's decision was received by the Tribunal in the early 2000s

Having listened to the tape recording of the departmental interview, the Tribunal would not necessarily have reached the same conclusions reached by the delegate, but still wished nevertheless to take evidence from the applicant before making a decision, particularly with respect to his family's current circumstances.

The Tribunal wrote to the applicant inviting him to attend a hearing. No response to the hearing invitation was received. A number of messages were left by an officer of the Tribunal on the applicant's mobile phone in an effort to find out whether he had received the hearing invitation and/or proposed to attend the hearing. However, the applicant did not respond to those messages or contact the Tribunal prior to the scheduled hearing time.

The applicant did not attend the hearing. An officer of the Tribunal attempted to telephone the applicant, leaving a message on his voicemail service asking him to contact the Tribunal as a matter of urgency. However, the Tribunal received no contact from the applicant.

A several days later, an officer of the Tribunal again attempted to contact the applicant via the telephone without success, and also sent an email to an address which appeared on the applicant's file. Once again, the Tribunal received no response.

Unable to contact the applicant directly, and yet concerned in light of the situation in Zimbabwe about the prospective risk to the applicant if his application were rejected without his claims having been properly reviewed and he were returned to that country, the Tribunal endeavoured to contact the applicant's relatives, using what details could be gleaned from the information the applicant had provided to the Department and the Tribunal.

An officer of the Tribunal attempted a number of times to contact the applicant's parents in Zimbabwe at a number obtained from an internet-based telephone directory for that country corresponding to the name and address of the applicant's mother. The phone was not answered at any time.

The hearing invitation which had been sent to the applicant a several weeks earlier was returned to the Tribunal unclaimed.

After movement records were accessed to ensure that the applicant had not departed Australia, an officer of the Tribunal managed to contact via telephone Sibling A in Country 1, and the following conversation ensued:

*[Information about Sibling A's telephone conversation amended in accordance with s.431 as it may identify the applicant].*

The officer gave his name and stated that I was calling from Migration Review Tribunal in Melbourne about the applicant.

The officer stated that the Tribunal thinks that Sibling A might be the applicant's sibling as some information about Sibling A has been provided on the applicant's application form.

She was asked to confirm this by telling me the applicant's full name and date of birth. She confirmed the applicant's full name and date of birth.

Sibling A was referred to the Tribunal's website in the event of any concern about security, and the officer provided his telephone number and also offered to fax or email details of the Tribunal's inquiry as well.

The officer explained that the Tribunal was urgently trying to contact the applicant but that he appeared to have changed address without telling the Tribunal and risked having his application for permanent residence refused and becoming liable for detention and removal back to Zimbabwe if he cannot be contacted.

Sibling A was asked whether he/she has any current contact details for the applicant, and provided a mobile telephone number as well as an email address. Sibling A was asked in any event whether he/she would be prepared to contact the applicant directly and urge him to contact the Tribunal and Sibling A stated he/she would do so.

The officer asked whether Sibling A would be prepared to answer some questions about the family's background and circumstances in Zimbabwe, and he/she agreed to do so.

Sibling A was asked whether he/she or other sibling work for the a certain international organisation, and he/she replied in the affirmative. Sibling A was asked whether his/her father had worked for the international or a humanitarian organisation and in what capacity, and he/she stated that he had worked for a humanitarian organisation in Zimbabwe as a professional.

The officer also asked Sibling A if he/she had had any contact with his/her parents recently. Sibling A replied that his/her mother was presently residing with him/her in the Country 1, and also indicated that he/she has recently had contact with his/her father in Zimbabwe as well. The officer asked if Sibling A could provide the Tribunal with his/her parents contact details. Sibling A reiterated that his/her mother was presently residing with him/her in the Country 1, and that he/she could provide his/her father's contact details, if required, at a later time.

Sibling A was asked if he/she was aware of his/her parents having any problems in Zimbabwe. Sibling A stated that they were having political problems, and when asked to elaborate, stated that they were "without food, without freedom and that they were suffering as a result of the applicant and their siblings' membership of the opposition, the MDC.

Finally, Sibling A confirmed the email address.

The officer then called the applicant on the telephone number provided by Sibling A, confirmed his identity, established that he did wish to attend the hearing, and also established that he continued to reside at the same address, and could not explain why the hearing invitation had been returned unclaimed.

The following day, a new hearing invitation was sent to the applicant at the same address, and a copy was also sent to the email address provided by Sibling A. The Tribunal did not receive a response to the hearing invitation, and on the day prior to the scheduled hearing, an officer of the Tribunal telephoned the applicant to ascertain whether he intended to come to the hearing. The applicant indicated that he would be attending.

However, on the morning of the hearing, the applicant telephoned the Tribunal to advise that his roster had been changed, he could not get time off work, and he would not, as a consequence, be attending the hearing after all. He was initially told to put the request in writing, but after the Tribunal member was advised of this development, an officer called the applicant back to advise him that as he does not have permission to work, his work commitments were not an acceptable reason for having the hearing adjourned, and he was informed that the hearing would not be adjourned on this basis. The applicant was advised that the commencement of the hearing could, however, be deferred until he was able to attend.

The applicant then attended later that morning, and the hearing commenced at shortly afterwards.

### *The Tribunal Hearing*

The applicant identified himself to the Tribunal, presenting his passport as evidence of his identity. The applicant is the holder of a valid visa, but the Tribunal noted that this visa had not been evidenced in the applicant's passport. The applicant was asked whether he was working, and he indicated that he was. The Tribunal explained to the applicant that in fact he did not have permission to work, as the valid visa he currently held did not permit him to work. The applicant said that he had been permitted to work on his previous visa, and did not realize that he could no longer do so. The applicant was warned that if he worked in breach of his visa conditions he risked having his valid visa cancelled and being placed in detention. The applicant indicated that he would immediately cease working.

The Tribunal explained its role and the purpose of the hearing, and outlined to the applicant its concerns about his case, particularly the delay in making his application and his apparent lack of interest in pressing his protection claims, and that despite his claim to have been unable to contact his parents since the early 2000s the Tribunal had spoken to Sibling A and been informed that their mother is residing with him/her and that their father continues to reside in Zimbabwe.

The applicant was asked to explain the family's finances, and to indicate what had happened when he stopped receiving money from overseas. The applicant explained that his father had actually been quite well-off, and had owned a number of assets [*detail of assets deleted: s.431*] but that the government had frozen his assets some years ago. He said that a friend of his father in Country 1 named Friend X had been paying for his education expenses in Australia, but that after a while he could no longer afford to do so and the payments had stopped. He was asked whether anyone else such as Sibling A could support him but he said that Sibling A could not afford to.

The applicant was asked whether he had had any recent contact with his family. He described having recently spoken to his mother in Country 1 for the first time since the early 2000s, and became overwhelmed with emotion when doing so. In Zimbabwe she had lost her job, and had been unable to stay with her husband because he was fighting with the MDC and stayed on the move. However, apart from Sibling A, he has had no direct contact with any other family members since leaving Zimbabwe. As well as another Sibling in Country 1, the applicant indicated that other Siblings are in Country 2, as he is now in contact with them again. Sibling B went there a number of years ago and he understands that Sibling C followed him a number of years ago. The applicant's father and Sibling D (not mentioned in his protection visa application) are still in Zimbabwe.

The applicant was asked whether he was aware of any specific problems his family had experienced since he left Zimbabwe and he said that he was not. However, in the past he and his sibling had been assaulted when they were involved in political activities, just for doing what they supported and stood for. This was how he and his sibling had become known locally as MDC supporters. He said that militia knew who they were and would target them. After being assaulted he had stopped his active involvement and he never felt safe again. Even here he does not feel safe. The applicant described his feelings of insecurity in public places even in Australia. He was asked whether he had felt this way since he was assaulted and he said that he had. In addition there had been the family's incident. The applicant was asked to clarify when this had occurred and he said that it was in the early 2000s (as he had said in his original application) and not some months later (as he had said at the departmental interview). He was asked whether he was sure about this and he said that he was.

The applicant was asked why Sibling A had been able to contact his father if the applicant hadn't, and he indicated that Sibling A is in touch with Sibling D who is still in Zimbabwe living with a relative. Sibling D, unlike the rest of the family, has had no political involvement. The applicant also indicated that a number of times Sibling A had passed on a phone number for their father only for the applicant to find he was unable to get through.

The applicant said that on one occasion several months ago when he was trying to contact his father he had called a family friend, Friend Y who had lived close by the applicant's family in Town O. However, the applicant was told that because of his father's involvement with the MDC he was not prepared to have anything further to do with him or even to discuss politics over the telephone. That was several months ago.

The applicant was asked why his father hadn't tried to leave, and he said that he didn't know, but he thinks his father wants to stay there and continue the struggle against the government but didn't want the rest of the family to remain there because of the risk of harm that entailed. He explained that he understands that his father is constantly moving around, as it is not safe to stay at the family home and he understands from what Sibling A has told him that his father lives out of his vehicle.

The applicant was asked what he thought would happen to him if he returned to Zimbabwe, and he said that he doesn't know. He feels that what happened to him several years ago could happen again. He said that a friend of his who had recently come to Australia from Zimbabwe had described people being afraid to openly support the MDC and only doing so under cover if at all. He said that as he is known as an MDC supporter he will be at risk.

The applicant was asked where he would face these problems and he said he would be at risk in his local area. He was asked whether he expected to encounter any problems on arrival at the airport if he was to return to Zimbabwe, and he said that he didn't think so.

The applicant was asked whether, if he was known in his local area he could not relocate and live, for example, with relatives elsewhere in Zimbabwe, like Sibling D was doing. The applicant explained that because of the risk associated with involvement in the MDC, many ordinary people tend to shun those involved, including their relatives, for fear of attracting adverse attention themselves.

The applicant said that after the family's incident the family had tried to relocate but "the relatives had kicked them out". The eventual exception was his Sibling D. The applicant said he is not sure what is going on with him, however he is not involved in politics. He indicated

that Sibling D may nevertheless have problems because of his family's involvement in politics, and noted that Sibling D has argued with their father over politics. The applicant thinks that his relative might be OK about Sibling D living there but would not accept him, and that he would get them into trouble.

He said that if he had no choice but to return to Zimbabwe he would try to find his father and would support whatever his father was doing. He said he would not turn his back on his party just because of the risk of being beaten.

The applicant was asked whether he had been involved in any political activities in support of the MDC since arriving in Australia He said he had not. He had initially mainly been concerned about studying, but financial difficulties prevented him from doing so once Friend X stopped supporting him. He was also worried about getting into trouble, as he feels insecure and doesn't know who might be watching. He was asked whether he knew anyone else here from Zimbabwe who was involved in politics at all. He indicated that he had Friend Z whom he had known in Zimbabwe and who he had met up with again in Australia They have discussed politics together. He wants to support the cause but he is not sure how. At home (in Zimbabwe) what people need is money but he has not been able to afford to contribute in this way. He understands the situation in Zimbabwe is so serious that even possession of an (MDC membership) card can put you in gaol, and there is no tolerance for any kind of resistance to the regime.

The applicant was asked whether Friend Z was aware he had applied for a protection visa and he said that he was. He was asked whether he had any objection to the Tribunal attempting to call Friend Z to confirm what he had said, and he agreed without hesitation, providing Friend Z's number. The Tribunal attempted to call Friend Z but was, unfortunately, unable to get through as the phone diverted to voicemail.

## **COUNTRY INFORMATION**

The United States Department of State "*Country Reports on Human Rights Practices*" 2006, published on 6 March 2007 provides the following background information on Zimbabwe:

Zimbabwe, with a population of approximately 11.6 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 is authoritarian. The last two national elections, the presidential election in 2002 and the parliamentary elections in March 2005, were not free and fair. Although the constitution allows for multiple parties, the ruling party and security forces intimidated and committed abuses against opposition parties and their supporters and obstructed their activities. The divided Movement for Democratic Change (MDC) is the country's principal opposition; despite the fraudulent elections, the MDC factions held 41 of 120 elected seats in the House of Assembly and seven of 50 elected seats in the Senate at year's end. The civilian authorities generally maintained control of the security forces, but often used them to control opposition to the ruling party.

The government engaged in the pervasive and systematic abuse of human rights. The ruling party's dominant control and manipulation of the political process through intimidation and corruption effectively negated the right of citizens to change their government. Unlawful killings and politically motivated kidnappings occurred. The state sanctioned the use of excessive force and torture, and security forces tortured members of the opposition, union leaders, and civil society activists. Prison conditions were harsh and life threatening. Security forces arbitrarily arrested and detained journalists, demonstrators, and religious leaders; lengthy pretrial detention was a problem. Executive influence and interference in the judiciary

were problems. The government continued to forcibly evict citizens and to demolish homes. The government continued to use repressive laws to suppress freedom of speech, press, assembly, movement, association, and academic freedom. Government corruption and impunity remained widespread. High ranking government officials made numerous public threats of violence against demonstrators. The following human rights violations also continued to occur: harassment of human rights and humanitarian nongovernmental organizations (NGOs) and interference with their attempts to provide humanitarian assistance; violence and discrimination against women; child labor and prostitution; discrimination against persons with disabilities and ethnic minorities; an increase in the number of HIV/AIDS orphans and child-headed households; harassment and interference with labor organizations critical of government policies; and attempts to supplant legitimate labor leaders with hand-picked supporters.

## RESPECT FOR HUMAN RIGHTS

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

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

Unlike in the previous year, there were no reports of politically motivated killings by the government or ruling party supporters; however, security forces killed several persons during apprehension.

On June 29, two police officers in Bulawayo assaulted a group of men at a bar when they overheard one of the patrons saying that he wished President Mugabe had died instead of the recently deceased minister of information and publicity. Two of the men, Gift Jubane and Prince Ndebele, died a day later as a result of their injuries. The other victims, several of whom required hospitalization, reported that during the beating police accused them of working with the MDC to topple the government. The two unidentified police officers were suspended. An investigation was ongoing at year's end.

Unlike in the previous year, there were no reports of killings by war veterans or ZANU-PF supporters.

There were no developments in the following killings from 2005: the March killing of Gift Chimbandi, a war veteran burned to death reportedly as a result of a dispute with other war veterans living on a seized farm; the April killing of a 70 year old grandmother, who was beaten to death during an assault on suspected MDC supporters; the April killing of Ebrahim Mofat, who was beaten to death for suspicion of burning houses belonging to ZANU PF supporters; and the May killing of Godwin Ganda, a war veteran believed to have spearheaded the first farm occupation in the country in 1998.

Unlike in the previous year, there were no reports that prisoners died from abuse by prison officials or guards.

#### b. Disappearance

There were no reports of disappearances during the year; however, there were reports of politically motivated kidnappings and related torture committed by ZANU PF supporters. Domestic human rights organizations believed that many such incidents were not reported due to fear of retribution by progovernment factions. The government often did not investigate reported abductions and torture of MDC supporters.

For example, on July 9, eight unidentified men reportedly abducted an MDC youth organizer in Chitungwiza and took him to a nearby army barracks where he was left with a group of soldiers. The victim, who was released after a few hours, claimed that his abductors told the soldiers he was an MDC supporter, and that the soldiers beat him during an interrogation to elicit the names of other soldiers who were assisting the MDC in organizing opposition to the government. The soldiers threatened to kill the youth if he went to the authorities.

No action was taken against ZANU-PF supporters responsible for the February 2005 abduction of MDC candidate Godfrey Gumbo, nor the April 2005 abductions of Wilson Mushonga, the son of an MDC candidate, and a group of his colleagues.

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

Although the constitution prohibits torture and other cruel, inhuman, or degrading treatment or punishment, security forces continued to engage in such practices. Police reportedly used excessive force in apprehending and detaining criminal suspects, as well as ordinary citizens, for holding meetings or participating in demonstrations. Government supporters continued to assault suspected opposition members. Violent confrontations between various youth groups aligned with either the government or the opposition continued.

Human rights groups reported that physical and psychological torture perpetrated by security agents and government supporters increased during the year. The Zimbabwe Human Rights NGO Forum recorded 337 cases of torture during the first nine months of the year. Youth militia forces, trained by ZANU-PF, were deployed to harass and intimidate suspected supporters of the MDC and Zimbabwe Congress of Trade Unions (ZCTU).

There were reports of indoctrination against political opposition (see section 5).

Security forces committed political violence, including instances where soldiers and persons in military uniforms beat civilians, particularly in areas suspected of heavy support for the opposition. Army and police units participated in or provided logistical support to perpetrators of political violence and generally permitted their activities. Individuals targeted for harassment and torture tended to be active members of the opposition or high level ZANU PF members in disfavor with the ruling party. According to the Human Rights Watch (HRW) report *You Will Be Thoroughly Beaten - The Brutal Suppression of Dissent in Zimbabwe*, "police have arbitrarily arrested hundreds of civil society activists" for participating in "routine meetings or peaceful demonstrations, often with excessive force, and in some cases subjected those in custody to severe beatings that amounted to torture."

No action was taken against the perpetrators of the following 2005 abuse cases: the February abduction and torture by unidentified persons of a Curuve man believed to be an MDC supporter; the April arrest and beating by police of MDC MP-elect Nelson Chamisa; or the assaults and intimidation through the year of persons perceived to be supporting the opposition, including teachers, civil servants, health workers, and laborers.

The trial of Kenny Karidza, who was arrested and tortured in 2004 for allegedly selling state secrets to foreign governments, had not begun by year's end.

On September 13, police arrested more than 100 members of the ZCTU to prevent the labor movement from staging nationwide marches planned that day. Police severely beat several of the organizers, including ZCTU Secretary General Wellington Chibebe (see section 6.a.). Numerous ZCTU members were hospitalized as a result of their injuries.

War veterans and ZANU PF supporters continued to harass, intimidate, and abuse journalists considered to be sympathetic to the opposition (see section 2.a.).

Security forces repeatedly used force to disperse nonviolent gatherings and demonstrations; security forces also beat participants and demonstrators (see section 2.b.).

There was at least one report of a politically motivated rape during the year. A woman alleged that police in Harare detained her for three days after she attended an MDC meeting in April. Upon her release, she claimed that police forced her into a van and took her to an isolated area where a police officer raped and beat her. The victim reported that the police officer threatened her with death if she reported the incident.

According to a Zimbabwe Torture Victims/Survivors Project report released in December, at least 15 percent of Zimbabwean women refugees interviewed at a counseling center in Johannesburg, South Africa between February 2005 and September 2006 reported they had

been raped in Zimbabwe; the victims most frequently named members of ZANU-PF, police, military, and the Central Intelligence Organization (CIO) as the perpetrators.

The following information regarding the human rights situation in Zimbabwe and the entry and exit procedures in the country was provided in the recent UK Home Office, *Country of Origin Information Report: Zimbabwe*, dated 18 June 2007:

#### RECENT DEVELOPMENTS

##### *11 March 2007 – Opposition demonstration suppressed/leaders tortured*

- 7.01 On 11 March 2007 the Movement for Democratic Change (MDC) attempted to hold a prayer meeting to highlight the worsening economic conditions in the country. However, the gathering, held in the Harare suburb of Highfield, was brutally suppressed by police and other state agents with two people killed, at least 150 arrested, many hurt, and the leaders of the MDC seriously injured after they were beaten in police custody. The detained were denied legal and medical assistance. [50h] (allAfrica.com, 13 March 2007) [4j] A recent report noted that a third person was confirmed as having died as a result of beatings and torture at the hands of police following the disturbances of 11 March. [52] (Zimbabwe Lawyers for Human Rights and the Zimbabwe Association of Doctors for Human Rights)

##### *Background*

- 7.02 Since September 2006, the government has increasingly resorted to violent tactics and draconian laws to suppress dissent, including massive arrests and severe beatings as its response to civil society protests. [100d] (International Crises Group, 5 March 2007, p3) The current crackdown on the Opposition should be seen in the context of Zimbabwe's continued and worsening "economic collapse" [24h] (Economist Intelligence Unit Country Report, April 2007, p1) with the economy shrinking by 40 per cent since 1998, unemployment of 80 per cent, [100d] (International Crises Group, 5 March 2007, p2) and inflation, according to the International Monetary Fund, on course to reach 4,279 per cent during 2007. The economic hardship felt across the country has in turn widened existing cracks in the ruling party with President Mugabe facing increased pressure from sections of his own party to step down in 2008 because of fears that the party is rapidly losing support among its core followers. [24h] (Economist Intelligence Unit Country Report, April 2007, p1-4)
- 7.03 IRIN News.org reported that a new mood of defiance has led to mounting tension "...in Zimbabwe over the past two months: NGOs, church groups, labour and students have all staged sporadic demonstrations around the country." [10o]
- 7.04 The International Crisis Group reported that increasing willingness among opposition groups and civil society to organise street protests has led to increasingly serious clashes with police and state agents. In September 2006, a protest organised by the Zimbabwe Congress of Trade Unions (ZCTU) [24h] (p4) was closed down by the riot police before it had begun. [61] (The New York Times, 13 September 2006) The actions of the police in preventing the ZCTU's protest were described by one civil society leader as the worst beatings that had been witnessed following such a gathering, with fifteen union officials hospitalised and ZCTU leader, [24h] (p4) Wellington Chibebe suffering "...two fractures on his left arm, cuts on his head and bruises on his body..." [3ai] (BBC News, 15 September 2006)
- 7.05 "On 18 February 2007 police crashed the presidential campaign launch of MDC leader Morgan Tsvangirai, leaving three feared dead, though the event was sanctioned by the High Court." [100d] (International Crises Group, 5 March 2007, p3)
- 7.06 During the weekend of the 3 and 4th March 2007 the Tsvangirai MDC held a number of rallies in defiance of a police ban [\*On the 21 February 2007, the police banned all

rallies and protests for three months to avoid “pandemonium and looting” [100d] (p3)] on public meetings and rallies. A rally at Makoni West on Sunday 4 March was held at Chiwetu shopping centre and was addressed by Morgan Tsvangirai. SW Radio Africa reported that “...police led by Rusape officer-in-charge only identified as Mai Muchene, threatened villagers at the rally and ordered the shopping centre to close. The MDC said the officer in charge had brandished an AK 47 rifle...” An earlier rally at Budiriro was broken up after police arrived and used teargas and baton sticks on the estimated 7,000 MDC supporters who had turned up. [138g] (SW Radio Africa, 5 March 2007)

#### *11 March 2007 and subsequent events*

- 7.07 IRIN News.org reported on 12 March 2007 that “Morgan Tsvangirai and Arthur Mutambara, the leaders of the two MDC groups, and several other party and NGO officials were arrested on Sunday ahead of a planned prayer meeting in Highfield, Harare's most populous working-class suburb, where an ‘opposition ringleader’ was shot dead and three policemen were injured in an altercation in the same suburb, also on Sunday.” [10o] ZimOnline reported on 12 March 2007 that the rally was organised by the “Save Zimbabwe Campaign, a coalition of opposition parties, churches, students and labour that is pushing for political change in Zimbabwe...” [49bj]
- 7.08 ZimOnline noted that MDC youth activist Gift Tandare was shot and killed by police during the demonstrations. Senior members of the MDC were reported to have been arrested and beaten, including: Morgan Tsvangirai, Arthur Mutambara, Lovemore Madhuku, Tendai Biti, Grace Kwinje, Lucia Matibenga, Job Sikhala and Frank Chamunorwa. [49bj] SW Radio Africa reported on 12 March 2007 that Nelson Chamisa, Mike Davies and Elton Mangoma were also in custody. Grace Kwinji, the MDCs “...Deputy Secretary for International Relations was reported to be in a “critical state after sustaining head injuries.” [138h] The Independent reported on 13 March 2007 that “Morgan Tsvangirai... was so severely beaten by police after his arrest on Sunday morning he lost consciousness three times...Eyewitnesses said Mr Tsvangirai was lucky to be alive and described seeing the police taking it in turns to smash his head against a concrete wall.” [4g] The Telegraph reported on 14 March 2007 that he had been moved to intensive care with a cracked skull. [5d] SW Radio Africa reported that five opposition leaders were being treated in the intensive care unit at Avenues Clinic. The beating of Morgan Tsvangirai was reported to have been so brutal that he required mouth-to-mouth resuscitation. [138j] (SW Radio Africa, 14 March 2007) The Independent article also reported that Lovemore Madhuku sustained a severe beating at the hands of the police and was reported to have been “unconscious in hospital with a broken arm”. [4g]
- 7.09 Zimbabwejournalists.com reported on 13 March 2007 that following the arrests of the 11 March, there were reports that various activists in detention were being refused food and water and access to legal aid. Some of the detainees were reported to have been denied food for two days. [143c]
- 7.10 In addition to the protests in Harare, SW Radio Africa reported that demonstrations were also held in Mutare and Masvingo. In Mutare, 125 MDC activists were arrested with Godfrey Mubatsa (Manicaland Chairperson), Pishai Muchauraya (Provincial Spokesperson), and Prosper Mutseyami (Deputy Chairperson). In Masvingo, “Student leaders were arrested ... following on-going class boycotts at Masvingo State University. 10 students were arrested including Gideon Chitanga, the Zimbabwean National Student’s Union (ZINASU) Vice President who is being questioned on his involvement with the Save Zimbabwe Campaign.” [138h]
- 7.11 On 14 March 2007, SW Radio Africa reported that “Sesel nZvidzai, the Gweru mayor who was elected on a Movement for Democratic Change (MDC) ticket was arrested yesterday for embarking on a demonstration in solidarity with arrested detainees and

the Save Zimbabwe Campaign. The mayor was arrested together with 10 other MDC supporters.” Police in Kwekwe arrested 10 activists protesting against the beating of Morgan Tsvangirai and other leaders. [138j]

- 7.12 Zimbabwejournalists.com reported that: “Two MDC activists were shot at point blank range around 4 am today at the funeral of Gift Tandare in Glen View. The two, Nickson Magondo and Naison Mashambanhaka were among a group of 500 mourners observing a vigil, consoling the Tandare family, a common practice at funerals in Zimbabwe. The two are recuperating in hospital.” [143c]

*Zimbabwe Congress of Trade Unions (ZCTU) stay away*

- 7.13 The Independent reported on 14 March 2007 that police “...stormed the offices of the country’s labour movement, the Zimbabwe Congress of Trade Unions, and seized documents and videotapes.” The union was reported to have called for a two-day national strike. [4i] The strike was planned by the ZCTU to continue the campaign of opposition, and to “turn up the heat” on Mugabe’s beleaguered government. [89ai] (The Zimbabwe Situation, 3 April 2007) However, the strike, organised as a stay-away rather than the street protests of September 2006, failed to encourage most workers to risk staying off work. ZimOnline reported on 4 April 2007 that the “...two-day stay-away called by Zimbabwe’s largest trade union yesterday flopped as workers turned up for work and businesses opened but analysts attributed this to fear of a government backlash, a few weeks after police brutally stopped an opposition prayer rally. ... Analysts also said Zimbabwe’s high unemployment levels, which has seen eight in every ten people out of work, meant that there were few people to heed the ZCTU’s call. Nearly 70 percent of the country’s workers are now employed by the government.” [49bm]
- 7.14 SW Radio Africa reported on 3 April 2007, that the presence of armed police on the first day of the stay-away was part of intimidatory tactics used by police. There were reports that “...there were disturbances in some high-density areas including Kuwadzana, Budiriro Dzivarasekwa, Mabvuku, Mufakose and Chitungwiza. Small groups of residents tried to block the streets using rocks and rubbish bins and some minibuses were also pelted with rocks. Muchemwa said truckloads of riot police had moved through these areas randomly assaulting anyone on the streets.” [138k]

*Mugabe threatens the diplomatic community*

- 7.15 Mounting criticism from Western governments about the treatment of protesters on 11 March led the United Kingdom and United States to call for increased sanctions against the Zimbabwe government. In a statement following a meeting with President Kikwete of Tanzania, President Mugabe publicly denounced Western interference in his country saying that Western critics could “go hang”. [3i] (BBC News, 15 March 2007)
- 7.16 Mugabe’s comments; directly aimed at countries that he believes are involved in assisting and funding opposition activities, increased the pressure on the diplomatic community in Harare. The Times reported on 20 March 2007 that: “President Mugabe threatened to expel Western diplomats yesterday as his security forces pressed on with a violent crackdown to suppress a feared popular uprising. Simbarashe Mumbengegwi, the Foreign Minister, said that Zimbabwe was prepared to invoke the Geneva Convention to kick out envoys who, it claimed, offered support to Mr Mugabe’s political opponents. ...Mr Mumbengegwi accused the envoys of ‘overstretching their competence’ by allegedly siding with the opposition Movement for Democratic Change (MDC).

“The Zimbabwean Government has accused Western diplomats of organising food and water for victims of last Sunday’s assault by police of 30 opposition activists, including Morgan Tsvangirai, leader of the larger faction of the MDC.

“The ambassadors summoned yesterday, from Western Europe, the US, Japan and Australia, were not allowed to address those claims or raise the long catalogue of violent abuse by the Government since the crisis began on March 25. Christopher Dell, the US Ambassador, walked out after Mr Mumbengegwi refused to take questions.” [82l] (The Times, 20 March 2007)

- 7.17 The Times reported on 4 April 2007 that the government owned Herald newspaper published an editorial in which it accused Gillian Dare, first secretary at the British Embassy, of “... ‘blatant interference’ in Zimbabwean politics by visiting injured members of the Opposition in hospital” The Herald article threatened that Ms Dare could find herself “caught in the cross-fire” and would be returned home to the UK in a “body bag” The Times noted that: “The attack is the latest in a stream of bizarre accusations, mostly against the British and American ambassadors, whom Mr Mugabe accuses of using the MDC as a tool to bring down his Government.” [82n] The Scotsman reported on the 4 April 2007 that “The Herald, which is closely controlled by Mr Mugabe’s presidential spokesman, alleged that Ms Dare [who was also accused of being a spy by the newspaper] was the ‘purse holder and the main financier of the violence being perpetrated by the MDC’.” [98c]

*The crackdown continues*

- 7.18 “The police crackdown on the opposition continued on Monday [12 March 2007] when 140 MDC activists, including women and children, were arrested at the start of an anti-government protest in central Mutare.

“The protesters were demonstrating against the murder of MDC activist Gift Tandari by the police in Highfields on Sunday and the subsequent arrest and detention of the MDC leaders. ...

“In Masvingo at least 10 students including Zimbabwe National Students Union vice-president, Gideon Chitunga were arrested Monday following on-going class boycotts at Masvingo State University, according to information from the Crisis Coalition.” [138i] (SW Radio Africa, 12 March 2007)

- 7.19 On 13 March 2007, Morgan Tsvangirai, Lovemore Madhuku and around 50 other anti-government activists appeared in Harare court charged with inciting violence. The US ambassador to Zimbabwe, Christopher Dell, who was present at the court, reported that it was clear that Morgan had “suffered a severe beating”. “Mr Dell said he saw one young man lying on the floor of the courtroom, who appeared to be nearly unconscious. ... These serious injuries speak volumes of the callous disregard the Mugabe government has for its own people.” [34j] (The Guardian, 14 March 2007) A number of sources stated that the assaults on the opposition activists had not been carried out by the police [4i] (The Independent, 14 March 2007), but by specially drafted soldiers from a “crack Commando unit” The soldiers, disguised as police, were reported to have used drugs before the assault in what one eyewitness described as attempted murder. [49bk] (ZimOnline, 14 March 2007)

- 7.20 In the aftermath of the opposition demonstration of the 11 March, a number of sources reported that President Mugabe was considering clamping down further on opposition activists and NGOs by declaring a state of emergency. “At a meeting attended at Mugabe’s Munhumutapa offices in Harare on Thursday, Mugabe is said to have pushed for the immediate declaration of a state of emergency that would give the state extra powers to effect mass jailing of Mugabe’s opponents. Mugabe was however dissuaded from taking that route by his security chiefs who felt the action would be too drastic and would send the wrong signals to the international community. ... security ministers are said to have told Mugabe to use ‘maximum force without officially declaring a state of emergency’” [49bl] (ZimOnline, 14 March 2007)

- 7.21 “The Movement for Democratic Change (MDC) and its civil society allies have reported an increasing incidence of abductions and threats against activists, allegedly by state security agents, as a crackdown against perceived government opponents continues.
- “Morgan Tsvangirai, the leader of the main camp of the MDC, told a press conference in Harare yesterday that ‘More than 600 of our officials and supporters have been abducted since February 16, and the repression is continuing. People are under siege in the townships. We have about 150 people who have been hospitalised since the regime started its crackdown against the opposition,’ said Tsvangirai.” [37b] (Financial Gazette, 13 April 2007) On 10 April 2007, the MDC made an urgent appeal for “...medical supplies and funds to help meet escalating medical costs, food and legal assistance.” The appeal by the MDC for medical assistance follows its announcement that over 600 of its activists had been hospitalised since the government crackdown on opposition activities on 11 March. [138m]
- 7.22 “Zimbabwean police on Thursday fought running battles with opposition supporters in the second city of Bulawayo as political tensions remained high in the southern African country following the brutal assault of opposition leaders last weekend.
- “The police blamed the disturbances on opposition Movement for Democratic Change (MDC) party supporters whom they accused of barricading the main railway line leading into the city with boulders and logs.
- “The disturbances came a day after police arrested Lovemore Moyo, the MDC legislator for Matobo and another senior party official Samuel Sipepa Nkomo on Wednesday night.
- “Moyo and Nkomo together with 16 other party officials were arrested on Wednesday for allegedly holding a "secret" meeting in the city that the police said was meant to plot violence at next weekend's prayer rally in Bulawayo.” [49bn] (ZimOnline, 16 March 2007)
- 7.23 *The Times* reported on the 18 March 2007, that: “Nelson Chamisa, aide to Morgan Tsvangirai, the Movement for Democratic Change leader, was assaulted at Harare International Airport as he was leaving for Belgium via London to attend a meeting of the European Union and Africa Caribbean Pacific in Brussels, the party’s secretary general, Tendai Biti, said from Johannesburg.
- “He was beaten on the head with iron bars. There was blood all over his face. He is in a critical condition at a private hospital in Harare,” Mr Biti said. ...
- “The assault follows the re-arrests at the airport Saturday of three opposition activists, who were allegedly assaulted along with Mr Tsvangirai at the March 11 protest. ... Grace Kwinje and Sekai Holland, among the most severely injured in last week’s incident, were prevented from leaving to receive medical care, and Arthur Mutambara, leader of an opposition faction, was later also arrested at the airport.” [82o] (The Times Online, 18 March 2007)
- 7.24 On 28 March 2007 heavily armed Zimbabwe police officers using powers under POSA “... cordoned off much of the central business district in a bid to conduct searches on the Headquarters of the MDC at Harvest House. It is understood that Morgan Tsvangirai intended to have a press briefing at Harvest House on the spate of abductions of his party leadership in the month of March. Close to 80 people, including senior MDC officials, were arrested and bussed to Harare Central Police Station. It is alleged that those arrested were seriously tortured before being released the following day and the day after the courts ordered their release.” [35c] (Zimbabwe Human Rights NGO Forum, 10 May 2007)

- 7.25 On 5 April 2007, SW Radio Africa reported that Alois Mudzingwa, a founder member of the MDC and National Executive member, had been found unconscious, in suspicious circumstances, on a sports field. He was reported to have died soon after being found. Mr Mudzingwa was reported to have been an active and high profile member of the MDC who had in the past been beaten and tortured by police, militia and war veterans. One such attack resulted in his confinement to hospital for several weeks. [138l] In another news report, the Mail and Guardian reported on 10 April 2007 that Philip Katsande, a provincial official with the MDC had been shot and critically injured following a police raid on his home. The police stated that they were "...hunting for suspects behind a string of petrol bomb attacks on police stations. ... The attack on Katsande comes days after the badly-beaten body of an abducted television cameraman, Edward Chikomba, was found on the outskirts of Harare, in a killing some suspect was linked to his work. Chikomba allegedly leaked footage to foreign media of a badly beaten Tsvangirai after his release from custody last month – images that provoked a torrent of international condemnation of the regime of Robert Mugabe." [6l]
- 7.26 On 26 May 2007, riot police again stormed Harvest House (the HQ of the Tsvangirai faction of the MDC) arresting MDC youth members. The meeting of youth members, called to discuss democracy in Africa, was broken up by police in riot gear who reportedly used force to arrest 211 youth members. There were reports that those arrested were beaten and interrogated by the police and denied access to lawyers or any food. The 211 youth members were all released by the following evening without charge. Nelson Chamisa, spokesman for the MDC stated that he believed that the government was attempting to deflate morale within the party before the 2008 elections. [138t] (SW Radio Africa, 28 May 2007)

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## **EXIT/ENTRY PROCEDURES**

### *Treatment of returned failed asylum seekers*

- 35.01 Following the United Kingdom Government's decision to resume returns to Zimbabwe in November 2004, a number of articles appeared in British and Zimbabwean publications claiming that forcibly returned Zimbabwean nationals had been stopped and interrogated by Zimbabwean government agents. Among reports of human rights abuses *The Voice* reported on 9 February 2005 that several returnees had disappeared while others had been beaten and threatened upon arrival. [81] (p1-2) *Newzimbabwe* on 23 April 2005 and *The Times* on 4 July 2005 reported further claims that returnees were facing interrogation and beatings at the hands of CIO (Central Intelligence Organisation) officers at Harare airport. [82b] *Newzimbabwe* claimed that returnees faced a "Gestapo" welcome on arrival. [90b] Reports of abuse included imprisonment, beatings to the soles of the feet and electric shock treatment to the chest and testicles. [82b] *The Independent on Sunday* on 3 July 2005 and *The Times* on the 5 July 2005 reported further accounts of human rights abuses of forcibly returned asylum seekers, noting that the CIO and Youth Militia co-operated in perpetrating the abuses. [82c] [4d]
- 35.02 *Scotland on Sunday* reported on 22 May 2005 that Archbishop Pius Ncube, an outspoken critic of the Zimbabwean Government, urged the United Kingdom government to suspend all returns to Zimbabwe where he claimed that they faced "certain death" if returned. [98b]
- 35.03 Responding to the UK Government's decision to resume returns to Zimbabwe *News24.com* reported on 17 December 2004 that Zimbabwe's Information Minister had warned that plans by Britain to deport 10,000 failed asylum seekers could be a plot to destabilise the country before next year's polls. Jonathan Moyo told the

government-controlled *Herald* newspaper that the country needed to remain vigilant in case those deported were “trained and bribed malcontents” who could “cause mayhem during and after the March 2005 elections”. Mr Moyo is also quoted as saying “We have the right to ask whether these would be deportees are Blair’s mercenaries of regime change.... [38g] (p1-2)

- 35.04 However, in an apparently contradictory statement, BBC News reported on 17 December 2004, that Zimbabwe’s Justice Minister Patrick Chinamasa had said that the Government would unconditionally accept anyone sent back from the United Kingdom. “He said that the deportations backed up the government’s argument that the opposition is exaggerating claims of human rights abuses. ‘The chickens are now coming home to roost. It’s wrong to suggest that they went there [the UK] as victims of torture, but the truth is that they were economic refugees,’ Mr Chinamasa said.” [3bq]
- 35.05 However, *The Guardian* noted on 10 July 2005 claims by the then Immigration Minister, Tony McNulty, who stated that there had been “no substantiated reports” of abuse since deportations had recommenced in November 2004. [34h] *The Independent on Sunday* noted on 13 July 2005 that reports of abuse against returned failed asylum seekers were being investigated by human rights activists, lawyers and religious groups. However, the article noted that tracking deported refugees in Zimbabwe is fraught with difficulty. “Expatriate leaders say many asylum seekers go into hiding immediately after they return, or are too fearful of retaliation to co-operate with lawyers and opposition groups.” [4d]
- 35.06 *The Times* reported on 14 October 2005 that forcible returns to Zimbabwe had been stopped indefinitely, following a ruling by the Asylum and Immigration Tribunal (AIT) that found that there was a “real risk of serious harm” for those forcibly removed to Zimbabwe. [82g]
- 35.07 *The Guardian* reported on 3 August 2006 that the United Kingdom Government had won an appeal against AIT’s October 2005 ruling. The article noted that “The tribunal [AIT – Asylum and Immigration Tribunal] reversed its decision of last year and yesterday ruled that failed asylum seekers would not automatically face persecution if returned to Zimbabwe.” However, the tribunal stated that some “...claimants linked with Zimbabwe[s] opposition parties or with military or criminal records might be at greater danger of serious mistreatment...” Those claimants with a “...political profile considered to be adverse to the Zimbabwe regime...” are at risk of encountering persecutory ill-treatment. [34c] Commenting on the ruling, News24 reported (2 August 2006) that Zimbabwean Justice Minister Patrick Chinamasa stated that failed asylum seekers returned from the UK would be welcomed back with “open arms”. “They were never persecuted in the first place and claims that they will be harmed when they return home are unfounded.” The article also reported the acting Information Minister Paul Mangwana as saying that “All deportees would be ‘more than welcome to come back and help rebuild our economy’.” [38d] *The Times* reported on the 2 August 2006 that even Didymus Mutasa, minister with responsibility for the CIO [82i], who had previously stated (reported by SW Radio 30 June 2005) in August 2002 that “We [Zimbabwe] would be better off with only six million people, with our own people who support the liberation struggle. We don’t want all these extra people.” [138a] is reported to have said that returning Zimbabweans would be welcome and “looked after very well”. [82i]

The following two articles referred to in the above report are reproduced in full. The article entitled *Tortured and dumped: the fate of those sent home to Mugabe by UK* was published on 3 July 2005 by the Independent on Sunday, and accessed on 23 October 2007 from [http://findarticles.com/p/articles/mi\\_qn4159/is\\_20050703/ai\\_n14684651/print](http://findarticles.com/p/articles/mi_qn4159/is_20050703/ai_n14684651/print):

Refugees sent back to Zimbabwe by the British government have been tortured and beaten by Robert Mugabe's secret police, The Independent on Sunday can reveal today.

The disclosures, which last night plunged the Government into a new row about its controversial policy, highlight the grave danger that deportees face when refused asylum and forcibly deported back to the country ruled by President Mugabe's regime.

The cases uncovered by the IoS include at least six incidents of refugees being repeatedly assaulted; one beaten so severely he was hospitalised; one being nearly drowned during interrogation; and others dumped without food and water deep in the bush.

These new revelations will fuel the bitter row now enveloping the Home Secretary, Charles Clarke, after he refused to halt the forcible returns of failed Zimbabwean asylum seekers despite the violent repression now gripping the country.

Kate Hoey, the Labour MP and former minister, said these cases meant it was 'shockingly wrong for the Home Office to continue to deport people'. Ms Hoey added: 'Charles Clarke keeps saying that we have no proof but I met people when I was there who had been tortured. Anyone who is deported back from the UK, even if they are not a political activist, is at risk because the anti-British feeling is so strong.'

Ministers are planning a fresh round of deportations this week as they face a series of legal challenges over the continued detention of these refugees, and allegations of ill-treatment by guards at detention centres.

Menzies Campbell, deputy leader of the Liberal Democrats, said last night the evidence uncovered meant the Home Office now had a moral duty to suspend all deportations to Zimbabwe. David Davis, the shadow Home Secretary, asked that the Government suspend deportations until a rigorous method of monitoring the safety of those returned to Zimbabwe could be put in place.

The controversy erupted late last month after scores of Zimbabwean asylum-seekers in immigration detention centres around the country began hunger strikes in protest at Home Office plans to deport them. It is now thought that up to 125 detainees are refusing food.

The allegations uncovered by the IoS " based on investigations by Zimbabwean human rights groups and church leaders " include:

- A refugee in his 40s sent back last December alleges he was handcuffed at Harare airport by Zimbabwean secret police and driven into the bush. He was then beaten repeatedly, had his head forced into a bucket of water and was accused of being a British spy.
- Also in December, a refugee was seized a day after being interrogated for three hours at Harare airport and beaten so badly he had to be rushed to hospital. It is believed his assailants were militia linked to the ruling Zanu-PF regime.
- In May, British officials escorting another man back to Zimbabwe allegedly handed him straight to the secret police at Harare airport. He was assaulted by his interrogators, and is now in hiding.
- Last month, another returnee was interrogated at the airport, made to divulge addresses of other dissidents, then arrested at his home and interrogated again.

Dr Brighton Chireka, director of the Zimbabwe Association, said the regime's secret police, the Central Intelligence Organisation, who are increasingly paranoid, only focused on people they believed were dissidents or spies. 'The Central Intelligence Organisation is the most feared in Africa,' he said. In other cases, suspected dissidents are seized by militias, linked to Zanu-PF, whose favourite techniques include forcing metal rods through the victim's armpits and using paddles studded with roofing nails to beat people with.

The fate of the Zimbabweans who have been expelled by the Home Office is now being investigated by human rights activists, lawyers and religious groups.

Evidence compiled by the Zimbabwe Human Rights Group, the Zimbabwe Association and a Methodist preacher from the Midlands, Dr Martine Stemerick, suggests there could be at least 10 cases of refugees being persecuted.

Dr Stemerick has recently returned from a three-week-long trip to Zimbabwe, covertly recording evidence about the ill-treatment of returned asylum seekers.

However, tracking deported refugees in Zimbabwe is fraught with difficulty. Expatriate leaders say many asylum-seekers go into hiding immediately after they return, or are too fearful of retaliation to co-operate with lawyers and opposition groups.

Susan Harland of the Zimbabwe Association, said: 'It is incredibly frustrating. These people just don't have the confidence to make statements because they fear their names will be plastered everywhere. If they did, we would be able to stop these deportations happening.'

The ban on deportations to Zimbabwe was lifted last November because officials said there had been a substantial rise in the number of people making asylum claims falsely saying they were Zimbabwean. Since January at least 95 people have returned to Zimbabwe, a figure that includes people who have left voluntarily.

Next week, lawyers are preparing a High Court challenge over Mr Clarke's refusal to release Crispen Kulinji, the most prominent hunger striker and senior opposition activist. Human rights groups are investigating reports that at least two male hunger strikers in Harmondsworth were placed in solitary confinement by guards as punishment for leading the protest. A third man is also understood to have been placed under 'room arrest'.

The article entitled *Proof of deportees' torture puts Clarke under pressure* was published on 5 July 2005 by the Times Online, and accessed on 23 October 2007 from <http://www.timesonline.co.uk/tol/news/uk/article540487.ece>:

CHARLES CLARKE is under growing pressure to explain why he assured the Commons that deported Zimbabwean asylum-seekers would come to no harm, when there is mounting evidence that some have been tortured.

After revelations in *The Times* about the violence suffered by some deportees, MPs from all sides demanded yesterday that the Home Secretary face them before the start of the G8 summit and spell out whether Britain can provide any help to these victims.

Liam Fox, the Shadow Foreign Secretary, called on Mr Clarke to halt deportations. "All deportations should be stopped to Zimbabwe until we have in place a mechanism that can assure the safety [of those returned]," he said. "The Government says that there is no evidence of maltreatment. That is because the asylum-seekers disappear on their return. The wilful naivety with which the whole approach to Zimbabwe is being conducted I find offensive."

The Home Secretary also faced demands from a growing chorus of MPs to report on the deteriorating health of 90 Zimbabwean hunger strikers held at British detention centres.

Among them is Absolom Mashamba, 34, a former prosecutor, who is due to be flown back to Harare today.

Evan Harris, the Liberal Democrat MP for Oxford and Abingdon, whose constituency includes the Campsfield House detention centre where Mr Mashamba is on the fifteenth day of his fast, is trying to block his removal. "I will be furious if he is removed," Dr Harris said.

"I told Charles Clarke it is hypocritical to claim that Mugabe is an evil tyrant with an appalling human rights record and then claim it's safe to return for anyone who has gone against the regime by making an asylum claim, let alone one who may have as strong a case as Mr Mashamba does".

Mr Mashamba was a senior figure in the Zimbabwe judiciary when he was arrested in 2001 by police hunting his sister, a noted opposition figure. She fled to Britain where she was granted asylum status.

Mr Mashamba's face and head still bear the scars from being beaten and given electric shocks. "My head was forced into a bucket of dirty water until I nearly drowned," he told *The Times* last night.

Some weeks later he was detained and tortured again. He fled to Britain on April 17, 2001.

His claims for asylum were refused and he was held in Walton prison in Liverpool for a time until fellow Zimbabwean refugees helped him to get bail.

Mr Mashamba went underground, living with his English-born partner to avoid deportation in September 2001, but was arrested last month as the Home Office stepped up its deportation of Zimbabweans.

"I would rather die here than face what happened to me before," he said. "That will never be wiped from my mind. If they try to handcuff me and drag me on to a plane I will use what strength I have left to fight being sent back."

The Home Office — which misspelled his name on a memo — insisted again last night that there is no change of heart on forced removals, but immigration officials have called off a string of deportations since the hunger strike started. Those given a reprieve last week told *The Times* yesterday that they are fearful that they will be sent back once the G8 summit is over.

Kate Hoey, the Labour MP for Vauxhall, and Alastair Burt, the Tory MP for Bedfordshire North East, were among those demanding a new statement from the Home Secretary.

"It is unprecedented to have so many asylum-seekers on a hunger strike in detention," Ms Hoey said. "Does Charles Clarke want someone to die before he comes to his senses?" She is also urging the Government to persuade the South African authorities not to return a 26-year-old man deported from Britain last month who escaped custody after being beaten by Zimbabwean police.

The victim, who gave his name as Vincent, had worked for a Christian charity in Bulawayo, which brought him up after his parents were murdered by a militia belonging to Robert Mugabe's ruling Zanu (PF) party in the early 1980s.

He also worked for the opposition Movement for Democratic Change. He was beaten after being questioned about that work and in November 2002 the charity gave him the money to flee to Manchester.

When he arrived back at Harare airport last month he was immediately arrested and beaten during three days of interrogation.

After his release Vincent went to Bulawayo, where police were again waiting for him. Two more periods of brutal detention followed and his relatives were threatened so he escaped to South Africa.

His cousin, who asked not to be named, told *The Times* that Vincent was picked up at the weekend by South African police who said that he will be sent back within 48 hours.

A spokesman for the United Network of Detained Zimbabweans said: "How much more proof does Charles Clarke need that deportees suffer violence when they are forcibly returned?"

In a similar vein, the following article entitled *Zimbabwe Detains 160 Deportees* was published in Worldpress.org on 2 January 2006 and accessed on 22 October 2007 from <http://www.worldpress.org/Africa/2206.cfm#down>:

Security agents in Zimbabwe are interrogating more than 160 Zimbabweans who were deported recently from South Africa.

The South African Broadcasting Corporation (Dec. 28, 2005) reports that the deported men and women had been held at Lindela Detention Center outside Johannesburg and included Zimbabwean civil servants who claimed they had been arrested in South Africa despite having legal travel documents.

"The deportees, some of whom did not have travel documents, were flown into Zimbabwe last night [Dec. 27] and are currently at Harare International Airport pending clearance."

A spokesman for South Africa's department of home affairs confirmed that Zimbabweans had been deported by air but said this was not unusual.

"We deport people by air from time to time," Nkosana Sibuyi said.

More than 3 million Zimbabweans are estimated to be living outside the country, most of them in South Africa.

Zwnews.com (Dec. 28, 2005) says more Zimbabweans are set to be flown back to Zimbabwe from South Africa soon.

Zimbabwe's Consular General in South Africa, Chris Mapanga said:

"Deportations have been by road or by train to Beitbridge [border post], but this time around, because trains are not available for deportation, the South African home affairs [department] decided to deport our people by air."

He described the deportations as a "unique arrangement" aimed at reducing the number of detainees inside Lindela.

"They [the South African authorities] don't want to keep Lindela full to the brim during this holiday time. They want to make sure people are moved out of that place because we've had cases of deaths at Lindela due to overcrowding.

"The total number of Zimbabwean detainees we have identified at Lindela is about 560, and of that number some of them left yesterday, and others are yet to leave, probably today," Mapanga said.

Over 30 detainees, including a pregnant woman, died at Lindela Detention Center in 2005 because of overcrowding and the poor conditions under which they were being held.

Newzimbabwe.com (March 2, 2005) revealed that deportees receive a "Gestapo" welcome at the Harare International Airport with some of them being detained and interrogated for more than three hours.

Some of the detainees report being tortured by Zimbabwean security agents. Others, who were forcibly removed from Britain in 2005, have not been heard of since. The last their families heard of them, in Zimbabwe and in Britain, was that they had been picked up by Zimbabwe's omnipresent secret police, the Central Intelligence Organization.

The move by the South African home affairs department to deport Zimbabwean immigrants comes at a time when President Robert G. Mugabe's government has become increasingly hostile to and suspicious of Zimbabweans who return to the country after long stays abroad. Officials have publicly accused them of being spies, mercenaries and agents of regime change who are being sent back into the country under the guise of returning illegal immigrants and failed asylum seekers.

President Mugabe's government is also currently working on measures aimed at curtailing the travel rights of Zimbabweans who are critical of its policies.

According to information posted on the website of the Zimbabwean Ministry of Home Affairs, the Zimbabwean Department of Immigration is responsible for "controlling and

facilitating the movement of people into and out of” Zimbabwe. The Zimbabwean Department of Immigration is present at all entry points including Harare International Airport (‘Department of Immigration – About the Department’ (undated), Ministry of Home Affairs, Zimbabwe website [http://www.moha.gov.zw/index.php?link=imm\\_about](http://www.moha.gov.zw/index.php?link=imm_about) – Accessed 27 March 2007; and ‘Department of Immigration – Contact Us’ (undated), Ministry of Home Affairs, Zimbabwe website [http://www.moha.gov.zw/index.php?link=imm\\_contact](http://www.moha.gov.zw/index.php?link=imm_contact) – Accessed 27 March 2007).

A number of sources suggest that the Zimbabwean Central Intelligence Organisation (CIO) is responsible for security at Harare Airport. An article dated 23 March 2007 in *The Zimbabwe Independent* reports that the Zimbabwean “government is removing civilians from the Department of Immigration at border posts and airports and replacing them with security and intelligence officers in a bid to beef up security.” The government appointed three senior assistant commissioners from the police as principal chief immigration officer and two assistant principal chief immigration officers:

Sources said the three were drafted into the department as part of the new security measures that government has introduced to monitor the borders and airports.

...They said the move was part of a wider plan to fill all strategic security area jobs with either the CIO, police or the army. They said more security agents would be employed by the department to man the country’s ports of entry (Shakeman, Mugari 2007, ‘CIO Replace Immigration Officers’, *Zimbabwe Independent*, 23 March, allAfrica.com website <http://allafrica.com/> – Accessed 26 March 2007).

According to *Jane’s Sentinel Security Assessments* and reported by the UK Home Office, the “CIO has taken over immigration security at Harare International Airport in its search for dissidents (mostly MDC activists), especially on flights to the UK and the US” (Jane’s Information Group 2007, *Jane’s Sentinel Security Assessments – Southern Africa (Zimbabwe)*, 25 January in UK Home Office 2007, *Country of Origin Information Report – Zimbabwe*, 21 February, Section 11.52).

2007 has seen an increase in violence against opposition activists in Zimbabwe, particularly MDC officials and members, who have been subjected to arrests, beatings and other abuses. In a report from BBC online, dated 20 March 2007, ‘*Crackdown*’ on Zimbabwe activists, allegations made by the leader of the MDC of the targeting of MDC members by COI and youths from ZANU-PF are detailed:

Zimbabwe's opposition says there has been a sharp escalation in violence against activists across the country. The Movement for Democratic Change (MDC) has accused the authorities of carrying out arbitrary arrests. MDC leader Morgan Tsvangirai also told a UK newspaper that President Robert Mugabe was now using "hit squads" to crack down on the group's members. Scores of activists were arrested and allegedly assaulted after police broke up a rally just over a week ago. Four senior MDC officials were prevented from leaving the country, some to seek treatment for injuries they say were sustained in police custody. The police accuse the MDC of starting the violence - which it strongly denies - and say the travel ban is necessary because some activists may face charges.

'Badly beaten'

On Monday, Zimbabwe's foreign minister warned foreign diplomats that the government would not hesitate to expel them from the country if they gave any support to opposition activists. Meanwhile in Brussels, a senior European Union politician said officials from Zimbabwe's ruling Zanu-PF party should be banned from attending planned meetings of EU and African, Caribbean and Pacific (ACP) officials later this week. "It is clear that the

participation of Zanu-PF delegates in the ACP-EU meeting would send a terrible signal," said Glenys Kinnock, co-chair of the EU-ACP group. MDC spokesman, MP Nelson Chamisa, said he was severely beaten on Sunday as he tried to leave the country to travel to the meeting. But the Zanu-PF delegation has arrived in Belgium. A statement issued on behalf of Mr Tsvangirai says that groups of youths from Zanu-PF and officials of the Central Intelligence Organisation have been targeting known MDC activists. Those targeted have been taken into custody and assaulted, but none have been charged or brought to court, the statement says. It claims another 35 MDC members - on top of the 50 injured when police broke up the rally nine days ago - have been taken to hospital with fractures and severe bruising. Mr Tsvangirai's spokesman William Bango told the BBC that six had gunshot wounds. The MDC argues this bears the hallmark of a deliberate attempt to crush all legitimate resistance to the government, the BBC's Southern Africa correspondent Peter Biles says.

'Flat lie'

In an interview for the UK's Daily Telegraph, Mr Tsvangirai - who needed stitches in a head wound after he was arrested - said the authorities' crackdown on MDC members had become much more focused. "Instead of random beatings at police stations, [Mugabe] is now using hit squads, unidentified men, unidentified vehicles," he told the paper. "But we know there are units of state agents that have been given this assignment." He said the violence was "coming directly from Mugabe". But Security Minister Didymus Mutasa denied the allegations, saying they were "a flat lie". Mr Mugabe has said Western critics should "go hang". More than 80% of Zimbabweans are living in poverty, with chronic unemployment and inflation running at more than 1,700% - the highest in the world.

An article from *The Economist* details the increased activities of the CIO in detecting opposition supporters as part of the crackdown against MDC (2007, 'Houdini holds on, for now - Zimbabwe', *The Economist*, 24 March (FACTIVA) – Accessed 23 March 2007)

Zimbabwe's agony

Zimbabweans are desperate to kick out their leader, but too divided to act

THE walls talk bravely enough in Harare, Zimbabwe's capital. "Vote him out" is scrawled in man-sized letters on a fence in the leafy suburb where President Robert Mugabe has his private home. On brick and tarmac across town are sprayed "MDC", the initials of the opposition party, and the word "Change" But flesh and blood are more vulnerable. In the past two weeks, since police shot dead a man who was calling for Mr Mugabe to go and then arrested and badly beat several opposition leaders, something close to a state of emergency has been in force.

At night plain-clothes security men prowl the townships, breaking up meetings and enforcing an unofficial curfew. All over the city uniformed police now tote semi-automatic rifles. It is popularly believed that one in ten adults works for the feared Central Intelligence Organisation (CIO), which reports directly to Mr Mugabe. Last weekend the CIO reportedly snatched the body of the slain protester from a funeral parlour to prevent his burial becoming the focus of more anti-Mugabe demonstrations. Few dare to mention the president by name. "The old man must give it a rest, the people are cross," says a gardener, adding that the police use water-cannon and truncheons on those who speak out.

So the crackdown goes on, despite foreign criticism even from some corners of Africa that had previously kept quiet. On March 18th an opposition activist was dragged aside at Harare airport and beaten. Others were arrested when they tried to leave the country for the medical treatment they need after the beatings they had suffered earlier this month.

Optimists say that the increasing repression is evidence that Mr Mugabe is becoming desperate, that he now lacks any other means to hang on to power. Morgan Tsvangirai, the main opposition leader, whose fractured skull has become a very visible symbol of the latest round of state violence, says that the end is close for Mr Mugabe. Another MDC spokesman

believes that the president has run out of tricks to ensure his survival: “We are watching Houdini finally drowning in his chains”, he says.

But that may be wishful thinking, at least if it depends on the opposition getting its act together. The MDC remains divided, penniless, without serious foreign support and unable to get people back on the streets in big numbers. Young men have thrown petrol bombs at police stations and assaulted policemen, but such acts are spontaneous defiance; little is organised. Residents of Harare, where anti-Mugabe feeling is strongest, say that they “just pray for change”, but few seem ready to do much more. Beyond the city there have been no serious demonstrations.

Of course Zimbabweans are fed up. Most are jobless. Few wages, anyway, cover the high cost of something as mundane as taking a bus to work. At dusk the roads are lined with men and women, some with firewood or sacks of mealie-meal on their shoulders, tramping home to townships many miles away. With inflation at 1,700%, cash is being printed so fast it is all but worthless. Zimbabweans joke that theirs is the only country where millionaires go hungry. Petty crime is rising. Shop owners say staff or customers used to pilfer some 5% of their stock, but now the share is as high as one-third.

But such woes do not simply translate into political protest. Without opposition leaders to organise the discontented, Zimbabweans knuckle down and endure hardship. More and more households, struck by AIDS, are headed by children; more young people turn to prostitution and crime; more beggars and fruit-sellers patrol the streets.

Holding on to his job

And among the poverty and hopelessness, a few people are getting rich too. Ever more luxurious cars navigate Harare's potholed streets and broken traffic lights. On March 19th the country's stockmarket rose by a barely credible 569,000 points, as much in a single day as it rose in the four decades up to January 2007. Investors get short-term loans from local banks to speculate; when it all collapses, as it must, some banks will be in big trouble.

None of this means, however, that Mr Mugabe is safely in office for the long term. A real threat lies within his own ranks. Jonathan Moyo, an outspoken independent MP (but formerly the chief public apologist for the president), claims that the old man is isolated in his own party and is losing his political touch: “Mugabe's rule is finally coming to an end,” he says. He predicts that the ruling Zanu-PF party will soon split as rivals for the succession become impatient to take over.

Mr Mugabe has long been adept at dividing and ruling over his allies, but recently he has stumbled. He failed to get the party to extend his presidential term by two years. He has been virtually ignored by his party after saying that he will run again for president in an election in 2008. Instead, leading power-brokers, especially Solomon Mujuru, an old brother-in-arms, appear to be stitching together rival party factions to ditch the president. Mr Mujuru is said to worry that economic collapse is threatening his own vast wealth and is thought to have the backing of at least some of the army.

Such rumours, if true, would be a greater threat than street protests. Tantalisingly, some close to Zanu-PF's leaders even say that Mr Mujuru has been in talks with Mr Tsvangirai. Yet Mr Mugabe is a keen fighter. He is spry despite his 83 years, rising at 4am each morning and working until at least 9pm, according to a priest who sees him regularly. He has a strong incentive to hold on to power, as he fears prosecution for murder and other crimes. And some others in the party would hate to see Mr Mujuru triumph, so may help prolong Mr Mugabe's rule. Thus, as with the opposition, the rival factions of the ruling party are hobbled by their own divisions. Houdini is indeed looking troubled, but he is not out of breath yet.

The following article discusses the escalation in abductions and beatings of critics of the government by security forces (Peta Basildon 2007, ‘Mugabe seizes passports from opposition activists’, *The Independent*, 22 March, (FACTIVA) – Accessed 23 March 2007):

Security forces in Zimbabwe have been accused of stepping up abductions and beatings of government critics, while senior opposition figures are having their passports confiscated to prevent them publicising the crisis to the outside world.

William Bango, a spokesman for Movement for Democratic Change (MDC), said: "At least five opposition officials have been picked up for torture from the townships by the police every night before they are returned to their homes. The strategy is to try to ensure that the opposition is destroyed as these officials would be too scared to participate in our activities in future." Passports of MDC faction leader Arthur Mutambara and senior party officials Grace Kwinje and Sekai Holland had been seized. The latest accusations of brutality came as Western powers sought to persuade Africa to confront President Robert Mugabe. Tony Blair said Mr Mugabe's regime was "appalling, disgraceful and utterly tragic for the people of Zimbabwe" and damaging the region's reputation.

"Let's be very clear: the solution to Zimbabwe ultimately will not come simply through the pressure applied by Britain. That pressure has got to be applied within Africa, in particular within the African Union," he told Parliament.

Few African governments have joined the criticism of Mugabe, although leaders meet in Tanzania next week to discuss Zimbabwe. The Zambian President Levy Mwanawasa said the region would have to get involved. "Quiet diplomacy has failed to help solve the political chaos and economic meltdown in Zimbabwe," he said. In Harare, Mr Mugabe has summoned judicial officials to a seminar geared towards preparing them to handle "terrorism cases".

Sources revealed that the seminar was being attended by senior magistrates whom Mr Mugabe wanted to mete out "heavy punishment" to opposition officials accused of terrorist activities.

Mr Mugabe's spokesman, Sikhanyiso Ndlovu, dismissed the opposition MDC as a "terrorist organisation" and said the government was justified in implementing any measures geared towards countering it.

Mr Bango said his party was aware of the secret seminar for judicial officers. They had been told that the seminar was necessary because Zimbabwe "was facing a deeper terrorism threat than ever before and government wants to develop the capacity of judicial officers to handle them". Mr Bango said it was evident that the government was trying to muzzle the judiciary so it could target the opposition whenever "so called terrorism crimes by the opposition" were brought before the courts.

Mr Mugabe has over the years weeded out judges who displayed independence. Mr Bango said his party feared officials would be targeted on trumped-up charges in the next few months as Mr Mugabe becomes desperate.

"We are being informed that they [the government] want to plant arms of war at various places to use them as a pretext of arresting us and accusing us of planning a war to justify their claims that we are terrorists," he said.

Peter Hitschmann, a former Rhodesian soldier and friend of the prominent opposition activist Roy Bennett, has now spent over a year in jail on charges that he cached arms to use in an alleged plot to kill Mr Mugabe. Mr Bango said Zimbabwe was certainly heading for trouble unless regional countries intervened now. He said the MDC was prepared to accept a dignified exit strategy for Mr Mugabe if regional leaders pressured him to negotiate an end to the current impasse.

The Human Rights Watch article *Zimbabwe: Security Forces Extend Crackdown to Public*, 28 March 2007, details the serious abuse of not only opposition activists but ordinary Zimbabweans by the security forces (accessed on 27 June 2007 from <http://hrw.org/english/docs/2007/03/28/zimbab15578.htm>):

(Johannesburg, March 28, 2007) – The government of Zimbabwe has permitted security forces to commit serious abuses with impunity against opposition activists and ordinary Zimbabweans alike, Human Rights Watch said today. Security forces are responsible for arbitrary arrests and detentions and beatings of opposition Movement for Democratic Change (MDC) supporters, civil society activists, and the general public.

The Southern African Development Community (SADC) heads of state are meeting today at an extraordinary summit in Dar-es-Salaam, Tanzania to discuss, among other issues, the political situation in Zimbabwe. Zimbabwean President Robert Mugabe is scheduled to attend the meeting. Human Rights Watch called on the sub-regional organization to take strong measures to address the escalating crisis.

“The government of Zimbabwe has intensified its brutal suppression of its own citizens in an effort to crush all forms of dissent,” said Georgette Gagnon, deputy Africa director at Human Rights Watch. “The crackdown shows the government has extended its attack on political dissent to ordinary Zimbabweans, which should prompt the SADC to act quickly.”

Human Rights Watch recently spent two weeks in Zimbabwe interviewing many victims of abuse and witnesses to the political unrest in the cities of Harare, Bulawayo and Mutare. Witnesses and victims from Harare’s high-density suburbs of Glenview, Highfield and Mufakose told Human Rights Watch that for the past few weeks police forces patrolling these locations have randomly and viciously beaten Zimbabweans in the streets, shopping malls, and in bars and beer halls.

Police forces have also gone house-to-house beating people with batons, stealing possessions and accusing them of supporting the opposition. The terror caused by the police has forced many families in the affected areas into a self-imposed curfew after dark.

The recent escalation of political unrest in Zimbabwe began when police imposed a three-month ban on all political rallies and meetings in Harare on February 21, 2007. The opposition MDC and civil society activists vowed to defy the ban. Since then, hundreds of MDC members, including its leader Morgan Tsvangirai, and civil society activists have been arrested and detained around the country. On March 15, for example, 14 MDC members were arrested in Bulwayo for failing to notify the police about plans to organize a demonstration. They were released without charge the following day. On March 16, four students were arrested at the University of Zimbabwe campus and accused by police of being “security threats” before being released on the same day without charge.

The violent police disruption of a prayer meeting organized by the Save Zimbabwe Campaign on March 11, and the subsequent arrest of MDC and civil society activists, led to skirmishes between opposition members and security forces in several high-density suburbs in Harare. According to police reports, three police officers were injured in a clash with opposition members before the prayer meeting. Police reports published in the state-run Herald newspaper also alleged that MDC activists had engaged in acts of violence, including the petrol bombing of several police stations around the country, which in one case severely burned three police officers. These events have triggered a brutal government backlash against activists and ordinary Zimbabweans.

“The government ought to prosecute those accused of violent acts but it shouldn’t respond to political unrest with ever more brutal and excessive force,” said Gagnon.

On March 14, police severely beat 10 employees of a local store in Mufakose, Harare. The shop manager told Human Rights Watch:

The police who attacked us were more than 50. They hit us just outside the store as we were locking up for the night and leaving. More than eight vehicles of police came and they said ‘everybody sit down.’ We were dressed in our store uniform. I tried to negotiate with them to say we were just employees but the first one beat me with a baton and I sat down. They hit me

on my leg and my shoulder was also hurt. They were beating us with batons, rifle butts and they were kicking us.... They were saying 'you are MDC people.' We are now so scared.

In another case on March 14, one man told Human Rights Watch how a group of 12 policemen brutally assaulted him at a bar in Glenview, Harare:

I was accosted by one policeman who told me to come outside. But when I got outside there were two more policemen armed with batons and they began to beat me. They beat me thoroughly and then they told me to go but I fell down and they started beating me again. They were joined by other policemen and there was now a chain of policemen beating me with batons and kicking me in the ribs everywhere. They were telling me 'you are beating policemen, don't do that.' I told them that I didn't know anything about beating policemen but they continued hitting me. I fell unconscious and when I woke up I was taken to Harare central hospital where they took an x-ray. They found I had a broken arm and badly bruised ribs.

A 15-year-old girl and her mother were abducted on March 19 at Warren Park D in Harare by a group of unknown persons, they alleged to be government supporters. The girl described her ordeal to Human Rights Watch:

We were put into a car and blindfolded and we didn't know where we were going. Then they put us into another vehicle. I think it was an open truck. They took us to Mount Hampden and we were taken out of the car and badly beaten with clenched fists and kicked while we were there. They were saying 'your father is an MDC supporter and you are the ladies of Women of Zimbabwe Arise and that is why we are beating you up.' We were hit on our heads, our backs, our legs, everywhere. We were just beaten up very badly. We haven't reported the case to the police because it is no use. They will just arrest us again because those people who beat us are part of that. It's no use.

The girl and other victims of similar abuses told Human Rights Watch that they believe members of Zimbabwe's Central Intelligence Organization, members of the ruling ZANU PF party and its 'youth militia,' were the likely perpetrators of these abuses and other acts of intimidation, abduction and assault of opposition members and civil society activists.

"The government should investigate and if necessary punish abuses by the security forces," said Gagnon.

The Zimbabwean government has legal obligations under several international and African human rights treaties, including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, which require it to respect the right to life and to physical integrity, as well as the freedoms of association, expression and assembly. Human Rights Watch called on the government to ensure respect for these obligations, and launch an immediate and independent investigation into abuses by security forces around the country.

Human Rights Watch also called on the Zimbabwean security forces to abide by the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials in policing demonstrations. The principles state that law enforcement officials, in carrying out their duties, apply nonviolent means as far as possible before resorting to the use of force. Whenever the lawful use of force is unavoidable, law enforcement officials must use restraint and act in proportion to the seriousness of the offense.

Human Rights Watch expressed deep concern that the SADC has so far failed to make a concerted effort to address the Zimbabwean government's repeated violations of fundamental human rights. Zimbabwe is a member state of the SADC and all member states commit themselves to respect human rights.

"The Zimbabwe government's flagrant violations of its citizens' rights have contributed to the country's political crisis," said Gagnon. "Southern African leaders' failure to take strong

action over Zimbabwe would be a betrayal of the SADC's commitment to protect and respect human rights."

Human Rights Watch called on SADC leaders to:

- Strongly condemn and demand an end to all human rights abuses committed in Zimbabwe, including the recent acts of violence and brutality by security forces against Zimbabweans, impunity for police abuse, arbitrary arrests and detentions of opposition supporters and civil society activists, and the general climate of repression faced by Zimbabwe's citizens.
- Consistently and publicly condemn any further abuses committed by the Zimbabwean authorities, such as refusals to allow political opposition rallies and other acts of political repression. The SADC should stand united in publicly demanding greater respect for freedom of assembly, association, and expression in Zimbabwe.
- Call on the Zimbabwean government to establish an independent commission of inquiry with participation from the SADC into recent abuses by security forces.

"The time has come for Southern African leaders to work together to ensure the crisis in Zimbabwe doesn't destabilize the entire region."

A subsequent Human Rights Watch report dated May 2007 entitled *Bashing Dissent Escalating Violence and State Repression in Zimbabwe* (accessed on 27 June 2007 from <http://hrw.org/reports/2007/zimbabwe0507/>) includes the following summary:

*Of course he [opposition leader Morgan Tsvangirai] was bashed. He deserved it...I told the police beat him a lot. He and his MDC must stop their terrorist activities. We are saying to him, 'Stop it now or you will regret it.'*—President Robert Mugabe, addressing a ZANU PF (ruling party) rally on March 29, 2007.

On March 11, 2007, the Save Zimbabwe Campaign—a broad coalition of civil society organizations and members of the political opposition—attempted to hold a prayer meeting at Zimbabwe Grounds in Highfield, Harare. As hundreds of people streamed into the grounds, police used violence and brutality to prevent the meeting from taking place, and arrested more than 50 opposition members and civil society activists, including the leaders of the two factions of the opposition Movement for Democratic Change (MDC).

The arrest and severe beating of these opposition leaders and civil society activists by police and state security officers marked a new low in Zimbabwe's seven-year political crisis. It ignited a new government campaign of violence and repression against members of the opposition and civil society—and increasingly ordinary Zimbabweans—in the capital Harare and elsewhere throughout the country. The ominous statements by Zimbabwe's President Robert Mugabe on March 17 and 29, 2007 that the opposition members and civil society activists deserved to be "bashed" by the police highlighted the government's blatant disregard for the basic human rights of its citizens that authorities at all levels have shown during Zimbabwe's political crisis.

This report, based on two weeks of research in the cities of Harare, Bulawayo, Masvingo, Mutare and Bindura, describes in detail the Zimbabwe government's most recent violent crackdown on peaceful protest and dissent from February to April 2007, mainly in the city of Harare. It provides evidence of the government's widespread and systematic abuses against members and supporters of the opposition and civil society activists, as well as its increasingly violent repression of ordinary Zimbabweans in the high-density suburbs of Harare. The report highlights how the Zimbabwe authorities have repeatedly breached and violated the human rights of its citizens with complete impunity.

Human Rights Watch conducted 37 interviews with lawyers, NGO representatives, and victims and witnesses to the violence in the city of Harare and its suburbs of Glenview and Highfield, as well as 14 interviews with civil society activists in Bindura, Mutare, Masvingo

and Bulawayo. All described acts of intimidation, arbitrary arrests, abductions and beatings by Zimbabwe's police forces and other state and security agents. This report also documents how police have used disproportionate and lethal force against unarmed activists resulting in the death of one activist, Gift Tandare, and serious injuries to several others.

The Zimbabwean government claims that it is responding to an opposition campaign of violence and terror in the country and has arrested more than 30 MDC members and supporters throughout Zimbabwe whom it accuses of orchestrating and carrying out a series of petrol bomb attacks around the country. Human Rights Watch opposes the use of violence by all political parties, and those who commit such acts should be prosecuted in accordance with international fair trial standards. Although the petrol bomb attacks and violence may provide the official justification for the government's arrests of opposition officials, they do not justify the state's brutal and widespread campaign of beatings and repression of hundreds of ordinary Zimbabweans, opposition members and supporters, and civil society activists in Harare's suburbs.

In contrast to government claims that primary responsibility for the recent violence lies with the political opposition, Human Rights Watch found that Zimbabwe's police forces, agents of the Central Intelligence Organization (CIO), and groups of "youth militia" are the main perpetrators of serious human rights abuses. The government's failure to curb abuses by these groups is likely to encourage further unchecked violence.

Despite widespread international condemnation and calls for an end to the abuses—including the beatings, arbitrary arrests and abductions of opposition members and supporters, civil society activists and the repression of ordinary Zimbabweans—continue unabated. The human rights violations that have occurred in Zimbabwe over the past three months—and the complete lack of accountability of those responsible for these violations—is of special concern given the longstanding and pervasive culture of impunity in Zimbabwe.

The dire state into which Zimbabwe has descended is illustrated by the following BBC news report dated 14 June 2007 entitled *Zimbabwe 'collapse in six months'* accessed on 28 June 2007 from <http://news.bbc.co.uk/2/hi/africa/6751671.stm> The report, which also notes that in Zimbabwe the inflation rate 3,714%, the unemployment rate: 80%, four million people need food aid and the life expectancy is 37 for men and 34 for women, states as follows:

Zimbabwe will collapse within six months, possibly leading to a state of emergency, says a leaked briefing report for aid workers in the country.

Rampant inflation will mean shops and services can no longer function and people would resort to barter, it said.

"The memorandum is talking about a situation where there is no functioning government or a total breakdown," an unnamed aid worker told the UK Times.

Zimbabwe's inflation is already 3,714% - the highest rate in the world.

Business quotes were now valid for just one day or even one hour, said the report written by consultants and sent to workers at the United Nations and other aid agencies.

Several organisations contacted by the BBC News website denied commissioning the report.

Some firms were already partly paying their workers in food, rather than money, it said.

Shops were doubling their prices twice a month, so they could purchase replacement goods.

If this continues, "doubling the current inflation for each of the seven remaining months of 2007 gives 512,000% thus the economic collapse is expected before the end of 2007," said the report, according to the AP news agency.

The security forces who have remained loyal to President Robert Mugabe were also feeling the effects.

The report said an ordinary police officer earned less than aid workers paid their domestic staff.

It said power and water suppliers were already near collapse. Electricity was last month rationed to just four hours a day to save power for farmers.

Just one adult in five is believed to have a regular job.

Some 4m Zimbabweans - a third of the population - will need food aid this year, according to the UN World Food Programme.

Mr Mugabe denies responsibility for Zimbabwe's economic problems, blaming a western plot to bring down his government because of his policy of seizing white-owned land.

The concerns set out in the above reports are echoed in the latest Australian government travel warning, located at <http://www.smartraveller.gov.au/zw-cgi/view/Advice/Zimbabwe> and accessed on 8 November 2007:

- We advise you to reconsider your need to travel to Zimbabwe at this time due to the high level of criminal activity, the absence of the rule of law, and deteriorating economic conditions which could lead to civil unrest at any time. This includes visits to national parks and Victoria Falls.
- The security situation could deteriorate quickly and without warning, and Australians could be caught up in violence directed at others. In these circumstances, departure options may be severely limited. You are responsible for ensuring you are able to depart Zimbabwe if concerned for your safety. You should ensure that your documentation remains up to date. The Australian Government's ability to provide consular services may be limited.
- Zimbabwe is experiencing hyperinflation, food shortages, mass unemployment, shortages of foreign exchange and fuel, and increasingly unreliable basic services such as power, water and transport. Health services are poor. Many basic commodities, including medical supplies, are now in short supply, leading to panic-buying in shops and supermarkets.
- If you do decide to travel to Zimbabwe, you should exercise extreme caution.
- The ongoing political and economic crisis has made the situation very volatile, particularly in urban areas. We strongly advise you not to travel to high density urban areas.
- You should avoid demonstrations, street rallies and any public gatherings as they may turn violent.
- Police and security forces are likely to act indiscriminately against any perceived opponents of the Government, or even against the general public in the vicinity of political gatherings.

Similarly, the US Department of State's Consular Information Sheet, updated as at 29 October 2007 and accessed from [http://travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_1063.html](http://travel.state.gov/travel/cis_pa_tw/cis/cis_1063.html) on 8 November 2007 includes the following [emphasis added]:

**SAFETY AND SECURITY:** The political, social, economic, and security situations in Zimbabwe are deteriorating. Incidents of political violence have increased sharply. U.S. citizens residing in or travelling to Zimbabwe should be aware of conditions that could affect their safety, including government-sanctioned violence. Government security forces are increasingly acting with impunity. They have attacked peaceful demonstrations protesting against political repression and a deteriorating economic situation. U.S. citizens are strongly urged to avoid all political rallies and demonstrations, or large gatherings of any kind anywhere in Zimbabwe. During the past year, political demonstrations, which occur in both

urban and rural areas, have resulted in injuries. One member of the opposition political party, Movement for Democratic Change (MDC), was killed on March 11, 2007 by Zimbabwean police who broke up a prayer rally in Highfields, a low-income suburb of Harare. In the weeks following, numerous opposition members were kidnapped from their homes and public places and beaten and tortured. The government's security forces have also directed violence at common citizens, indiscriminately beating individuals on the street and in private establishments.

**Zimbabwean media outlets, particularly those affiliated with the Government of Zimbabwe, publish incendiary reports accusing the United States, Australian and British governments of funding terrorism and advocating regime change in Zimbabwe.**

On April 1, 2007, a government sponsored newspaper, The Herald, charged that a UK Embassy employee was "meddling" in Zimbabwean affairs and threatened that if she didn't cease her conduct, she might next arrive in London in a body bag. Resident and visiting Americans have been arrested, detained, or threatened with expulsion for activities that would not be considered crimes in the U.S., including the expression of opinions regarding the current political regime in Zimbabwe.

The 1 August 2007 edition of the Combined Harare Residents Association newsletter at [http://www.chra.co.zw/index.php?option=com\\_content&task=view&id=198&Itemid=65](http://www.chra.co.zw/index.php?option=com_content&task=view&id=198&Itemid=65), On accessed by the Tribunal on 27 November 2007, is relevant because actually makes reference to a *Mhishi shopping centre* in Mufakose, consistent with the applicant's claim, and also refers general terms to the ongoing abuses of Mugabe's supporters:

**ZANU PF ABUSES VENDORS**

VENDORS in Harare are desperate for other interventionist strategies to save them from continued abuse by Zanu PF whenever the ruling party has a political rally in their neighbourhood.

There are widespread rumours among the vendors that those who do not attend Zanu PF meetings will be dealt with but no specific action has been disclosed.

It is also understood that in Mufakose, Zanu PF militants went from household to household allegedly registering people to become Zanu PF members.

Residents who were allocated vending places in Mufakose were in July forced to attend Zanu PF rallies in Kuwadzana and Dzivarasekwa.

ZUPCO buses were brought to ferry the vendors to a political rally in an attempt to counter another one held by the opposition MDC at Kuwadzana 4 grounds.

"They were ordered not to open their market places for business because of the rally," Bake said. "This happened at Samuriwo, Mhishi and OK business centres in Mufakose. These people have families to look after and must not be forced to do things they do not want to do."

## **FINDINGS AND REASONS**

### **Country of Nationality**

The applicant claims to be a national of Zimbabwe, and has presented various documents in support of this claim. Departmental records indicate that the applicant first entered Australia early 2000s as the holder of a valid Zimbabwean passport endorsed with a valid visa which was granted to him a few weeks earlier in Zimbabwe. On the basis of the evidence before it the Tribunal accepts that the applicant is a national of Zimbabwe, and has assessed his claims against that country.

### **Assessment of Protection Claims**

The applicant delayed making refugee claims until his immigration status in Australia had become tenuous, which might raise the question of whether he genuinely fears persecution in Zimbabwe or is simply seeking to avoid returning to a country in which the populace is clearly undergoing severe privations. The applicant's seemingly lackadaisical approach to his review application added to the Tribunal's concerns in this respect.

The Tribunal scheduled a hearing at which the applicant did not appear, and a number of attempts which the Tribunal made to contact the applicant were unsuccessful. However, Sibling A, when contacted without an forewarning and without the knowledge of the applicant, confirmed many aspects of the applicant's claims, both core and peripheral, including that that most of the family were in fact members of the MDC, including the applicant, that they had experienced problems in Zimbabwe for that reason, that Sibling A had worked in an international organisation, and that their father had in the past worked for the a humanitarian organisation. Sibling A also explained that their mother had now joined him/her in Country 1, but that their father remained in Zimbabwe. The Tribunal's own efforts to contact the applicant's parents in Zimbabwe on the family's listed number had come to nothing, and it appeared from the manner in which the applicant described to the Tribunal both his joy at having been able to speak with his mother for the first time in some years following her recent arrival in Country 1, that he had in fact had no contact with her during that time. The applicant also explained that having spoken to his mother he now had a better understanding of his father's circumstances, that he was continuously moving around in the course of his work for the MDC cause, and that he was actually living out of his vehicle. The applicant also indicated that although Sibling A had passed on contact numbers for his father on a number of occasions he had never managed to get through to him.

The applicant claims to be at risk of persecution on account of his political opinion. He claims to have been assaulted in the past on account of his political activities. At the Tribunal hearing he recounted this event and described the effect it has had on him, causing him to feel insecure and anxious in public places. This account to appeared convincing and credible, and the Tribunal observes that the applicant appeared very distressed when describing these experiences he claims to have undergone.

The applicant also appeared to have only a limited understanding of the refugee determination process, and of the implications of failing to comply with steps not just in the refugee determination process but also in respect of his previous visa processing. For example, the applicant's fee waiver request at the MRT was refused because he had failed to provide the requisite evidence such as bank statements to demonstrate that he could not afford the application fee, with the result that the fee was not waived and the Tribunal concluded that it had no jurisdiction because a valid application had not been made in time. The records relating to the applicant's previous visa indicate that he was perennially in trouble with his fees, but also displayed a poor attitude. When the applicant did attempt to lodge a protection visa application the application was invalid, and part of the forms were only completed when he was interviewed. Even then they appear to be afflicted by basic errors which are not particularly material to his claims. For example, the family members do not all appear to have been listed, and Sibling C is subsequently listed as the opposite gender. The applicant apparently failed to respond to an invitation to undergo health and character checks.

The Tribunal notes that there is no record of the applicant having had legal advice or representation at any stage since he arrived in Australia not at any stage had any advice or representation, and this has been reflected in his incompetent dealings with the immigration

bureaucracy. This is unfortunate, but it also ties in with the applicant's account of having been cast adrift when his sponsor in Country 1 stopped subsidising his fees. Although there are references to Sibling A having assumed that responsibility, the applicant assured that Tribunal the money had in fact been coming from a friend of his father until this support was withdrawn, and that Sibling A could not afford to support him. In this respect the applicant's evidence has been quite consistent.

Having regard to the applicant's demeanour at hearing, and to the Tribunal's own credibility guidelines, the Tribunal is more inclined to ascribe possible shortcomings such as the delay in lodging the protection visa application and the apparent lack of enthusiasm for pressing the protection claims to fear, uncertainty, and the lingering effects of the applicant's experiences in Zimbabwe rather than to any lack of bona fides.

The Tribunal was able to independently confirm some aspects of the applicant's claims. In light of the manner in which it was obtained, the Tribunal both accepts and places particular weight on the evidence from Sibling A. In addition, the Tribunal accessed the Zimbabwe online telephone directory at <http://www.telone.co.zw/cgi-bin/searchdir.pl> on a certain date and ascertained that there was a person by the name Friend Y listed as residing in Town O as the applicant had claimed. The Tribunal also confirmed the existence of Friend X, and gleaned from Tribunal files and departmental movement records information which is, the Tribunal considers it sufficient to say, essentially consistent with what the applicant had claimed about him.

The Tribunal also found various aspects of the applicant's claims about the treatment of actual or suspected MDC members and sympathisers to have unambiguous support in the country information referred to above, and notes that in many respects that the country information extracted above describes risks of which the applicant seems unaware, in that it information suggests that forced returnees can face detention, interrogation, beatings, and worse upon arrival at the Harare international airport, and also that that Western sentiment has been whipped up by the Mugabe regime, particularly with respect to the UK, the US and Australia, potentially adding to the risk to returnees from those countries.

Indeed country information such as the Human Rights Watch reports extracted above suggests that the situation in Zimbabwe has become so dire, and the efforts of the unequivocally deplorable Mugabe regime to cling to political power so desperate, that the authorities now seem to be targeting anyone at all who is not obviously pro-ZANU-PF, *in order to crush all forms of dissent*.

In light of the above, and despite some apparent inconsistency with respect, for example, to the date of the family's incident, the Tribunal is prepared to give the applicant the benefit of any doubt and accept his claims, in particular that he and many of his family members were also members of the MDC, that was assaulted in the past in the course of and on account of his political activities for the MDC, that his family's incident, that his father continues to participate in MDC activities in Zimbabwe, and that if forced to return to Zimbabwe he will try to join his father and resume his political activities.

### **Risk of Serious Harm Capable of Amounting to Persecution**

In these circumstances, the Tribunal finds that there is a real chance that the applicant will be subjected to serious harm capable of amounting to persecution for the purposes of s.91R of

the Act for reason of his actual or imputed anti-government sentiments if he returns to Zimbabwe, now or in the foreseeable future, including on arrival at the airport.

In the event that he does manage to clear the airport, the Tribunal nevertheless considers that the applicant could still encounter serious problems. He appears to the Tribunal to have nowhere to go except his family home, where the Tribunal finds it to be likely that he is known to be from an MDC family. Bearing in mind both the general country information about actual or perceived opponents of the Zimbabwean regime, and its findings with respect to the applicant in particular, the Tribunal therefore concludes that in the event of his return to Zimbabwe there is a real chance that in the foreseeable future the applicant would be identified as an MDC supporter or a member of an MDC family and would for that reason encounter serious harm capable of amounting to persecution from the Mugabe regime and its supporters.

### **State Protection**

The Tribunal finds on the basis of the country information extracted above generally that the threat which the applicant would face upon his return to Zimbabwe comes from the ZANU-PF controlled Zimbabwean government, from the state security organs, and from ZANU-PF supporters. In this context, the Tribunal also finds that state protection from this threat in accordance with international standards would not be available to the applicant in Zimbabwe.

### **Finding on Persecution**

In light of the above, the Tribunal finds that the applicant faces a real chance of experiencing serious harm capable of amounting to persecution in Zimbabwe in the reasonably foreseeable future.

### **Convention Nexus**

The applicant claims to be at risk of persecution on the basis of the Convention ground of political opinion. The country information extracted above clearly supports the proposition that actual and/or perceived opponents of the Mugabe regime are persecuted in Zimbabwe for the Convention reason of their actual and/or imputed political opinion. The Tribunal finds that the real chance of persecution which the applicant faces is for the reason of his political opinion.

### **Internal Relocation**

Finally, bearing in mind the country information about the deteriorating security situation in Zimbabwe, the Tribunal finds that the applicant cannot avoid the persecution he faces a real chance of experiencing by relocating within Zimbabwe, as it would be neither safe for him to do so nor, in light of the current security situation there, reasonable to expect him to do so.

### **CONCLUSIONS**

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

## **DECISION**

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

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

Sealing Officer's I.D. Inward