Upper Tribunal
(Immigration and Asylum Chamber)

EM and Others (Returnees) Zimbabwe CG [2011] UKUT 98(IAC)

THE IMMIGRATION ACTS

Heard at Field House
on 18 to 25 October and 15 December 2010
and 14 January 2011

Determination Promulgated

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Before

MR JUSTICE BLAKE, PRESIDENT
SENIOR IMMIGRATION JUDGE P R LANE
IMMIGRATION JUDGE R C CAMPBELL

Between

EM
COM
CLM
JG

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For Appellants EM and JG:	Mark Henderson and Alasdair Mackenzie, instructed by the Immigration Advisory Service
For Appellant COM:	Shivani Jegarajah, instructed by Thompson & Co, Solicitors
For Appellant CLM:	Mark Henderson and Alasdair Mackenzie, instructed by Turpin & Miller, Solicitors

For the Respondent: Eleanor Grey and Colin Thomann, instructed by the Treasury Solicitor

1. Evaluating the position as at the end of January 2011, the country guidance at paragraph 267 of this determination replaces that in RN (Returnees) Zimbabwe CG [2008] UKAIT 00083, as follows:

(1) As a general matter, there is significantly less politically motivated violence in Zimbabwe, compared with the situation considered by the AIT in RN. In particular, the evidence does not show that, as a general matter, the return of a failed asylum seeker from the United Kingdom, having no significant MDC profile, would result in that person facing a real risk of having to demonstrate loyalty to the ZANU-PF.

(2) The position is, however, likely to be otherwise in the case of a person without ZANU-PF connections, returning from the United Kingdom after a significant absence to a rural area of Zimbabwe, other than Matabeleland North or Matabeleland South. Such a person may well find it difficult to avoid adverse attention, amounting to serious ill-treatment, from ZANU-PF authority figures and those they control. The adverse attention may well involve a requirement to demonstrate loyalty to ZANU-PF, with the prospect of serious harm in the event of failure. Persons who have shown themselves not to be favourably disposed to ZANU-PF are entitled to international protection, whether or not they could and would do whatever might be necessary to demonstrate such loyalty (RT (Zimbabwe) [2010] EWCA Civ 1285).

(3) The situation is not uniform across the relevant rural areas and there may be reasons why a particular individual, although at first sight appearing to fall within the category described in the preceding paragraph, in reality does not do so. For example, the evidence might disclose that, in the home village, ZANU-PF power structures or other means of coercion are weak or absent.

(4) In general, a returnee from the United Kingdom to rural Matabeleland North or Matabeleland South is highly unlikely to face significant difficulty from ZANU-PF elements, including the security forces, even if the returnee is a MDC member or supporter. A person may, however, be able to show that his or her village or area is one that, unusually, is under the sway of a ZANU-PF chief, or the like.

(5) A returnee to Harare will in general face no significant difficulties, if going to a low-density or medium-density area. Whilst the socio-economic situation in high-density areas is more challenging, in general a person without ZANU-PF connections will not face significant problems there (including a "loyalty test"), unless he or she has a significant MDC profile, which might cause him or her to feature on a list of those targeted for harassment, or would otherwise engage in political activities likely to attract the adverse attention of ZANU-PF.

(6) A returnee to Bulawayo will in general not suffer the adverse attention of ZANU-PF, including the security forces, even if he or she has a significant MDC profile.

(7) The issue of what is a person's home for the purposes of internal relocation is to be decided as a matter of fact and is not necessarily to be determined by reference to the place a person from

Zimbabwe regards as his or her rural homeland. As a general matter, it is unlikely that a person with a well-founded fear of persecution in a major urban centre such as Harare will have a viable internal relocation alternative to a rural area in the Eastern provinces. Relocation to Matabeleland (including Bulawayo) may be negated by discrimination, where the returnee is Shona.

(8) *Internal relocation from a rural area to Harare or (subject to what we have just said) Bulawayo is, in general, more realistic; but the socio-economic circumstances in which persons are reasonably likely to find themselves will need to be considered, in order to determine whether it would be unreasonable or unduly harsh to expect them to relocate.*

(9) *The economy of Zimbabwe has markedly improved since the period considered in RN. The replacement of the Zimbabwean currency by the US dollar and the South African rand has ended the recent hyperinflation. The availability of food and other goods in shops has likewise improved, as has the availability of utilities in Harare. Although these improvements are not being felt by everyone, with 15% of the population still requiring food aid, there has not been any deterioration in the humanitarian situation since late 2008. Zimbabwe has a large informal economy, ranging from street traders to home-based enterprises, which (depending on the circumstances) returnees may be expected to enter.*

(10) *As was the position in RN, those who are or have been teachers require to have their cases determined on the basis that this fact places them in an enhanced or heightened risk category, the significance of which will need to be assessed on an individual basis.*

(11) *In certain cases, persons found to be seriously lacking in credibility may properly be found as a result to have failed to show a reasonable likelihood (a) that they would not, in fact, be regarded, on return, as aligned with ZANU-PF and/or (b) that they would be returning to a socio-economic milieu in which problems with ZANU-PF will arise. This important point was identified in RN, and remains valid.*

2. Guidance is also given on the assessment of the private and family life of a Zimbabwean national present in the United Kingdom for over 11 years with children born and/or resident most of their lives in the United Kingdom.

3. In the absence of countervailing factors, residence of over 7 years with children well-integrated into the educational system in the United Kingdom, is an indicator that the welfare of the child favours regularisation of the status of mother and children.

This determination is arranged as follows:

A. PRELIMINARY

1. This is the determination of the Tribunal, to which each of the panel has contributed. In it we consider the situation in Zimbabwe in terms of the current political position and related protection issues, in order to give country guidance, some two years after the appearance of the determination in RN (Returnees) Zimbabwe CG [2008] UKAIT 00083. We do this in the context of re-making the decisions in the case of four Zimbabwean applicants for asylum, whom we shall call the appellants. The issue on which we give this country guidance is whether the circumstances in Zimbabwe as at the date of this decision are such that there is a reasonable degree of likelihood that a person who has no ZANU-PF connections will be at risk on return to his or her home area by reason of a perception of disloyalty or an inability to demonstrate loyalty.

2. The Tribunal sat on 18 to 25 October and 15 December 2010 and on 14 January 2011. We heard oral evidence from two of the appellants and from four expert witnesses called by three of the appellants. The oral evidence is summarised in Appendix A. The evidence regarding the timing and consequences of elections is summarised in Appendix B. We were provided with a large amount of documentary material, which is listed in Appendix C. The background evidence covers the position up to 28 January 2011. Counsel made a number of written submissions (including in skeleton arguments), as well as oral submissions, all of which we have taken into account, together with the entirety of the oral and written evidence.

3. We would like to record our gratitude to counsel and to those instructing them for the efforts they have made; in particular, to put the Tribunal in as good a position as possible to give its country guidance. We are also grateful to the experts who gave oral evidence. We have taken account of the judgments of the Court of Appeal in PO (Nigeria) [2011] EWCA Civ 132. We observe what is there said about the length of the AIT's determination in that case detracting from the clarity of its exposition. The present determination is necessarily a long one; but we have sought to maintain clarity by dealing with certain of the evidence in Appendices A and B. We have also followed paragraph 56 of the judgments in setting out our country guidance at paragraph 267 of this determination.

B. THE FOUR APPELLANTS

Appellant EM

4. EM was born on 27 December 1975. He left Zimbabwe by air in March 1999, arriving in the United Kingdom as a visitor on 27 March. On 6 April 2000 he was granted leave to remain as a student until 30 September 2002. Appellant EM overstayed, claiming asylum on 5 April 2009. He said he had come from a teaching family in Zimbabwe and had worked as a supply teacher in that country for about two years, until 1997. In 1998 he enrolled for a teaching diploma with Belvedere Technical Teachers College. His home area was Mutoko, a rural area of Mashonaland East. He travelled to the United Kingdom in order to visit his sister. He told the respondent at interview that he had three sisters and three first cousins living in the United Kingdom. One sister was a British citizen and the other two had been granted asylum. At the time, he was staying with friends in the United Kingdom and did not have a partner in this country. He did not have any medical issues: "just an allergy or two".

5. On 6 July 2009 appellant EM was served with the respondent's decision to refuse his asylum application. Appellant EM's appeal was heard at Taylor House on 17 August 2009 by an Immigration Judge. In her determination dismissing that appeal, the Immigration Judge noted that appellant EM asserted a fear of returning to Zimbabwe because he had no close family network in that country and because of his association with the teaching profession and because he had been away for ten years in a country seen as hostile by the ZANU-PF government. He feared being questioned at the airport.

6. At paragraph 8 of her determination, the Immigration Judge did not consider that appellant EM had given a credible explanation for the delay in claiming asylum. After abandoning his studies in 2000, the appellant had used the services of a Nigerian representative in 2002 who, it was said, had obtained an ILR stamp for the appellant, which was later found to be invalid. The Immigration Judge did not accept appellant EM believed the ILR stamp to have been genuine and further found that he must have been aware since at least 2002 if not earlier that he had no basis of stay. The only explanation he gave for the failure to claim asylum until 2009 was that he had hoped the situation would improve.

7. The Immigration Judge found there was no evidence that appellant EM had been politically active either in Zimbabwe or the United Kingdom. There was no evidence to corroborate his claim to have been a supply teacher. In any event, that had only been for three months at a primary school in East Mashonaland in 1995 and for the year 1997 at another primary school. Conflicting evidence was given by appellant EM and his sister at the hearing as to the identities of the schools at which the appellant was said to have taught. The difficulty appellant EM had in establishing

that he had been a supply teacher suggested to the Immigration Judge that the authorities would not be aware of this aspect of his past. She also noted that his passport bore the term "student" instead of "teacher". As for the claim to have come from a family of teachers, the Immigration Judge noted that one sister, S, had been granted asylum but there was nothing to suggest that this had been on account of her profession. Appellant EM's father, also said to have been a teacher, had retired in 1990 although he was later said to have been brought out of retirement by a large mission school. Appellant EM said that his brother had taught in Harare. The Immigration Judge found that there was no evidence that these persons had been targeted as teachers or involved in the MDC. On the contrary, appellant EM said that since they lived in a ZANU-PF stronghold, they had had to be card-carrying members of ZANU-PF to ensure their safety. The decision of appellant EM's parents and brother to leave for Zambia at the end of 2008 was, she found, due to the illness of the appellant's father and his inability to access care in Zimbabwe. Although appellant EM had suggested to the Immigration Judge that they left also because there was a resurgence of violence in Mashonaland in late 2008, the Immigration Judge said she had been "shown no objective evidence to corroborate this" (paragraph 11). The family had remained in their home area throughout all the previous problems during the elections and there was no suggestion appellant EM's parents had been driven from their home.

8. At paragraph 14, the Immigration Judge considered that she was entitled to depart from the findings in RN because there was "now a power-sharing agreement in place with MDC politicians in government positions" and that RN had reached its conclusions "in the aftermath of the postelection violence and the apparent failure of power sharing in 2008". She concluded that the situation "had sufficiently changed from that described in RN to merit deviation". The appellant would be returning to his family home (which he said was being looked after by distant relatives) and where his parents and brother had lived until they went to Zambia for medical reasons. Although the home area had been a ZANU-PF stronghold there was no indication that appellant EM's family, who carried ZANU-PF cards, had been targeted in any way. She "could not accept his bare assertion that he would be at real risk because he could not demonstrate support for the regime. I concluded that despite the appellant's length of stay in the UK and that he would be returning as a failed asylum seeker these factors on their own in the current circumstances would not arouse suspicion on return."

9. Reconsideration of the Immigration Judge's decision was ordered on 21 September 2009 under section 103A of the Nationality, Immigration and Asylum Act 2002 on the basis that, despite the unchallenged extensive adverse credibility findings in the determination, it was arguable that the Immigration Judge had erred in departing from the country guidance in RN. At the reconsideration hearing on 18 January 2010, the AIT found that there was a material error of law in the determination, for the reason just given, and that none of the findings of the Immigration Judge concerning the appellant should stand, with the exception of the finding that the

appellant was aware in 2002 that the ILR stamp he had secured in his passport was not genuine.

10. On 18 October 2010, at the commencement of the present hearings, Mr Henderson made an application for appellant EM's appeal to be adjourned. Appellant EM's case had been transferred from previous representatives to the Immigration Advisory Service when his appeal had been amongst those designated as potential candidates for country guidance. At the time the file was transferred, contact had been made with appellant EM but since then, contact with him had been lost. The last contact was at the beginning of September 2010.

11. We were satisfied that appellant EM had been properly served with notice of the hearing. It was for appellant EM to maintain contact with his legal advisers. There was nothing to suggest that his failure to do so had arisen from circumstances beyond his control. In all the circumstances, applying the overriding objective set out in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008, we decided that the interests of fairness and justice were such that the adjournment application should be refused.

12. In his closing written submissions, Mr Henderson submitted that appellant EM would be unable to demonstrate loyalty to ZANU-PF, if returned, taking account of his long absence in the United Kingdom, his asylum claim, the grant of asylum to family members, his former profession as a teacher and his lack of actual ZANU-PF links.

Appellant COM

13. Appellant COM was born on 5 December 1969. He arrived in the United Kingdom on 17 October 2002, using his own passport. He applied for asylum on 13 February 2009. On 12 August 2009 the respondent refused appellant COM's application and he appealed to an Immigration Judge who, following a hearing in Birmingham on 5 October 2009, allowed the appellant's appeal. Appellant COM said that he was a resident of Harare who had joined the MDC in 1999 and attended meetings and rallies as well as distributing flyers and supporting the party with donations. He had been detained in May or June 1999 in a local shopping area, on suspicion of looting. The following month he had been stopped at a roadblock when visiting his family in their village and detained in a cell until the following morning. A few months later, ZANU-PF youths had seized him and taken him to their base where they beat him and made him sit in cold water. He was warned by them about supporting the MDC. The CIO then took an interest in appellant COM because he had a job as a credit controller for an international courier company. At this point he decided it was better to leave Zimbabwe. Following arrival in the United Kingdom, appellant COM joined the Northampton branch of the MDC UK and Ireland in February 2007.

14. The Immigration Judge found that appellant COM had come to the notice of the authorities as a low level MDC supporter and that his account of incidents involving

government officials and ZANU-PF supporters was credible. The Immigration Judge did not, however, consider that the treatment meted out to appellant COM in Zimbabwe had amounted to persecution. The Immigration Judge found that appellant COM had been an active member of the Northampton branch since January 2007 and that he had also attended Zimbabwean vigils, where he had been photographed.

15. The Immigration Judge did not find appellant COM's credibility was undermined by the fact that in 2004 he had made an application to remain based on ancestry, which involved the submission of a false birth certificate. This was apparently all the fault of his legal adviser.

16. The Immigration Judge found that RN was "still good law. I find that although the situation has changed in Zimbabwe since RN, human rights abuses continue and that the appellant would be at risk of persecution on return" (paragraph 44). The Immigration Judge found that appellant COM's inability to demonstrate loyalty would be such as to give rise to a real risk, increased by the fact that he would be "a failed asylum seeker and that he has spent a considerable amount of time in the United Kingdom". Furthermore there was "a real risk that his activities in the United Kingdom may have come to the attention of the CIO and the authorities in Zimbabwe and that he would face further interrogation on arrival".

17. Reconsideration of the Immigration Judge's decision was ordered by Ouseley J on 10 December 2009. He was satisfied that a substantial case had been mounted before the Immigration Judge by the respondent that circumstances in Zimbabwe had changed since RN and that this should have been dealt with "in a legally adequately reasoned decision". Paragraph 44 of the determination "leaves it wholly unclear how the IJ approached it". Ouseley J did not "say the decision was bound to be different but it could be, and I am sceptical of the extent to which what has been provided suffices for an IJ to disapply RN, absent any further CG". The respondent's case "warranted proper analysis rather than lengthy rehearsal".

18. On 22 February 2010 the Upper Tribunal directed that not later than five working days before the Case Management Review hearing (which in the event took place on 25 March) the party who did not apply for reconsideration (that is to say, in this case, appellant COM) must serve a reply on the Tribunal and the other party, if it was contended that there was no material error of law in the determination, giving reasons; and in the absence of such a reply, the Tribunal may at that hearing decide the error of law issue. At the hearing on 25 March, the representative of appellant COM conceded that there had not been compliance with the directions of the Upper Tribunal. On that day, the representative handed the Tribunal a manuscript reply, asserting that the Secretary of State had failed to supply evidence of sufficient quality and quantity regarding what was said to be changes in country conditions since RN. Furthermore the Practice Directions of the Tribunal were said to require the Immigration Judge to give clear reasons only for departing from current country guidance, not for following such guidance. The Tribunal on 25 March concluded that

there was no merit in these submissions and that the evidence supplied by the Secretary of State had required some sort of analysis, which was lacking in the determination. The attempt to rely on the Practice Directions was misconceived. The Tribunal accordingly set aside the Immigration Judge's decision.

19. As will be apparent, in the present proceedings which are the subject of this determination, appellant COM was in the position of being the respondent. We have, nevertheless, continued to refer to him as an appellant, for ease of reference. At the hearing on 22 October, we indicated that we would remake the decision in appellant COM's case by allowing his appeal.

Appellant CLM

20. Appellant CLM, born on 25 November 1952, left Zimbabwe using his own passport and in possession of a visit visa, in February 2005. He claimed asylum in March 2009. His application was refused on 28 July 2009 and he appealed to the AIT. Following a hearing at Newport on 7 October 2009, a Designated Immigration Judge dismissed appellant CLM's appeal.

21. The Designated Immigration Judge made adverse credibility findings regarding appellant CLM. He found that even if appellant CLM had been involved in politics at all in Zimbabwe, this would have been only as "a low level member of the MDC in Hatfield", Harare (paragraph 74(i)). Although appellant CLM had joined his local branch of the MDC in the United Kingdom and attended a number of meetings, the Designated Immigration Judge found there was "no evidence to indicate that his identity would have been disclosed to any individuals who were employed by the Zimbabwean Embassy or who are supporters of the ZANU-PF or the current Zimbabwean regime" (paragraph 74(ii)). Nor was there any evidence "to show that the appellant's name or photograph has ever appeared on the MDC [local branch's] website or in any other capacity in connection with that organisation" (paragraph 74(iii)). At paragraph 79, the Designated Immigration Judge found that although appellant CLM might face hardship upon return to Zimbabwe, this was not anything greater than that which would be faced by any other member of his ethnic community. The civil and social infrastructure of the country might still be basic, but that did not mean that conditions in Zimbabwe generally were such that return would mean a returnee would automatically face "inhumane or degrading treatment" (paragraph 79).

22. At paragraphs 80 to 85, the Designated Immigration Judge analysed the post-RN evidence, in particular, that in the COI Report of July 2009 which spoke of "many professionals, many of them teachers … returning to Zimbabwe and … seeking readmission into public service". During February 2009 reports indicated that over 80,000 Zimbabweans returned voluntarily from South Africa. So far as the CIO were concerned, the Designated Immigration Judge did not consider that it would be reasonably likely that the appellant would be suspected of being a failed asylum seeker by the CIO. As indicated in HS, the screening process adopted by the CIO at

the airport remained an intelligence-led process, which sought to identify individuals in whom the CIO had an interest from the passenger manifest. That guidance had not in any way changed since RN. In the circumstances of appellant CLM's case, the Designated Immigration Judge was not satisfied that the CIO were likely to have any interest in the appellant upon return or that there was any likelihood of him being held for second stage questioning. The appellant had family in Hatfield, Harare, with whom he could be reunited. At paragraph 12, the Designated Immigration Judge noted appellant CLM's evidence that, although he had high blood pressure and cholesterol, he was able to obtain medication for this in Zimbabwe. He had been doing odd jobs such as gardening and cleaning whilst in the United Kingdom. It is also relevant to note at this point that appellant CLM had said in his asylum interview that five of his six children continued to reside in Hatfield, Southerton and Westgate in Harare. According to the answer to question 171 of that interview, the ages of the children would now be 38, 36 and 31 (for those whose ages appellant CLM was able to give). Appellant CLM described Hatfield, Southerton and Westgate as "low density areas" of Harare (question 160). He said two of his daughters were married, one son was an accountant and one a clerk, whilst another son whose age he was unable to give was going to school. Another son was in the United Kingdom.

23. Reconsideration of the Designated Immigration Judge's decision was ordered on 10 November 2009, on the basis that it did not seem he considered whether the appellant would be able to show loyalty to ZANU-PF on return, although "whether this is really still necessary can be dealt with on reconsideration". On 25 March 2010, the respondent acknowledged that directions sent by the Upper Tribunal on 22 February had not been complied with. These required the respondent to serve a reply if it was contended that there was no material error of law in the determination of the Designated Immigration Judge and stated that in the absence of such a reply, the Upper Tribunal may at the hearing decide the error of law issue. The Tribunal accordingly proceeded on 25 March to decide that issue, concluding that the Designated Immigration Judge had failed to give adequate reasons for departing from RN and at paragraph 91 of his determination in failing to give adequate reasons for finding that the appellant's activities in the United Kingdom would not place him at real risk on return. The Designated Immigration Judge's findings of fact regarding the appellant would, however, stand, as would his finding regarding a witness who had confirmed appellant CLM's involvement in the local branch of the MDC.

Appellant JG

24. Appellant JG was born on 18 August 1970, came to the United Kingdom in 1999 and was granted an extension of stay as a student until 2001, after which time she has remained without leave. She claimed asylum on 17 March 2009, with her three children as dependants. That claim was refused by the respondent and appellant JG appealed to the AIT. Following a hearing at Newport on 29 October 2009, an Immigration Judge dismissed appellant JG's appeal on asylum and human rights grounds.

25. Appellant JG told the Immigration Judge that she was a qualified secondary school teacher in Zimbabwe, who had worked at a government-funded school that had a "fervent ZANU-PF ethic" (paragraph 7). Although not engaged in politics, she supported the MDC. Wishing to change her career, appellant JG arrived in the United Kingdom in 1999 in order to embark on a nursing course. She left her husband and son in Zimbabwe and had had no problems in that country prior to departure. Her husband had arrived in the United Kingdom in 2001 and appellant JG moved in with him and his children from a previous relationship. He became abusive and took the £2,000 which appellant JG's sister in Canada had given her to enrol upon another course. Appellant JG's son joined her in the United Kingdom in 2002 and in 2003 she moved in with her twin sister who was also living in this country. She had lost contact with her husband and had been in a relationship with a British citizen for the past three years. She claimed asylum when her home had been destroyed and her family feared persecution and torture in Zimbabwe. Also, her estranged husband's family had threatened to take appellant JG's children away.

26. The Immigration Judge found that the delay in appellant JG's claiming asylum was as a result of her perception that – presumably as a result of RN – she thought she would stand a greater chance of succeeding in staying in the United Kingdom. He rejected the assertion that appellant JG had claimed because things were getting worse in Zimbabwe. The Immigration Judge accepted that appellant JG had been ill-used by her husband in the United Kingdom but rejected the claim that, if returned, she would be at risk from his family in Zimbabwe, on account of the broken relationship with her husband. The in-laws were said to be active members of ZANU-PF but the Immigration Judge did not find it in the least likely that her in-laws would turn her in to the CIO or to ZANU-PF activists (paragraphs 44 and 45). On the contrary, applying RN, the Immigration Judge found that appellant JG would experience no difficulty in demonstrating loyalty to the regime, given her family connections "and I find it extremely likely that members of her family would be able to see her through any processes at the airport and obviate any difficulties with the CIO" (paragraph 47). At paragraph 49, he found that there would be "no obstacle to her expressing loyalty to the regime and pointing to the fact that she has never come to the adverse attention of the authorities".

27. As regards Article 8, although appellant JG had referred to a problem with her lung, there was no firm evidence of her medical condition. She gave evidence that her son had been 4 on arrival and was now 11. He had behavioural difficulties but "had not yet been diagnosed with Asperger's" syndrome (paragraph 22). She "had two children to look after and was pregnant" (17). As regards her current relationship, she said that "the man concerned was working abroad and … they did not live together when he was in the United Kingdom, which was only for a month three times a year" (paragraph 21). Appellant JG relied on help from her church and lived with her sister. The rent was paid by the sister in Canada.

28. At paragraph 46, the Immigration Judge found that the medical condition of appellant JG's son was not such as to breach the threshold of either Article 3 or Article 8 and that there was no firm evidence of her own medical condition. The Immigration Judge did not find "that Article 8 is engaged at all, but if it were, then her removal would be in pursuit of the legitimate aim of immigration control and would be proportionate to that aim" (paragraph 46). The Immigration Judge found that appellant JG "clearly has family back in Zimbabwe and I did not believe that there was the level of family animosity she has sought to establish. I find that she could easily support herself back in Zimbabwe, if necessary with the help currently received from the sister in Canada."

29. Reconsideration of the Immigration Judge's decision was ordered on 26 November 2009 on the basis that the Immigration Judge did not engage with the issue of risk to the appellant as a former teacher. At the Case Management Hearing of the Upper Tribunal on 25 March 2010, the respondent conceded that there was a material error of law in the determination. The Immigration Judge had failed to give adequate reasons for finding that the appellant would not be at real risk on return, as a former teacher, having regard to the relevant country guidance, and had also failed to make proper findings of fact in relation to the position of the appellant's children, in connection with her Article 8 claim. The Tribunal accordingly set aside the decision. The parties were directed to prepare for the present proceedings on the basis that the accepted findings of fact regarding the appellant would stand and that the Tribunal would need to make fresh findings of fact regarding the Article 8 ground, insofar as it related to the position of appellant JG's children.

30. In connection with the present proceedings, two reports were produced by Christine Brown, an independent social worker. She noted that appellant JG's son, T, was born in 1997 but remained with his maternal aunt from the age of 9 months until brought to the United Kingdom from Zimbabwe when he was 4. He experienced certain behavioural problems and was being assessed for the need for a Statement of Educational Need under the Educational Needs and Disability Act 2001. A second son, M, was born on 25 January 2002 and a daughter, R, on 12/01/2004. Ms Brown observed that T's behaviour was problematic and further noted that staff at his school had concerns regarding his understanding of social interactions and attendant behaviours. Appellant JG was diagnosed in 2001 with bronchial tuberculosis, which responded well to treatment, and she was subsequently diagnosed with Aspergilloma, a fungus which develops in a cavity in her lung. This also was treated with drugs; but appellant JG considered she required a gluten and dairy free diet as well as a "mould free environment" (paragraph 3.6). She told Ms Brown that surgery to deal with the fungal condition had been ruled out in 2009, on the ground that it posed an unreasonable risk to her life. Ms Brown considered that appellant JG's ability to maintain her health was vital to her children's wellbeing and security. On return to Zimbabwe, her ability to work would be compromised, although any funds which she might require would be provided by her sister in Canada, who worked as an accountant (4.0). If appellant JG became incapable, through ill health, of caring for

her children in Zimbabwe, this would leave them "vulnerable in an alien and unknown culture" (4.4).

31. Ms Brown concluded that appellant JG, along with her sister, had done much to provide a loving and secure family environment for her children, who remained her primary focus, often during periods of what appeared to Ms Brown to be quite extreme ill health. The children had developed significant social and emotional ties within their individual networks and, in Ms Brown's opinion, would "respond to any such removal with immense distress and trauma" (8.5). The child T had additional needs, which required further assessment.

32. In a further report handed to the Tribunal on 22 October 2010, Ms Brown noted that T was benefiting from a programme of assistance, supported by subject teachers, as a result of which strategies had been put in place to attempt his integration into the classroom setting (1.6). The new report also noted that the children had only a limited knowledge of Shona which "would in turn limit their ability to comprehensively access the educational curriculum in Zimbabwe until such a time when their comprehension and application of the language had developed" (1.7). Of greater impact, however, would be the loss of social and emotional structures and networks, and the fact that in Zimbabwe schools they would be regarded as "outsiders". Appellant JG feared that her "former husband who now has indefinite leave to remain in the United Kingdom would want to make an application for residency of their children under the Children Act 1999 for a s.8 residence order", albeit that the children had indicated to Ms Brown that under no circumstances would they want to live with him. Other documentation in the appellant's bundle related to the position of the child T and the efforts being made to address his needs as "a vulnerable young man who stands out as 'different' from his peers" (report of Assistant Head Teacher, 4 October 2010).

33. Appellant JG's written statement of 29 September 2010 formed the basis of her oral evidence, which is set out at Appendix A to this determination. There is, however, a supplementary statement from appellant JG, with a short confirmatory statement from her sister, each dated 24 November 2010. The supplementary statement deals with a passage in appellant JG's statement of 29 September, regarding an alleged attack on her mother in Zimbabwe. In the September statement, appellant JG said that her uncle rang her in April 2010 to say that her mother had been beaten up, whilst walking home from church. She and other women had been confronted by "a bunch of thugs", who were thought to have come from Epworth, "the rougher area nearby" in order to drink or hang around. The thugs allegedly shouted out at the mother that they knew she had kids in England. After this, appellant JG's mother had sent JG's younger sister, AT, to South Africa to stay with friends, prior to travelling to Canada.

34. The 24 November statement records how the earlier statement came to say that she understood from her uncle's phone call in April that her mother had been attacked in March 2010. Having seen the police report on the attack, appellant JG said that this

was given the date of 3 February 2010. She attributed this discrepancy to her being ill at the beginning of 2010 with her lung condition, as well as feeling stressed and worried, and being in a state of shock when she was told about her mother.

35. In December 2010, the respondent decided to grant appellant JG discretionary leave to remain in the United Kingdom for three years (together with the children), following a reassessment of the Article 8 position. We shall, however, later in this determination, have more to say about the Article 8 case of someone in the position of appellant JG. On 12 January 2011, appellant JG gave notice under Rule 17A of the Tribunal Procedure (Upper Tribunal) Rules 2008 and Practice Direction 5 of the Practice Directions of 10 February 2010, stating her wish to pursue her appeal before the Upper Tribunal on the ground specified in section 84(1)(g) of the Nationality, Immigration and Asylum Act 2002 which relates to the Refugee Convention.

C. ZIMBABWE COUNTRY GUIDANCE CASES

Country guidance before RN

36. The earliest extant country guidance case on Zimbabwe is SM and Others (MDC – internal flight – risk categories) Zimbabwe CG [2005] UKIAT 00100, which became country guidance on 12 May 2005. SM was heard in the wake of the Secretary of State's decision in November 2004 to resume enforced removals to Zimbabwe, which had been suspended since the beginning of 2002. The IAT summarised the background as follows:-

> "37. The background to the current situation in Zimbabwe can briefly be summarised as follows. Zimbabwe achieved formal independence from the United Kingdom in 1980. Robert Mugabe's ZANU-PF party won the largest number of seats in the elections in that year. Mugabe became Prime Minster leading a coalition government and has been in power since then. Constitutional changes in 1987 created an executive Presidency incorporating the ceremonial post of President with that of Prime Minister. ZANU-PF won a decisive election victory in 1995. The MDC was formed in September 1999 under the leadership of Morgan Tsvangirai. In February 2000 a referendum was held in a bid to consolidate the President's powers by amending the Constitution. Although this was lost, the government party pushed through a constitutional amendment to allow the seizure of white-owned farms. Elections were held in June 2000 and there was a systematic campaign of violence towards supporters of potential opposition politicians. Many acts of violence were perpetrated by ZANU-PF militants and war veterans. Politically motivated violence mostly perpetrated by government supporters against the MDC and commercial farmers continued throughout 2001 after the Parliamentary elections and in 2002 in the run up to the Presidential election of March 2002."

37. The IAT went on to find that the government's human rights record remained poor and that ZANU-PF supporters had committed numerous acts of abuse against

opposition supporters. There was little prospect of redress from the police or authorities. There was a "pattern of political intimidation and violence perpetrated by the government using affiliated organisations and supporters" (paragraph 38).

38. At paragraph 41, the IAT considered the position of those removed to Zimbabwe from the United Kingdom. Interrogation of such returnees was considered to be inevitable; but if "it is being asserted by the Zimbabwe government that returns are being used as a cloak for British agents and saboteurs to be smuggled into the country, it is likely that those returns will be carefully monitored whether for that reason or to identify and intimidate opponents to the regime". Returnees in general would be regarded with "contempt and suspicion" (paragraph 42) and "those who are suspected of being politically active with the MDC would be at real risk". Apart from that category, whether there was a real risk in an individual case would depend upon the circumstances. Given the unpredictability of the situation, it could not necessarily be assumed that those who had merely engaged in "low level activities" would not be at real risk. Relevant risk factors would include the categories identified in paragraph 43, which comprised "activists, campaigners, officials and election polling agents, MDC candidates for local and national government, MDC members, MDC supporters, those who voted or [were] believed to have voted for the MDC and those belonging to the MDC, families of the foregoing, employees of the foregoing, those whose actions have given rise to suspicion of support for the opposition such as attending an MDC rally or wearing a T-shirt, attending a demonstration, teachers and other professionals, refusal to attend a ZANU-PF rally or chant a ZANU-PF slogan or not having a ZANU-PF membership card".

39. At paragraph 44, the IAT accepted "there is a heightened risk during election periods and their immediate aftermath. This reflects the pattern which has been followed since 2000. Before an election there is intimidation of opposition supporters and those perceived to be encouraging support for the opposition in particular teachers and civil servants. Following an election the phenomenon of post-election retribution is well documented." It was, however, in the IAT's view artificial to attempt to draw "too clear a distinction between election periods and those periods before the next parliamentary or presidential elections". There was at the present time a "heightened risk" for teachers "because of their profession and the perception that they have supported and encouraged support for the MDC" (paragraph 45).

40. At paragraph 46, discussing the record keeping by the Zimbabwean authorities, the IAT reiterated that "The issue is whether an applicant is of adverse interest to the authorities. The fact that an applicant has a file indicates that he is or has been known to the authorities but without more it does not indicate whether he would currently be of interest." So far as internal relocation was concerned, the IAT found that a person "who has come to the adverse attention of the war veterans or ZANU-PF and who has been noted as a political opponent in his home area in our judgment is unlikely to be able to relocate in safety". The position would be otherwise, however, in the case of a victim of arbitrary violence "where his identity is unlikely to have been noted and recorded" (paragraph 49).

41. Following a number of judicial reviews in the case of persons who had been detained for removal to Zimbabwe, the Secretary of State agreed in July 2005 to suspend removals to that country, pending a "lead" judicial review hearing. On 18 October 2005 the Asylum and Immigration Tribunal gave country guidance in the determination known as AA (Involuntary returns to Zimbabwe) Zimbabwe CG [2005] UKAIT 00144. That case ceased however to be country guidance on 2 August 2006 on the publication of AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061 ("AA No 2"). At paragraph 229 of AA No 2, the Tribunal found that the evidence regarding enforced returns did not establish or demonstrate "a consistent pattern of such returnees being subjected to ill-treatment upon being involuntarily returned simply on account of being regarded as someone who has made an unsuccessful asylum claim in the United Kingdom". There was only "a very small handful of cases in which it is said that there was no reason other than the mere fact of an involuntary return and the perception on the part of the authorities of being a failed asylum seeker that gave rise to" significant difficulties (paragraph 230). Although "all deportees will be questioned, often in a hostile fashion, it is only in those cases where some further suspicion arises, above and beyond the asylum claim in the United Kingdom, that the deportee is moved on to the next stage of the process which involves interrogation which carries with it a real risk of serious ill-treatment" (paragraph 231).

42. There was nothing to indicate that the authorities at Harare Airport had any means of distinguishing between deportees who had made unsuccessful asylum claims and those who had not claimed asylum but who were being removed because they had no leave to remain in the United Kingdom (paragraph 240). All such returnees were likely to be asked whether they had claimed asylum in the United Kingdom; but they would be "allowed on their way unless that interview gives rise to suspicions of an adverse political profile, some additional feature to a military history that demands further investigation or any outstanding criminal issues" (paragraph 241). The evidence regarding voluntary returnees was "clear" (paragraph 243). There were three flights a week from the United Kingdom to Harare, which were usually fully booked with ordinary travellers, many of whom would be Zimbabwe citizens "who pass freely and without difficulty in and out of Zimbabwe". A person who made a voluntary return "with or without the assistance of an IOM reintegration package, will be indistinguishable from the ordinary traveller".

43. At paragraph 244, the Tribunal confirmed the country guidance in SM but to the risk categories identified in SM were added those whose military history disclosed issues that would lead to further investigation by the security services upon return and those in respect of whom there were outstanding and unresolved criminal issues. Those removed involuntarily from the United Kingdom would receive an initial interview to establish whether the deportee was of any interest to the CIO or the security services. "The deportee will be of interest if questioning reveals that the deportee has a political profile considered adverse to the Zimbabwean regime" (paragraph 249). Such a person would be taken away for a "second stage

interrogation". Anyone subject to a second stage interrogation by the CIO faced a real risk of serious mistreatment sufficient to constitute a breach of Article 3 (paragraphs 250 and 251).

44. Although the appeal in AA No 2 was remitted to the Tribunal by the Court of Appeal, its status as country guidance, together with that of SM, was reaffirmed by the Tribunal in HS (Returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094, which became country guidance on 29 November 2007. At paragraph 259, the Tribunal noted that the Court of Appeal had remitted the case of AA No 2 mainly because the Tribunal had not dealt expressly with important evidence of two witnesses known as W5 and W6. The Tribunal in HS considered the evidence of these witnesses and found that it did not support the proposition that violence was used during the initial interview at Harare Airport (paragraph 260).

45. The evidence reinforced the finding that there was a "two stage process at the airport and that anyone identified during the initial questioning that takes place at the airport as being of interest will be taken for interrogation. At that second stage there is a real risk of serious harm, but not before." The CIO, having taken over responsibility for the operation of immigration control at Harare Airport, replacing immigration officers, had the aim of detecting those of interest "because of an adverse military or criminal profile. The main focus of the operation to identify those who may be of adverse interest remains those who are perceived to be politically active in support of the opposition. But anyone perceived to be a threat to or a critic of the regime will attract interest also" (paragraph 264).

46. The assumption of responsibilities by the CIO was not something that affected the level of risk. The CIO could not question everyone and so there was "a screening process to identify those who might merit closer examination. We see no reason to suppose that the heightened role of the CIO would change this" (paragraph 266). As well as those suspected of adverse political, criminal or military activities, "those perceived to be associated with what have come to be identified as civil society organisations may attract adverse interest as critics of the regime" (paragraph 266).

47. There was "no evidence that ordinary passengers returning from the United Kingdom experience any difficulty in passing through the airport. In fact, the evidence is to the contrary" (paragraph 267). Nor was there evidence of any consistent pattern of treating any differently those who had not claimed asylum in the United Kingdom but who had been forcibly removed to Zimbabwe because they had been refused leave to enter or remain. Despite the "political rhetoric of President Mugabe and other highly placed members of the ruling party, the fact alone of returning to Zimbabwe having spent time in the United Kingdom, even if there is some irregularity discernable from stamps in the passenger's passport, does not give rise to any real risk on return to Harare airport" (paragraph 269).

48. The Tribunal accepted that the risk to returnees could not be assessed "on the basis that they are expected to lie to immigration officials on their return. Therefore, we

proceed on the basis that the fact of the failed asylum claim will be disclosed to anyone who asks" (paragraph 271). Nearly a quarter of the population of Zimbabwe had left the country and it was plain that the Zimbabwe government and its agents were fully aware that "the overwhelming majority of these are economic migrants" (paragraph 273). Professor Ranger's evidence was that a person who had sought to prosper economically in the United Kingdom would not be regarded as being disloyal for having left Zimbabwe. The rhetoric of the Zimbabwe government, that returning failed asylum seekers were being recruited to act as spies on behalf of the United Kingdom government, was "nonsense" and described by W66 (who was in a position to know) as being rhetoric designed "to demonstrate that people were foolish to go abroad to claim asylum. Those who do will be sent back" (paragraph 278). At paragraph 282, the Tribunal adopted and reaffirmed the guidance in AA No.2, adding a further risk category. Those associated with civil society organisations that had attracted adverse interest from the Zimbabwean authorities would face the same level of risk as those perceived to be political opponents of the regime.

RN (Returnees) Zimbabwe CG [2008] UKAIT 00083

49. The hearing in RN began on 1 September 2008, in the immediate aftermath of the atrocities and other widespread violence that had characterised the period around the second round of presidential elections in Zimbabwe in the middle of that year. At the close of proceedings on 5 September, the Tribunal indicated that it would reconvene if an event occurred that was capable of indicating a fundamental change in country conditions (paragraph 3). Following reports that an agreement had been reached between Mr Mugabe and Mr Tsvangirai regarding power sharing, the hearing was reconvened on 1 October, when submissions were considered. The hearing of the case was concluded on 30 October, in order to take evidence regarding the position in the light of the power sharing agreement that had been signed.

50. The position of the Secretary of State in the RN appeal is described in paragraphs 27 to 33 of the determination. In short, the Secretary of State submitted that it was not appropriate in the autumn of 2008 to be giving country guidance on Zimbabwe. Accordingly, the Secretary of State instructed Counsel not to cross-examine the expert witnesses called by the appellant to give oral evidence before the Tribunal. As a result, that evidence went unchallenged. So far as the issue of country guidance was concerned, the Tribunal was satisfied:-

> "…that in the circumstances it is right to give country guidance in this case, not just because of the passage of time since HS but also because the events of 2008 demand an authoritative assessment from the Tribunal in the form of country guidance. We do not purport to be able to predict the future and it may well be that events in Zimbabwe change swiftly and fundamentally. All we can do is to assess the information on the basis of the evidence before us and give country guidance pursuant to Practice Direction 18 and section 107(3) of the Nationality, Immigration and Asylum Act 2002, which makes that guidance authoritative, to the extent that subsequent appeals depend upon the same or similar evidence as that before us." (paragraph 33).

51. At paragraph 205, the Tribunal noted that in HS, it had been found that the well-resourced, professional and sophisticated intelligence service that comprises the CIO "would distinguish, when dealing with those returning as deportees from the United Kingdom, between those deportees in whom there was some reason to have interest and those who were of no adverse interest simply on that account". According to the Tribunal in RN, there could be no doubt that those falling into the risk categories identified and reaffirmed in HS continued to face a real risk of persecutory ill-treatment on return.

52. What was a new and important development was the fact that there had been "a major shift in the respective roles of the formal agents of the state, such as the army, the police and the CIO on the one hand and on the other the less formal representatives of the regime deployed in the form of the so-called 'war veterans', youth militias and the groups of people who simply regard themselves as ZANU-PF supporters" (paragraph 207).

53. There was little doubt, according to the Tribunal, that Mugabe had expected to win both the parliamentary and presidential elections in March 2008. This accounted for the "relatively peaceful pre-election period and the fact that the MDC was able to campaign relatively freely" (paragraph 208). It was wrongly thought that, as a result of past brutality, the electorate had been "tamed". Given that voting results were displayed outside polling stations, it was not possible for the vote to be rigged to such an extent as to give Mugabe victory. In the weeks that followed the March elections, the most that could be achieved was to deny Tsvangirai outright victory, which he had claimed was secured. This led to the need for a run-off vote.

54. The RN Tribunal considered it to be of significance that Mugabe had considered accepting the outcome of the first round "but was persuaded not to by those who stood behind him such as the commanders of the JOC and senior representatives of the CIO" (paragraph 210). They feared that, in the event of the MDC taking power, they could be called to account for their past misdeeds. It was these officers, according to the Tribunal, who promised to deliver the second round vote in the presidential elections to Mugabe and it was they who orchestrated what followed.

55. The violence that was unleashed as a consequence showed that there "has been a major shift in the way in which the formal agents of the state, such as the army, police and CIO deployed the less formal representatives of the regime in the form of the so-called war veterans, youth militias or 'green bombers' and groups of youths who simply regard themselves as ZANU-PF supporters" (paragraph 211). Since support for the MDC was centred in urban areas, it was reasoned by ZANU-PF that within those urban communities there would be significant numbers of MDC supporters and potential supporters. As a result "The target of the operation was not simply those identified as opposition supporters but whole communities within which such people might reasonably be expected to be found" (paragraph 212).

56. In reaching these findings, the Tribunal had significant regard to the evidence of the witness from a NGO known as W66. This witness considered that, even if a failed asylum seeker experienced no problem at the airport, he or she would do so on return to their home area because:-

> "…anything which might draw attention to an individual, suggesting they are an MDC sympathiser or unsympathetic to ZANU-PF, could mark them for special treatment in the present climate" (paragraph 79).

57. At paragraph 80, W66 was recorded as saying that the appellant in RN might well encounter roadblocks when seeking to travel from Harare to her home area by bus or other form of transport and that if so she would be required to produce proof of identification to demonstrate she was from the area she was seeking to access. Those operating the roadblock would look for some proof of support for ZANU-PF. From other evidence, the Tribunal noted that a person stopped at a roadblock who was unable to produce a ZANU-PF card "might be asked to sing the latest ZANU-PF campaign songs. An inability to do so would be taken as evidence of disloyalty to the party and so of support for the opposition. Clearly, a person returning to Zimbabwe after some years living in the United Kingdom would be unlikely to be able to pass such a test" (paragraph 81). At paragraph 89, W66 was recorded as describing how the violence was being delivered by various groups of people on behalf of the regime who, having been directed as to the task by the formal state authorities, had been left to carry it out as they saw fit. This had led to "an escalation in the scale and the extent of the brutality involved as well as the categories of victims". The basis of identification of those targeted had changed from the individual to the collective and from the gathering of information as to an individual's acts in support of the MDC to the targeting of those who were simply unable to demonstrate support for ZANU-PF (paragraph 89).

58. At paragraph 102, the Tribunal noted the evidence of Professor Ranger that, following the violence of the summer of 2008, some of the militia bases established then had been dismantled but others had not. There was also "an emerging worry … that ZANU/PF youth in some of the militia camps were refusing to disband, claiming that they had not been paid and threatening to reward themselves by looting". A Human Rights Watch Report of September 2008 said that MDC activists who had fled the violence before the July 7 run-off remained in hiding "while war veterans and youth militia continued to terrorise villagers in the rural areas" (paragraph 102).

59. At paragraph 115, recording the written evidence of witness W4, the Tribunal noted that this person said that the violence "has continued 'again more or less unabated' even after the run-off election". Accordingly, the Tribunal concluded there was cogent evidence that, subject to certain exceptions, those returning from the United Kingdom to their homes were at risk of being regarded as disloyal and so as legitimate targets for retribution and ill-treatment at the hands of the various militias who continued to seek to protect and preserve the ruling party's hold on power (paragraph 116).

60. In the light of this evidence the Tribunal concluded as follows:-

> "215. What is clear…is that it has been established by overwhelming evidence that in deploying these militias the regime unleashed against its own citizens a vicious campaign of violence, murder, destruction, rape and displacement designed to ensure that there remains of the MDC nothing capable of mounting a challenge to the continued authority of the ruling party.
>
> 216. This campaign has been rolled out across the country not by disciplined state forces but by the loose collection of undisciplined militias who have delivered a quite astonishingly brutal wave of violence to whole communities thought to bear a responsibility for the 'wrong' outcome of the March 2008 poll. It is precisely because of that that any attempt to target specifically those who have chosen to involve themselves with the MDC has been abandoned. In our view there can be no doubt at all from the evidence now before the Tribunal that those at risk are not simply those who are seen to be supporters of the MDC but anyone who cannot demonstrate positive support for ZANU-PF or alignment with the regime.
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> 217. We are reinforced in our conclusion by the reports that even some ZANU-PF supporters have suffered beatings when confronted by the militias and when they have been unable to demonstrate their loyalty.
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> 218. The evidence demonstrates also, in our view clearly and without ambiguity, that the aim of the violence was not limited to delivering for Mr Mugabe victory in the run-off vote, but to ensure that the MDC support base was sufficiently dismantled as to ensure that it ceased to exist in any meaningful way as to remain a threat to ZANU-PF's hold on power. That explains why, notwithstanding the talks taking place following the memorandum of understanding and the fact that the elections are, for now at least, concluded, the violence continues. Although this violence is not at the level seen during the summer of this year, everything remains in place for it to be repeated, should the regime deem this necessary.
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> 219. We are satisfied also that the militias have established no go areas and roadblocks to ensure that abuses that continue in rural areas where the MDC has made inroads into the ZANU-PF vote go unreported wherever possible so that displaced people are not allowed to return to their home areas.
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> 220. For these reasons we do not see that there can be said to be an end in sight to the real risk of violence being perpetrated on those identified as disloyal to the regime and therefore its potential supporters of the MDC.
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> …
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> 223. For these reasons we are not satisfied that the power sharing agreement has given rise in itself to any significant change on the ground in Zimbabwe, so far as international protection issues are concerned. There is, moreover, no evidence to

show that in the absence of more effective foreign political or other political pressure, the position is likely to change spontaneously.

…

225. …a person who is unable to demonstrate that he is a member or supporter of ZANU-PF or otherwise loyal to or associated with the regime when asked to do so by any of the various groups deployed across the country by the Zimbabwean regime to maintain its authority and hold on power will be at real risk of being subjected to ill-treatment amounting to persecution and serious harm such as to infringe Article 3 of the ECHR.

226. That risk arises throughout the country, in both urban and rural areas. A person may be faced with a need to demonstrate such loyalty to the ruling party in varying circumstances. The youth militias, "war veterans" and other groups put together under the direction of the state authorities have established camps or bases throughout the country from which they operate. Although the evidence suggests that some of those camps or bases have closed down after the run-off vote in July of this year it is plain that many remain and that they are to be found throughout the country in both rural and urban areas. Ordinary Zimbabwean citizens may encounter these groups at roadblocks set up to establish no go areas or simply when at home as militias move into areas thought to harbour MDC support."

61. The Tribunal in RN distinguished between rural areas, low density urban areas and high density urban areas as follows:-

"228. People living in high density urban areas will face the same risk from marauding gangs of militias or War Veterans as do those living in the rural areas, save that the latter are possibly at greater risk if their area has been designated as a no go area by the militias.

229. The evidence suggests that those living in the more affluent low density urban areas or suburbs are likely to avoid such difficulties, the relative security of their homes and their personal security arrangements being sufficient to keep out speculative visits. Many of those with the means to occupy such residences are in general likely to be associated with the regime and so not a target on the basis of doubted loyalty. Others may enjoy such a lifestyle as a result of a more circumspect relationship with the regime falling short of actual association, but which is, nevertheless, such as to give the appearance of loyalty."

62. The Tribunal at several points emphasised the need to make an individualised assessment of risk on return and that, as Elias LJ has subsequently held in TM (Zimbabwe) [2010] EWCA Civ 916, "The fact that an asylum seeker falls into one or more of the enhanced risk categories is not of itself sufficient to justify the grant of asylum". This was made clear by paragraph 230:-

"230. It remains the position, in our judgment, that a person returning to his home area from the United Kingdom as a failed asylum seeker will not generally be at risk

> on that account alone, although in some cases that may in fact be sufficient to give rise to a real risk. Each case will turn on its own facts and the particular circumstances of the individual are to be assessed as a whole. If such a person (and as we explain below there may be a not insignificant number) is in fact associated with the regime or is otherwise a person who would be returning to a *milieu* where loyalty to the regime is assumed, he will not be at any real risk simply because he has spent time in the United Kingdom and sought to extend his stay by making a false asylum claim."

63. In the context of late 2008, however, a person returning to his home area in Zimbabwe would "be unable to demonstrate that he voted for ZANU-PF and so he may be assumed to be a supporter of the opposition, that being sufficient to give rise to a real risk" (paragraph 231). So far as internal relocation was concerned, the Tribunal at paragraph 233 found that a newcomer to an area would be likely to encounter enquiries from representatives of the regime in control of that area and that, in such an area, the same risk arose as being faced with the demand to demonstrate loyalty to the ruling party, and might even be enhanced owing to his "newcomer" status.

64. At paragraphs 242 to 247, the Tribunal identified situations where a person would, notwithstanding the serious country conditions in Zimbabwe, be unable to make good a claim to international protection. It might, for instance, be difficult to reconcile the nature and cost of the person's journey to the United Kingdom with the economic deprivations suffered by many Zimbabweans. That might in turn raise questions as to whether the person was in fact aligned with or otherwise viewed as loyal to the regime "so as to be able to avoid the consequences of the chaotic disarray in the economy that other Zimbabweans have had to deal with, so as to preserve the means to finance such a journey… Most ordinary Zimbabweans not prospering under the patronage of the regime have very little left in the way of resources or possessions" (paragraph 243). Also, a person not found to be a witness of truth may fail to discharge the burden of showing that they were at real risk on return. As pointed out in GM & YT (Eritrea) [2008] EWCA Civ 833, however, it would still be necessary to consider whether, despite not being credible as to past experiences, there was nevertheless a reasonable likelihood of persecution on return.

65. At paragraph 261, the Tribunal found that there was clear evidence that teachers in Zimbabwe had, once again during 2008, become targets for persecution. That was confirmed by the evidence of Professor Ranger and reinforced by news reports. The fact of being a teacher or having been a teacher was "capable of raising an enhanced risk".

66. Finally, as regards country conditions and Article 3 of the ECHR, the Tribunal found at paragraphs 248 to 257 that country conditions and living conditions for many Zimbabweans had continued to deteriorate since the summer of 2007 and that some might be subjected to a complete deprivation of the basic necessities of life. That would not always be the case and each claim had to be considered on its own facts.

RS and Others (Zimbabwe – AIDS) Zimbabwe CG [2010] UKUT 363 (IAC)

67. This country guidance on Zimbabwe was added on 14 October 2010. Its summary (which we regard as an accurate précis of the determination) reads as follows:-

> "*(1) A significant number of people are receiving treatment for HIV/AIDS in Zimbabwe, and hence a Zimbabwean returnee will not succeed in a claim for international protection on the basis of a diagnosis of HIV/AIDS unless their case crosses the threshold identified in N v United Kingdom.*
>
> *(2) Though there is some evidence of discrimination in access to AIDS medication and food in Zimbabwe, it is not such as to show a real risk of such discrimination.*
>
> *(3) The return to Zimbabwe of a Zimbabwean diagnosed with HIV/AIDS does not place the United Kingdom in breach of its obligations under the Disability Discrimination Act."*

68. The Tribunal in RS had this to say about the country guidance in RN:-

> "197. It was agreed prior to the hearing of these appeals that they would be concerned with risk to the appellants on return to Zimbabwe on account of their HIV/AIDS diagnoses, and it was not understood that the country guidance decision in RN would be revisited. Nevertheless it was argued on behalf of the Secretary of State that it was appropriate to revisit RN, and reference is made in the Secretary of State's skeleton argument and elsewhere to background evidence postdating RN in this regard.
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> 198. The suggestion that RN should be revisited was vigorously resisted on behalf of the appellants, in light of the pre-hearing agreement, but nevertheless some evidence was put in and submissions made regarding the status of RN as country guidance and emphasising the point that RN remains in effect binding country guidance unless very clear and cogent reasons are given for departing from it. The point is made that if the appeals had been listed as general country guidance then a good deal of evidence would have been provided on behalf of the appellants.
>
> 199. We do not propose to dwell on this issue. The status of RN as the relevant country guidance is not a substantive issue before us, and we understand that it is likely that later this year RN will be revisited. In any event such evidence as we have before us to the extent that we have considered it appropriate to give consideration to it, indicates sufficiently clearly to our view, that bearing in mind that it is limited evidence only, that there is no reason to depart from RN as the country guidance that should lie behind our decision insofar as it is relevant to do so. Matters such as the State Department Report of 11 March 2010, and the report of Professor Ranger, indicate to us sufficiently clearly, that bearing in mind the terms of Practice Statement 12, we have not been provided with the kind of clear and cogent reasons which seem to us to be required in cases involving issues relating to aspects of country conditions as a whole for departing from RN as country guidance. It remains therefore very much of significance in this case as background (and in some cases as foreground) to the issues that we must consider."

69. For the appellants in the present case, Mr Henderson, relying upon paragraph 199 of RS, submitted that, not only should extant country guidance provide the starting point, but also that it could be departed from only if there were "clear and cogent reasons" for doing so. In support of that submission, Mr Henderson relied upon what the Tribunal (Carnwath LJ, Deputy President Ockelton and Senior Immigration Judge Storey) had said in paragraph 13(ii) of TK (Tamils – LP updated) Sri Lanka CG [2009] UKAIT 00049:-

> "(ii) …all parties should understand that when a case is set down to review existing country guidance, the latter is to be taken as a starting-point. The Tribunal has not ruled out that in some cases there could be a challenge to the historic validity of Tribunal country guidance (although such would require the production of evidence pointing both towards and against the accuracy of that guidance at the relevant time: see AM & AM (Armed conflict; risk categories) CG Somalia [2008] UKAIT 00091); but that will be rare. Ordinarily (as here), the process is incremental: the parties do not seek to dispute that the Tribunal's country guidance was valid at the time, but only to argue that it now needs alteration in the light of fresh evidence (see AIT Practice Direction 18.2). That being the case, there is no place for the wholesale reiteration of background country evidence that was before the previous Tribunal. Expert reports should not trawl over old ground..."

70. The relevant Practice Direction is now Practice Direction 12 of the Practice Directions (Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal), dated 10 February 2010, the relevant provisions of which read as follows:-

> "12.2 A reported determination of the Tribunal, the AIT or the IAT bearing the letters 'CG' shall be treated as an authoritative finding on the country guidance issue identified in the determination, based upon the evidence before the members of the Tribunal, the AIT or the IAT that determine the appeal. As a result, unless it has been expressly superseded or replaced by any later 'CG' determination, or is inconsistent with other authority that is binding on the Tribunal, such a country guidance case is authoritative in any subsequent appeal, so far as that appeal:-
>
> (a) relates to the country guidance issue in question; and
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> (b) depends upon the same or similar evidence.
>
> …
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> 12.4 Because of the principle that like cases should be treated in like manner, any failure to follow a clear, apparently applicable country guidance case or to show why it does not apply to the case in question is likely to be regarded as grounds for appeal on a point of law."

71. The proposition that a country guidance case should provide the "starting point" for a subsequent case that relates to the country guidance issue is inherent in the Practice Direction (and its AIT predecessor). Whether the subsequent case is being "set down

to review existing country guidance" or not, the effect of Practice Direction 12 and section 107(3) of the Nationality, Immigration and Asylum Act 2002 is to require the existing country guidance case to be authoritative, to the extent that the requirements in Practice Direction 12.2(a) and (b) are met. This is fully in accord with what the House of Lords (per Lord Brown) held in R (Hoxha) v Special Adjudicator [2005] UKHL 19. If the existing country guidance is such as to favour appellants (to a greater or lesser extent), it will in practice be for the respondent to adduce before a subsequent Tribunal "sufficient material to satisfy them" that the position has changed" (Paragraph 66).

72. We do not find that the Upper Tribunal's conclusion in RS at paragraph 199 is of assistance to our task in the present case. There the Upper Tribunal was expressing a view about the need for cogent evidence to depart from an extant country guidance case in a case that was not itself intended to be a country guidance case on the issue before us. The present cases have long been designated country guidance on the issue of a change in circumstances since RN, and we are re-examining all material data to inform ourselves what the present evidential position is. We recognise that the country guidance system has limitations if extant decisions become out of date and not based on relevant assessments as close as reasonably practicable to the date of the decision. The solution is two fold. First, in individual appeals where there is fresh material not available at the time of the country guidance the Immigration Judge will be entitled to depart from the country guidance in the particular case on the basis that the guidance was either not directed to the particular issue in the subsequent appeals, or the factual assessment in the guidance case has now to be updated in the light of relevant cogent fresh information. Second, it is for the Tribunal to identify appeals as suitable for fresh country guidance where a fundamental review of all relevant material should be undertaken to see whether the situation has changed. The observations in TK were directed to the first class, rather than setting a test for departure from country guidance in all circumstances. We nevertheless recognise that where a previous assessment has resulted in the conclusion that the population generally or certain sections of it may be at risk, any assessment that the material circumstances have changed would need to demonstrate that such changes are well established evidentially and durable. That is the test that we will apply in our consideration of the material but not as a preliminary reason to decide whether we should revisit RN at all.

73. Mr Henderson's related submission regarding RS was that, with the exception of the FFM report, the evidence submitted by the respondent to the panel in RS was in substance no different from that submitted to us; and that, on any reasonable view, developments in Zimbabwe since March 2010 had been a deterioration rather than an improvement. In considering this submission, it is important to bear in mind that, as the RS Tribunal said in paragraph 199, the status of RN as the relevant country guidance was not "a substantive issue before us". The focus in RS was the availability in Zimbabwe of medication for the treatment for HIV/AIDS and whether such availability was influenced by political factors. A country guidance case provides guidance on the issue that the case is considering rather than generally.

Some of the expert material relied on before us was included in the material before the Tribunal in RS where comments of a more general nature were made by the witnesses but that is no reason for us not to evaluate all the material now available to decide the issue at stake in the present case. In short we reject the contention that we should not embark on the enquiry that follows.

D. FACT FINDING MISSION OF AUGUST 2010

74. A major source of evidence relied upon by the respondent in the present appeals involved the report of Fact-Finding Mission to Zimbabwe, Harare 9 – 17 August 2010 produced by the Country of Origin Information Service of UKBA and published on 21 September 2010. On behalf of the appellants, Mr Henderson mounted a vigorous attack upon the FFM. It is therefore necessary to deal with the document in some detail.

Background

75. Section 142 of the Nationality, Immigration and Asylum Act 2002 established the Advisory Panel on Country Information, to advise on the balance and reliability of the respondent's country information. The functions of the APCI have now been absorbed into the Independent Advisory Group on Country Information of the Chief Inspector of UKBA.

76. In April 2008 Dr Alan Ingram of the Department of Geography, University College London produced a Review of COI Fact-Finding Mission Reports and Guidelines. He noted that the COIS web page stated that FFM reports were "produced by COI Service following fact finding missions to countries of origin to obtain information not available from the existing sources". At that time, FFM reports had been produced in relation to Iraq, Cameroon, India and Somalia. Dr Ingram made a number of recommendations, including that a section should be included in FFMs, setting out the thinking behind the choice of interviewees.

77. In a response paper of 2008 written by Nick Swift of the COI Service, it was explained that FFMs "do not attempt to undertake social research. Rather, COIS FFMs are an extension of the routine desk-based research used to produce COI Reports and other COI products. Our FFMs are not seeking to find 'the truth'; they are simply looking to obtain a range of views from informed parties on the issue in question" (paragraph 4.1). Interviewees were briefed in advance on the questions to be asked and had an opportunity of changing their responses before giving consent for their views to be included in the report. This meant the report was essentially "a collection of prepared statements, similar in nature to published written material". The difference was that, unlike such published material, the information obtained "goes directly to the detailed issues under investigation". Noting criticism of the expression "fact finding mission", paragraph 5.2 of the response said that it was in the nature of all COI that "most of it is comprised of the views and opinions of

informed organisations and individuals. This applies equally to FFMs, which do not seek to find hard facts but a range of informed views." "Fact finding mission" was, nevertheless, the accepted term used by all countries which carried them out. Consideration would, however, be given to referring to the exercise as an "information gathering mission".

78. At paragraph 5.5 of the response, it was stated that to some extent the sources used in FFMs were self-selecting owing to practical considerations of availability, geography and timing. Although an effort was made to make the samples as representative as possible, the reports of FFMs "make no claims about the validity of the sample; they simply state who was interviewed and what they said. It is left to the user to assess the value of the information provided by each source, as well as the overall balance of the sample."

79. Dr Adamson of SOAS and Dr Çali of UCL undertook an evaluation of the February 2008 Fact Finding Mission to Turkey. The authors noted that statements by interviewees should not necessarily be treated as authoritative but rather as opinions or impressions in many cases. Given the relatively small sample, it was unclear how representative the opinions presented were. The respondent agreed with this, noting that the statements by the interviewees contained opinions and impressions and would be used in the context of other authoritative material. Lack of time available for the FFM also meant that there were practical constraints. The minutes of the APCI meeting of 7 October 2008, when the evaluation of the FFM to Turkey was discussed, included the observation by Nick Swift that FFM reports were not designed to be stand-alone documents but to supplement the COI Report and that the information contained in them did not purport to be objective fact but the views of the individuals concerned.

The FFM report

80. With these background observations, we turn to the FFM report in the present case. The Fact-Finding Mission was undertaken by the Country of Origin Information Service with assistance from the Country Specific Policy Team, both of which are parts of UKBA, together with the Foreign and Commonwealth Office. The FFM was led by Debbie Goodier, Senior Researcher in COIS. Andrew Jones, First Secretary Migration at the British Embassy, Harare, and Mark Walker, Head of Unit, CSPT (as he then was) also took part in the visit. According to the introduction to the published report, the stated purpose of the FFM was "to gather information on the situation in Zimbabwe since the formation of the Government of National Unity (GNU) in February 2009, which may be relevant to the consideration of asylum applications in the United Kingdom". All meetings with sources were arranged by the British Embassy in Harare. The team also met seven Zimbabweans who had claimed asylum in the United Kingdom but who had subsequently returned voluntarily to Zimbabwe from the United Kingdom in 2009 and 2010. These individuals were identified and selected by the IOM. Most meetings took place between 10 and 17 August 2010. Where the team were unable to schedule

appointments during their visit, interviews were conducted solely by Andrew Jones of the FCO. All interlocutors were sent the list of questions to be asked at the interview in advance and advised that the information obtained may be published in a report placed in a public domain and/or used by immigration officials to assist the Immigration and Asylum Chamber (sic) when it considered the Zimbabwe country guidance case in October 2010. The document sent to NGOs in advance of meetings was at Annex A to the report. The introduction stated that given time constraints, the report was presented "as a collation of the agreed notes of answers provided by each interlocutor in response to the questions asked". A short summary of the information gathered from the sources had also been provided at the start of each section on main thematic questions. All the information gathered was said to have been attributed to sources and no attempt had been made to provide any analysis of the material. Several of the sources interviewed had asked to remain anonymous and to be identified in general terms. The list of the sources interviewed was at Annex B, a glossary of acronyms and abbreviations at Annex C, the NGO interview "transcripts" at Annex D and the selection criteria for returnees and questions sent to them in advance at Annex E.

81. We have had regard to the interview notes with the NGO interviewees or, as we shall call them, the civil society interviewees. Apart from these notes, the only other substantive part of the FFM report to which we have had regard are the 'transcripts' of the interviews with the seven returnees. For reasons which will be explained, we have not had regard to the executive summary or summaries of responses.

82. We shall deal first with the issues regarding the interviewees, other than the seven returnees to Zimbabwe from the United Kingdom. As already indicated, the process envisaged by the respondent was that, although manuscript notes were taken of the various meetings (the respondent has supplied those of Debbie Goodier) a set of notes comprising the questions asked and the answers given by the interviewee was produced in respect of each interviewee and sent to that person, for comment and approval. It was a major point for the respondent that, having regard to the approval process, these interview notes represented the actual views of the interviewees.

83. Following the late production by the respondent of email exchanges between David Gibbon, Senior Country Researcher – Zimbabwe and South Africa in the COIS and various interviewees, the appellants discovered that there were, in fact, a number of difficulties in this regard. In the notes relating to Gays and Lesbians of Zimbabwe (GALZ) the interviewee, to whom we refer as W82, wished to amend the paragraph relating to "the situation for gay men". Having said that it was possible for a man to be openly gay in Zimbabwe, the second sentence, as originally drafted, read "In high density areas openly gay men may face taunting and harassment and may also face discrimination in the provision of services on account of their sexuality". W82 amended his statement so that the sentence read "In high density areas openly gay men may face violence, taunting and harassment and may also face discrimination in the provision of services on account of their sexuality". His "track-change" comment, explaining this alteration, read "Although isolated, it's important to

highlight its occurrence" [i.e. the occurrence of violence]. According to a letter to the Tribunal of 25 October 2010 from Richard Lederle, Directorate of Central Operations, Country of Origin Information Service, this omission from the published report was a mistake.

84. The second problem in fact does not relate to the full interview notes but, rather, to the summary of responses, which the respondent at the hearing did not rely upon and to which we have had no substantive regard. For the record, however, we observe that the notes relating to the Research and Advocacy Unit included, at Mr Reeler's request, the following addendum to the list of profiles mentioned in response to question 5: "Can you set out your understanding of the nature and incidence of political violence in Zimbabwe at the present time (i.e. post-GNU)?":

> "To this list should also be added persons that do not demonstrate 'positive affiliation' to ZANU-PF: this is especially important in the rural areas and during elections."

85. The omission of this passage from the summary is, again, attributed to error.

86. The third mistake arises in the notes relating to the Zimbabwe Lawyers for Human Rights. Under the response to the question "Can you set out your understanding of the nature and incidence of political violence in Zimbabwe at the present time (i.e. post-GNU)?", there is in the published FFM report which was before the Tribunal the sentence:-

> "The violence is mostly in the form of threats claiming that violence in 2008 will be surpassed."

87. ZLHR responded, not with a textual amendment but with the following comment:-

> "This is too much of a generalisation and underplays the complexities of political violence in the country. I would suggest it either be taken out or developed further to indicate the many different types of political violence which are experienced. It is definitely not just threats."

88. Later in the same notes, against the question "Are there are any restrictions on someone moving and settling in another part of Zimbabwe?", the document stated:-

> "Movement to urban areas is possible but uncommon as economic reasons prevent people paying for accommodation. Employment prospects will affect where people migrate to."

89. Here, the comment received was:-

> "It is not uncommon as there has been an influx into urban areas, but living conditions are terrible because people cannot afford the costs of accommodation and end up sharing small rooms with many other people."

90. Mr Gibbon sought clarification from Mr Jones of the FCO in Harare. So far as the first problematic part of the text was concerned, Mr Jones proposed its omission, as suggested by the ZLHR representative. Mr Gibbon did so. As regards the second comment, Mr Gibbon deleted the word "uncommon" but did not incorporate the comment that living conditions were terrible. This was said to be an error.

91. Not unexpectedly, Mr Henderson, on behalf of the appellants, had a good deal to say about these matters, as well as other issues where he asserted that there were problems with the interview notes. We will come to these shortly. First, however, it is necessary to deal with some general criticisms.

92. Mr Henderson's first general criticism was that the FFM report contains opinions, not facts but those opinions have not been filtered, either individually or collectively, by any expert analyst for reliability, balance or weight. Mr Henderson referred to Practice Direction 10 of the Practice Directions of 10 February 2010, of the First-tier Tribunal and the Upper Tribunal. This concerns the requirements imposed on an expert witness. Without the safeguards to which Practice Direction 10 refers, he contended that it was difficult to see how the Tribunal could legitimately place weight on opinions expressed by people who may be partly or entirely anonymous, who have not had regard to the Practice Direction, whose views were being reported second-hand, and whose own expertise and qualifications were in some cases in doubt.

93. As we have already seen, it has been acknowledged by the COIS that Fact-Finding Mission reports are essentially about the gathering of opinions from informed sources in the country in question, albeit based upon what those sources consider to be the factual position (for example, as regards incidents of violence). Indeed, in the Tribunal's experience, it is clear to anyone reading an FFM report produced in proceedings in the United Kingdom that such a report is an assemblage of opinions.

94. So far as Practice Direction 10 is concerned, the Tribunal is not persuaded by Mr Henderson's submission. It is manifest that the Practice Direction is directed to the responsibilities of an expert witness, giving evidence before the Tribunal, by reference to an expert report. Looking at the list of identified sources in Annex B of the FFM report, it would be inappropriate to expect many, if not all, of the organisations to have provided their views in the form of experts' reports. They were in no sense "instructed" to provide such reports; nor can they be expected to give views which are unslanted or unbiased, in the sense of being uninfluenced by the concerns, aims and objectives of the bodies concerned. On the contrary, such civil society organisations have, as is clear from the other evidence, frequently fallen foul of the ZANU-PF regime and, since the GNU, of that part of the government that comprises ZANU-PF. Their views are put forward by the respondent as ones deserving of serious consideration because, in essence, they come from informed sources on the ground.

95. Likewise, we do not find force in Mr Henderson's apparent submission that the responses in the FFM report should have been "filtered" through "a well-qualified expert" (paragraph 144 of his closing submissions). In fact, at the hearing this was effectively what happened, in that both Professor Ranger and W66 were asked in detail about the responses in the FFM report. At the end of the day, however, it is for the Tribunal, as an expert body in its own right, to analyse and give weight to all the various evidential elements in this case. That is what we have done.

96. Four of the interviewees in the FFM report asked to remain anonymous. Mr Henderson questioned the weight that could be placed upon these, particularly in the light of his submissions regarding Practice Direction 10.

97. Although four organisations were anonymous in the version of the FFM report of 21 September 2010, which was before the Tribunal at the hearings in October, the current version of the document on the website contains six anonymous interviewees. The first of these, of whose identity the Tribunal and the parties are aware, has since become anonymous at the interviewee's request. He was regarded by W66 in oral evidence as "of course" deserving of respect. The second interviewee, an international organisation, which, again, was identified to the Tribunal and the parties, was also regarded by W66 as a natural source to include; a view the Tribunal shares.

98. The third anonymous interviewee, who was described as "an organisation in Zimbabwe", was interviewed by Debbie Goodier on 11 August 2010. That this organisation is one of some substance is apparent from the statement in the interview notes that it "could operate freely throughout Zimbabwe" and that some elements of the GNU speculated that the organisation was biased towards MDC: "however, the organisation is keen to maintain a reputation for neutrality".

99. The fourth anonymous interviewee was "a major NGO" interviewed by Debbie Goodier on 11 August. This organisation indicated that it was able to operate freely in Zimbabwe "in respects of some aspects of its operations but in relation to work with IDPs there are some constraints on physical aspects to some areas". These were, however, often overcome through local explanation and negotiation, although concerns remained and the situation was expected to get worse as the next elections approached. The organisation was "already working on contingency plans in an attempt to be able to maintain its operations" but had significant doubts about how conducive the environment would remain. Without at this stage venturing into the significance of what is there said, it is apparent to the Tribunal that this organisation, albeit anonymous, was one that it was appropriate for COIS to approach in connection with the FFM report.

100. The fifth anonymous organisation was "a faith-based organisation working in Zimbabwe", interviewed by Debbie Goodier on 16 August. Its response stated that it was an organisation "working in ten provinces of Zimbabwe through faith based community groups in urban and rural areas. The organisation carries out advocacy

and governance work and networks within civil society. It is also part of an ecumenical coalition group of cross denominational church leaders." We see no reason not to take that at face value, in deciding the weight to be given to the organisation's views.

101. The sixth and final anonymous interviewee was described as being attributable "to [a] major international humanitarian organisation". He was interviewed by Debbie Goodier on 17 August. He described the organisation as being generally able to operate freely in Zimbabwe, although over the past year it had been prevented from accessing the diamond fields. Elsewhere "access is surprisingly good. The organisation operates a substantial programme spread across the country." We consider it plain from that statement that the organisation is one of some reach and significance.

102. Mr Henderson criticised the assertion in the introduction to the FFM report, that no attempt had been made to provide any analysis of the material. He submitted that such an analysis had, in fact, started before the interviews had even occurred, with the selection of interviewees, the choice of questions, the choice of the conditions in which the interviews took place and the mode of recording the interviews. The Tribunal does not accept these criticisms. So far as the selection of interviewees was concerned, we accept what Mr Walker said in evidence, to the effect that the COIS had done its best in the time available to identify those whose views fell to be regarded as of significance. Indeed, given the degree of scrutiny to which it must have been apparent the FFM report would be subjected, it would plainly have been counterproductive to have done otherwise. Furthermore, we observe that W66, having had an opportunity to consider and comment upon the reliability of the respondents to the FFM (both anonymous and otherwise), in effect accepted that they represented a serious effort to gain the views of the voices of key NGOs. Whether all the interviewees are to be given equal weight is, however, a different matter, to which we shall turn in due course. Mr Walker accepted that, on reflection, more might have been done to involve trade unions.

103. So far as the choice of questions is concerned, the Tribunal agrees with Mr Henderson, to the extent that an element of judgment is bound to be involved in framing any questions of the kind with which we are concerned. But the precise nature of those questions is plain for all to see, as is the way in which the interviewees chose to answer them. The fact that not all interviewees appear to have been asked the same questions is, again, clear on the face of the report. No purpose is served by speculating about the reason for this. The effect is simply that there is no evidence in the form of answers to questions that were not put. So far as the narrowness of some of the questions is concerned, Mr Henderson criticised the question "Can you set out your understanding of the nature and incidence of political violence in Zimbabwe <u>at the present time</u> (i.e. post-GNU)?" Mr Henderson submitted that the question of how things might develop in future, or how an election might affect levels of violence, did not seem to have been asked. Nevertheless, he observed that some interviewees had commented on the future

anyway. That is so, and we shall consider what they had to say. However, the Tribunal does not find that there is anything sinister or otherwise problematic in the nature of the question, given that it is inherently easier for an interviewee to describe the position as it exists, rather than as it might be at some future time. The purpose of the question seems to us to be clear: namely, to ascertain whether there had been any change since the Government of National Unity was established in early 2009, shortly after publication of the determination in RN.

104. As for the fact that only one organisation was asked specifically about the profiles of victims of violence, the point we have mentioned in the preceding paragraph applies. It is, however, significant that the organisation asked about this, the Research and Advocacy Unit (Mr Reeler) is one of the two organisations regarded by W77 and W66 as the most reliable of the sources quoted in the report (appellants' closing submissions, paragraph 160).

105. Whether certain interviewees were speaking on their own behalf or on behalf of the organisation for which they worked was, in a small number of instances, problematic. Mr Reeler claimed that he was not asked at his interview whether he was giving a personal view or the view of the RAU. In the event, however, he was happy for his views to be attributed to that organisation. The same applied in the case of W78. Anastasia Moyo, in an email of 22 October 2010, said that she would be more comfortable if the interview was attributed to her as an activist, rather than to her organisation, Bulawayo Agenda. That has now been done in the latest version of the FFM report, although Mr Henderson questioned whether it was right to designate her as a "human rights activist", as opposed to merely an "activist". The Tribunal does not find that anything of significance turns on this.

106. A more significant dispute, however, arose in relation to the position of W80, regarding the Zimbabwe Human Rights NGO Forum. In his undated statement in appellants' bundle A/2, W80 stated that he was asked at interview whether the Forum had reports of systematic ill-treatment of returnees since the GNU and it was about this systematic ill-treatment of returnees that he said he would expect to hear if such a thing was occurring. Mr Walker, although his notes were not made available, was categoric in oral evidence that he remembered this particular exchange. He said that W80 was not asked about systematic ill-treatment.

107. There is in respondent's bundle D a copy email from W80 of 3 September, in which he said that the transcript was "fairly representative of the discussion. Please note the few suggested changes I have made." These changes were not included with the email; but it does not appear to be the case that they involved the notes being changed to refer to systematic ill-treatment. On the contrary, paragraph 2 of W80's undated statement – "I now note that this part of the summary is liable to be misunderstood" – makes it sufficiently plain that W80 did not so amend the transcript as part of the verification process of the FFM report.

108. On 9 November, the respondent produced Ms Goodier's manuscript notes of the meetings with W80 and the seven returnees from the United Kingdom. So far as the disputed matter is concerned, Ms Goodier's notes record "No accounts of UK returnees being mistreated – HR Forum would have known – huge network, most locations reported". Over the page, she wrote "Systematic ill-treatment would have been reported to NGO forum – any mistreatment isolated".

109. In their respective written submissions, both sides claimed Ms Goodier's manuscript notes supported their respective stances on the issue of "systematic" ill-treatment of returnees. The Tribunal considers that the essential thrust of what W80 said to Ms Goodier and Mr Walker is satisfactorily captured in the notes published in the FFM report: that the Forum "has not come across any cases of returnees from the UK being mistreated and would expect to know of any such cases because its member organisations are represented across the country".

110. Mr Henderson sought to use the manuscript notes to mount a further general challenge to the FFM report. Observing that there were various passages in those notes that had no counterpart in the printed report, he asserted that the printed "notes" must constitute an accurate and "as far as possible" unedited record of what was said by each interviewee, if the notes were to have "any value at all". (This submission chimed with Mr Henderson's earlier criticism of the report's referring to the notes as "transcripts" of what was said at the meetings). The Tribunal finds the submission goes too far. There is nothing in the manuscript notes we have seen that can be said to be materially at variance with the printed notes. Again, we come back to the fact that interviewees were sent and asked to approve the printed notes, which stand as their response to the questions posed. Mr Henderson's suggestion that interviewees "will have pressing tasks other than rewriting someone's interview note" is not compatible with the fact that the interviewees consented to and engaged with a process which involved them giving their views through the printed notes of the questions and answers. We note what Ms Harland had to say in this regard; but reject the implication that civil society figures in Zimbabwe were guilty of naivety or carelessness in their dealings with FFM teams.

111. Where Mr Henderson is on stronger ground, we find, is in relation to the executive summary at the beginning of the FFM report. The existence of this summary is hard to reconcile with the claim in the introduction that "No attempt has been made to provide any analysis of the material". Mr Walker, in his evidence, essentially agreed with Mr Henderson on this matter, informing us that he had argued against including an executive summary. For the respondent, Ms Grey informed the Tribunal that no reliance was placed on the executive summary or, indeed, the summaries of responses from the interviewees (other than the returnees). We have taken no account of those summaries in reaching our findings. Although it is not a matter for us, it may be that those responsible for the preparation of future FFM reports would in future do well to eschew such summaries, leaving decision makers and judicial fact-finders to draw their own conclusions from the full versions of the questions and answers of the interviewees.

112. Mr Henderson further criticised the current FFM report for failing to comply with what he described as "undertakings" given by Nick Swift to the APCI, that such reports would "disclaim any intention to be comprehensive"; for failing to state that the report contained the views of those interviewed rather than "objective fact"; and for not indicating that the report should not be considered in isolation from other country information.

113. We have dealt earlier with the criticism that the FFM report is about views or opinions, rather than facts. As for disclaiming any intention to be comprehensive, the lack of any such statement does not affect the weight to be placed upon the views, as expressed in the questions and answers, read in their entirety. Again, the matter is not for this Tribunal; but we question whether a standard form of words in FFM reports, disclaiming an intention to be "comprehensive", will always be meaningful. Indeed, it seems to us that any such statement runs the risk of being precisely the sort of "gloss" to which Mr Henderson took exception. In the present case, the records of interviews stand as evidence of what was said by the various individuals and organisations in answer to questions. As such, it is evidence, no more, no less. Whether that evidence is "comprehensive" will depend upon the issue or issues at stake in an individual case, in connection with which the FFM report is tendered in evidence. What weight to place on that evidence will be a matter for the judicial fact-finder who, as is trite law, must reach his or her conclusions on the totality of the evidence, as presented by both parties. For the same reason, we also do not find force in Mr Henderson's criticism that the FFM report does not state that it is not to be considered in isolation from other country information.

114. That brings us to the issue of the Operational Guidance Note. Mr Henderson criticised this for citing the FFM report as "practically the only information post-dating March 2010" (paragraph 146 of the closing submissions). It is not for us to tell the respondent how she should write OGNs. What is important is that the country information in the OGN is not, as that document makes plain, to be regarded by decision makers as having the status of evidence. In the present case, the respondent did not rely upon the relevant Zimbabwe OGNs as evidence and we have not treated them as such.

115. We have already dealt with the issue of those organisations and individuals who chose to be anonymised in the FFM report. So far as the named individuals and organisations were concerned, the RAU, ZimRights, Zimbabwe Association of Doctors for Human Rights, Zimbabwe Lawyers for Human Rights, Zimbabwe Human Rights NGO Forum, and the Catholic Commission for Justice and Peace Zimbabwe were broadly accepted by W66 as authoritative sources of information. The Tribunal has formed its own assessment that the views of those organisations are to be given weight. GALZ has a more limited remit, as is manifest from its nature. Nevertheless, its functions bring it into contact with other NGOs and state elements, as well as public attitudes.

116. The appellants' witnesses took issue with the role of the Counselling Services Unit. We accept what those witnesses said, regarding the CSU's lack of research capabilities for examining the range of human rights abuses in Zimbabwe. We have, accordingly, limited the weight given to the views of the CSU in the FFM report. We have not, however, disregarded their views, since it is apparent from the notes that the CSU representative possessed a detailed knowledge of the position on the ground.

117. The ambit of the Commercial Farmers Union is self-evident. Bulawayo Agenda and the Bulawayo Progressive Residents Association, whilst not possessing the research capabilities of some other NGOs, are nevertheless civil society organisations that have useful things to say about the position in Zimbabwe's second largest city and its surrounding area (W77 considered that they "had a broader reach than Bulawayo itself"). We have approached them in that light.

The seven voluntary returnees

118. Apart from the printed notes of the questions and answers with civil society interviewees, the only other part of the FFM report to which the Tribunal has had regard in the present appeals is that in part 5, comprising the notes of interviews with the seven voluntary returnees to Zimbabwe, interviewed by the FFM team in August 2010. As with the civil society participants, efforts were made by the team to obtain written confirmation from the returnees as to the accuracy of the notes. However, the response has been far poorer than in the case of the civil society interviewees. We have taken that into account in our consideration of the evidence but do not consider that the failure of returnees to respond means that this part of the evidence falls to be disregarded. This is particularly so since sources were informed that if they did not respond within seven days, it would be assumed they were content.

119. The criticism levelled by the appellants against this part of the evidence essentially rests on the suggestion that the selection of the returnees was in practice dictated by the IOM and that that organisation had an interest in painting as positive a picture as possible about its activities in assisting the voluntary return of failed asylum seekers to Zimbabwe. It was also suggested that the positive nature of the comments of the returnees could at least in part be attributed to their desire to keep on good terms with the IOM, until that organisation had provided the returnees with all the financial and other assistance for which they might be eligible.

120. We do not consider that the IOM's involvement in the process of identifying the returnees is a matter of any particular significance. Because of that organisation's work on behalf of UKBA, they are a natural source of information and an obvious point of contact with returnees to Zimbabwe. Whether or not some of the returnees also featured in a presentation that Sarah Harland described in her evidence is, again, immaterial. We do not accept her insinuation that any evidence which can be said to

involve the IOM is tainted, as a result of the organisation's desire to maintain its contract with UKBA.

121. Furthermore, the suggestion that the seven returnees are unrepresentative finds no support in the remainder of the evidence before the Tribunal. On the contrary, there is, in fact, an absence of evidence to show that returning failed asylum seekers to Zimbabwe from the United Kingdom, albeit arriving voluntarily (with or without emergency travel documents), have suffered harm, either at the point of return or subsequently. The account given by Ms Harland of a returnee being murdered involved a person described as an activist returning from South Africa, having never been in the United Kingdom (We shall have more to say about this aspect of her evidence later). Finally, although the accounts given by the returnees have certain common elements, not least the absence of problems involving the Zimbabwean authorities, each contains a considerable amount of individual detail. We also have the benefit of the respondent's refusal letters in respect of returnees 1, 2, 4, 5 and 6 and of the determinations in the case of returnees 1, 3, 4, 5 and 7 (returnees 2 and 6 did not appeal).

Tribunal's summary of the information given by the returnees

122. Returnee 1 arrived in the United Kingdom in 2000 and claimed asylum in 2008. She returned to Zimbabwe in January 2009. Although not found credible by the Immigration Judge as to her claim to be in need of international protection, returnee 1 was considered by him to be an educated person from a middle class family, who remained in Zimbabwe. Having passed through Harare Airport without problems, she returned to the parental home in Mashonaland but later moved to Harare where there was "more freedom…and less intimidation". She moved to Harare "for economic reasons as the income from the family business was not enough to support the family". She had not been successful in finding a job and had not told people that she had claimed asylum. Returnee 1 told the FFM team that there was not the same pressure in Harare to attend ZANU-PF meetings as there was in rural areas and that it was possible to have a discussion in public in Harare about politics, albeit with circumspection.

123. Returnee 2 claimed asylum in the United Kingdom in September 2002 but did not pursue an appeal and remained here illegally until May 2010, when he decided to return to look after his mother. He was not asked questions at the Zimbabwean Embassy regarding his application for emergency travel documentation and passed through Harare Airport without difficulty. Having gone to Nyanga to care for his mother, he returned to Harare in order to find a job. He regarded the assistance received from IOM as insufficient as "without cash he has found it impossible to negotiate the best possible price for goods for his business".

124. Returnee 3 was concerned that the FFM team did not provide details of the basis of his asylum claim, made in 2009. Returning to Zimbabwe in May 2010, he encountered no difficulties at Harare Airport. He was "surprised that there was very

little interest in his situation in Zimbabwe and he has encountered no problems since he returned". He was, however, anxious not to reveal that he claimed asylum in the United Kingdom. When interviewed, he was living in Harare, which was not his home area but was "the place where he has the best chance of getting a job and in fact the place he is most familiar with". It was not fear that had prevented him returning to his home area, but the absence of job prospects. Although presently unafraid, returnee 2 said that there was great uncertainty about what the next elections would bring.

125. Returnee 4 arrived in the United Kingdom in December 2001 and claimed asylum in November 2008. The Immigration Judge found that returnee 4 had produced forged documentation in connection with a claim to remain in the United Kingdom, based on UK ancestry. He returned to Zimbabwe in May 2010, using emergency travel documentation issued by the Zimbabwean Embassy. He was briefly questioned at Harare Airport about his documentation but was able to pass through entry clearance. He paid officers a bribe of $20, in order to stop what looked like becoming a protracted search of his bags. Returnee 4 went to live in the Hatfield district of Harare with a cousin. Owing to an administrative problem, there was a delay in the IOM paying him his accommodation allowance. He therefore used the £500 given to him on departure from London, as well as help from family and friends, in order to rent accommodation in the Avenues area. He subsequently moved back to live with his cousin. Although he had been fearful for his safety, returnee 4 had not received any threats and there was no indication that anyone in Zimbabwe was aware of his asylum claim. He had made "a conscious decision not to tell people this". He regarded the atmosphere in Zimbabwe as "uncertain".

126. Returnee 5, a middle-aged man, arrived in the United Kingdom in 2000, returned to Zimbabwe in 2003, came back to the United Kingdom in 2005 and claimed asylum in April 2009. The Immigration Judge found returnee 5 to have lived in an affluent suburb and to have been in the business of importing cars through South Africa. The Immigration Judge considered that the evidence suggested returnee 5 was aligned with the government of Zimbabwe. Returning in May 2010 using emergency travel documentation, returnee 5 told the FFM team that he "had to lie and say that he had lost his passport to avoid having to say that he had claimed asylum in the UK, although he felt that they knew he had claimed asylum". He had a house in Harare but this had been sublet so he travelled to Bulawayo where he owned a flat and was then living. He was "very happy" to be back in Bulawayo; but he did not tell anyone that he had claimed asylum in the UK "because he does not know how they would react".

127. Returnee 6, an elderly married lady, travelled to the United Kingdom in March 2004 and claimed asylum in March 2009. When that was refused, she did not appeal. She had no difficulty on return to Harare Airport. The IOM took her to stay in a guest house in Harare and then drove her to Bulawayo, where she later rented a cottage, before moving back into her own home in that city, which had been damaged. She

was "very happy to be back in Bulawayo" but only her husband knew she had claimed asylum in the UK.

128. Returnee 7, described as a young man, arrived in the United Kingdom in 2001 in order to study but was advised to claim asylum, which he did in 2004. The Immigration Judge described the claim of returnee 7 as "exaggerated and very general". Returnee 7 went back to Zimbabwe in January 2010, using his own passport. He had no problems at Harare Airport. His brother met him and drove him to Bulawayo. Returnee 7 then set up a cattle breeding business on land owned by his father, which was "doing extremely well". He had only told his immediate family that he had claimed asylum in the UK "because people are afraid to talk about having claimed asylum because if for example they talked to neighbours they might in turn tell ZANU-PF and that would be a problem". Returnee 7 described himself as "no longer afraid after he had passed through immigration at Harare Airport".

E. EVIDENCE EMANATING FROM FOREIGN AND COMMONWEALTH OFFICE

129. Apart from the Fact Finding Mission, a second source of evidence produced by the respondent requires separate mention. This comprises certain "egrams" sent to the FCO in London from the British Embassy in Harare between 2 July and 26 November 2010.

Background

130. Prior to the hearing in October 2010, appellants JG, EM and CLM requested disclosure of all documents within the control of the Secretary of State for the Home Department or other government departments relating to assessments of the political situation in Zimbabwe for the purpose of determining whether to commence enforced returns, pursuant to the ministerial statement of 29 October 2009. That ministerial statement had indicated that the UKBA would begin work on a process aimed at normalising the returns policy to Zimbabwe, moving towards resuming enforced returns as and when the political situation developed. The appellants' purpose was, in essence, to ascertain what lay behind the ministerial statement in October 2010, that the situation was now such that (subject to what might be said by this Tribunal in the present proceedings by way of country guidance) enforced returns to Zimbabwe could recommence.

131. In a letter of 18 October 2010 from the FCO Zimbabwe Unit to Mr Walker, it was said that the FCO had always been clear that enforced returns were related to foreign policy considerations, in particular the stability of the inclusive government in Zimbabwe, and were not related to security or safety of returnees. On 20 October the Tribunal directed the disclosure of "any material emanating from the FCO regarding its assessment of the political situation in Zimbabwe from 1 August 2010". On 22 December 2010 certain egrams were supplied to the appellants and the Tribunal,

subject to certain redactions and gists. This followed an analysis of FCO material, in which Junior Counsel for the respondent was involved, to identify material potentially falling within the scope of the Tribunal's direction, including (of course) material that might be said to undermine the respondent's case and/or support the cases of the appellants. Ten egrams were identified.

132. The redacted and gisted material was the subject of a public interest immunity certificate, signed by the Secretary of State for Foreign and Commonwealth Affairs on 21 December 2010. In accordance with the policy announced by the Attorney General on 11 July 1997, the certificate stated that the Foreign Secretary had focused specifically on the damage which would be caused if the material in question was revealed and that he had "applied the test rigorously. Where I have taken the view that the high test was not met, I have not made a claim for PII." In the certificate, he had explained to the fullest extent possible "the reasons why disclosure of the redacted or withheld material would damage international relations". Where it had not been possible to be more specific, full details were given in a schedule, made available to the Tribunal.

133. Acting pursuant to section 25 of the Tribunals, Courts and Enquiries Act 2007 and following the principles laid down in R v Chief Constable of the West Midlands Police, ex-parte Wiley [1995] 1 AC 274, as well as the overriding objective in rule 2 of the 2008 Rules, the Tribunal considered the certificate, schedule and redacted and gisted material. As a result, the respondent, at a hearing on 14 January 2011, confirmed that certain redacted passages would be unredacted and other such passages gisted. That this would be done was communicated to Mr Henderson on 14 January and the amended materials were supplied to the appellants and the Tribunal. We were satisfied that the remaining redactions and all of the gists were justified in the public interest, in that disclosure would cause real harm to that interest by damaging this country's international relations, and this was so notwithstanding the important protection issues raised in the present appeals.

134. At the "closed" part of the hearing on 14 January, the Tribunal was shown egrams emanating from the Embassy, covering the period between 22 November 2010 and 4 January 2011. In order to bring finality to the present proceedings, compatibly with the overriding objective, the Tribunal indicated in the "open" part of those proceedings that it would examine these egrams, compatibly with its PII functions, with a view to seeing whether any of them added anything of real substance to the material already before the Tribunal. Applying that criterion, the Tribunal required an egram dated 26 November 2010 to be produced to the appellants in gisted form. This has been done. On the same basis, the Tribunal stated that the respondent should keep the position under review until publication of this determination and disclose material subsequently arising only if that could be said to indicate a fundamental change in the position. No such material has been supplied.

Appellants' submissions

135. Our assessment of the FCO egrams is to be found later in this determination, where we examine that evidence, together with the other evidence before us. We do, however, at this stage need to address the general issues raised in the "Appellants' Submissions on Disclosure of FCO Documents", prepared on 20 January 2011.

136. Mr Henderson made the point that the respondent was unable to meet the timetable set by the Tribunal for disclosure of the FCO evidence. That is so; but we do not consider, nor does Mr Henderson suggest, that this has caused his side any particular difficulties, or that Ms Grey was wrong to say that the task of examining potentially relevant material was more onerous than originally envisaged.

137. The submissions of 20 January point out that, besides the FCO letters to which we have referred, Mr Walker gave oral evidence to the effect that his understanding of the FCO's objections to enforced returns was that the stability of the Zimbabwean government would be harmed, in that such returns would be used by ZANU-PF against Morgan Tsvangirai, who would be accused of shipping back MDC voters. The submissions make the point that there is nothing in the egrams that touches on the FCO's concerns in this regard.

138. Whilst true, we do not consider that this impacts materially upon the issues the Tribunal has to decide. Insofar as the FCO's stated policy was not to damage the stability of the inclusive government in Zimbabwe, the FCO has to be taken as not viewing the resumption of forced returns at this time as something which would damage the inclusive government by undermining the position of Morgan Tsvangirai. The motivation behind and timing of the ministerial statement of October 2010 are, however, not our concern. What we have to decide is whether and, if so, in what circumstances, the return of a failed Zimbabwean asylum seeker from the United Kingdom to Zimbabwe at the present time would give rise to a real risk of persecution or other serious harm to that person, taking (as we shall explain further) a holistic view, both as regards the position on the ground now and by reference to possible future scenarios.

139. In this regard, the FCO emails have something useful to say, as we shall later explain. The submissions of 20 January urged us to give the egrams relatively little weight, in particular, compared with the expert evidence and the evidence of "the most senior Zimbabwean figures involved in human rights monitoring and reporting who have given statements to the Tribunal". It appears from the submissions that we were being asked to place no weight, in particular, on those passages in the egrams which the appellants acknowledged "strike a more optimistic note" than the assessments of the experts and other persons just described.

140. These submissions are misconceived. It is clearly part of the function of Mr Canning, the British Ambassador to Zimbabwe, and his diplomatic staff, to keep the FCO in London apprised of the situation in that country, both as it is at present and as regards future scenarios, such as what might happen in the run-up to any elections. Assessments of this kind are plainly a significant function of any foreign-serving

diplomat. It is manifest that those assessments must involve a combination of first-hand observation and discussions with third parties who are in a position to provide relevant information. In short, the egrams are a proper part of the fabric of the evidence placed before the Tribunal, which includes the views of the expert witnesses.

F. ASSESSMENT OF THE GENERAL EVIDENCE

Has there been a material change in the risk of persecution or other serious ill-treatment since RN?

141. On the totality of the evidence before us, it is plain that (except in the case of certain rural areas) there has been a material change in the risk of persecution or serious ill-treatment in Zimbabwe, compared with the position as analysed by the Tribunal in RN. In that case, the Tribunal quite rightly had great regard to the levels of serious human rights abuses, including death, serious injury and torture, which had been inflicted by agents of ZANU-PF during the summer of 2008, both in the run-up to the second round of elections and in the immediate aftermath thereof. Compared with that position, the evidence before us, including that of the appellants' experts, points consistently to what we regard as a marked decrease in such violence. W66 stated in oral evidence that it would be wrong to suggest that things were as bad now as they were in 2008. There had been "an orgy of violence" between the two elections of that year, involving an attack on the population of Zimbabwe, but the country "was not in the same position, yet". W66 described the position as different from that described in RN, where anyone might be caught up at roadblocks and required to demonstrate loyalty to ZANU-PF. W77 specifically did not take issue with anything he had heard W66 say in oral evidence. W77 considered that violence had been particularly bad in 2008 and was different in nature thereafter. Any fresh violence in 2009 and thereafter was not an increase in the rates of violence witnessed in 2008. He considered there to be a "sliding scale" of risk, with MDC activists at the top and those at the bottom being ordinary individuals in high density areas, where the risk "would involve a random element". 2008 had been "an exceptional year" for roadblocks which were "more random or sporadic now". Although W77 described there still being a risk of being stopped and questioned, as to whether one was a supporter of the MDC, in the light of the evidence as a whole, we do not find that this can be said to represent a generalised real risk to returning failed asylum seekers from the United Kingdom, regardless of their political profile.

142. It was also plain to us from Professor Ranger's evidence that the position, according to him, was, in terms of current violence, different from that described in RN. It is true that both Professor Ranger and the other appellants' witnesses expressed grave concerns about the future position, in particular, when elections were called in Zimbabwe. For example, Professor Ranger spoke of the most pervading emotion being a "fear of renewed violence". We shall turn to that issue in due course. For the

present, however, we find that, short of such concern as to the future, the evidence shows a general improvement, compared with the position in RN.

143. The same point emerged from the evidence of Mr Reeler (of the Research and Advocacy Unit), who stated that violence "is not currently as high as during the 2008 election period". We note what Mr Reeler said at paragraph 19 of his first report, that there is a spectrum of risk, with MDC members, office bearers and suchlike being at the top; but that "There is also a real risk for ordinary Zimbabweans who are not perceived as loyal". We do not, however, consider the evidence shows that, as a general matter, the return of a failed asylum seeker from the United Kingdom, having no significant MDC profile, would result in that person facing at present a real risk of having to demonstrate loyalty to the regime.

144. This is reiterated in the evidence in the parts of the FFM report to which we have had regard. For example, the Zimbabwe Association of Doctors for Human Rights considered that current levels of violence were (as at August 2010) "much lower than in 2008", notwithstanding that there was a high level of "verbal violence and intimidation directed towards known political activists". Having regard to the evidence before us, we also consider that there is force in what was said in the FFM report by the international organisation referred to in paragraph 97 above, that the same information regarding political violence "tends to circulate continually and is often uncorroborated. Thus, what was in fact one incident comes to be reported as two separate ones and motives and outcomes can become confused." To this must be added the fact that, as is apparent, many of the internet news sources placed before us display a marked (albeit understandable) antipathy towards Mugabe and ZANU-PF, with the resulting temptation to over-generalise from what may in reality be sporadic problems. In the organisation's view, the overstatement of actual levels of violence leads people to talk about the current situation as if it were similar to 2008, "when in fact there is no comparison".

145. The anonymous organisation interviewed by the FFM team on 11 August 2010 spoke of people in Zimbabwe being "tentative about the current peace and … aware that it is fragile". Again, however, there was concern about the "potential for violence in many rural communities". There was a "general opinion that [the police] are less tolerant of political violence" than in the past; although the evidence overall means that that last remark must be treated with considerable caution. There is, however, support for it in the view of the major NGO interviewed on 11 August, which considered that in urban areas "the police are more likely to intervene to stop political violence, whoever the perpetrator". The Zimbabwe Human Rights NGO Forum considered that there were problems regarding the constitutional outreach process (about which we shall have more to say); but that otherwise "levels of political violence are currently low, with more emphasis on threats along the lines of stay in line or expect to face worse violence than in 2008". The Catholic Commission for Justice and Peace Zimbabwe considered that there was "little actual political violence at the moment", although this was said to be because the population had been "so cowed by previous violence that they are afraid to do the sort of things that

would provoke further actual violence". Whilst we have tempered the weight to be placed on the views of Bulawayo Agenda, so far as more general issues are concerned, it is nevertheless noteworthy that they considered that threats and physical violence within Matabeleland North and South, Bulawayo, Midlands, Masvingo and Manicaland had declined since the formation of the GNU. By the same token, the Bulawayo Progressive Residents Association considered the current situation to be "peaceful – for the moment, at least. Violence is much less widespread and the violence is less open."

146. For the appellants, Mr Henderson submitted that, if one looked at various statistics of human rights violations, there was no material difference between those recorded in the late summer and autumn of 2008, as considered in RN, and the figures recorded for the summer of 2010. As the Tribunal in RN, notwithstanding this reduction in violence, had seen fit to say what it did about the risk to those unable to demonstrate loyalty to the regime (or, as it should now be described, ZANU-PF), Mr Henderson submitted that there was no proper basis for us to depart from the country guidance in RN.

147. We do not consider there to be merit in these submissions. Although RN looked at the position in the few months immediately following the election violence in the summer of 2008, it was quite understandable for that Tribunal to adopt a very cautious approach to whether there had been a material change on the ground, as regards the real risk of serious harm. In particular, the Tribunal, at paragraph 102 of its determination, noted the evidence of Professor Ranger that the militias unleashed by ZANU-PF in the run-up to the presidential elections were, in some cases, refusing to disband and that, according to a Human Rights Watch Report, these groups and others were continuing to terrorise villagers in rural areas. At paragraph 115, the Tribunal also had regard to the written evidence of the witness described as W4 who considered that the violence had continued "more or less unabated even after the run-off election".

148. In addition, at paragraph 218, the Tribunal considered that the continuing violence, just described, was being perpetrated with a view to ensuring that the MDC support base "was sufficiently dismantled as to ensure that it ceased to exist in any meaningful way as to remain a threat to ZANU-PF's hold on power".

149. It is plain from the evidence before this Tribunal that, insofar as that might have been a reason for the continuing violence in 2008, it has manifestly failed to have the desired result. Support for the MDC in general and the MDC-T in particular appears, if anything, to be higher now than it was at the time of the 2008 elections. But, be that as it may, we are in no doubt that, viewing matters from the vantage point of late January 2011, when the latest country information was placed before us, militias, war veterans and the like are not terrorising the population of Zimbabwe, as they were during 2008. We make this finding, taking into account the most recent evidence adduced by the appellants, including that concerning clashes in mid-January 2011 between MDC members and ZANU-PF youths in the Mbare suburb of

Harare and a report of a disturbance at the MDC headquarters in that city. We also note the comments in the House of Lords on 27 January 2011 by the Minister of State, Foreign and Commonwealth Office, who referred to "clear evidence of intimidation and violence rising again". We do not regard the Minister's remarks as an acknowledgment that the present position is as serious as in late 2008, at the time of RN; but, in any event, the evidence before us does not show this to be the case.

150. It is also relevant to observe that, according to the July 2010 Zimbabwe Peace Project summary of politically motivated human rights and food related violations (appellants' bundle B), a graph showing what was described as "politically motivated violence" indicated that this rose from around 600 cases a month to 4,380 in April 2008, 6,288 in May 2008, declining to 3,758 in June 2008 and 1,383 in July of that year. Violence in fact rose from 964 to 1,336 between September and October 2008, with well over 1,000 cases a month being recorded until August 2009, when it dropped to 527. The figure for July 2010 was 884. A later report showed the figure for September 2010 as 861.

151. In the materials supplied by the appellants in January 2011, there is a report from "sokwanele.com" entitled "Zimbabwe Inclusive Government Watch: Issue 22". It asserts that in November 2010 106 "articles from the internet media were recorded and catalogued", representing "an increase of 10% from October in breaches of the Global Political Agreement". Although the article appears to infer from this that violence is on the increase, the basis of the study, coupled with the rhetorical nature of much of the report, does not indicate that it is evidence deserving of particular weight.

152. We have already touched on the issue of roadblocks. These were prevalent both in the run-up to the elections in the summer of 2008 and in their immediate aftermath. It is plain from the determination in RN that the Tribunal in that case regarded the prevalence of roadblocks as particularly significant, as regards its finding that a returnee from the United Kingdom at that time faced a real risk of encountering such a roadblock, whether in a rural or urban area, and of having to demonstrate loyalty to the regime; for example, by singing the latest ZANU-PF song.

153. It is apparent from the evidence before us that incidences of roadblocks have, since that time, significantly diminished. None of the civil society organisations and individuals interviewed by the FFM team identified roadblocks as a significant current problem. Neither did any of the appellants' witnesses. In this regard, W66 specifically said in oral evidence that things were not as bad at present as in 2008. W77 regarded roadblocks as "more random or sporadic now". Professor Ranger spoke of there being some roadblocks in Mashonaland. In general, we find that the thrust of the evidence given by the appellants' experts is to the effect that, whilst there may be a risk to a person who is not a MDC activist of being challenged to demonstrate allegiance to ZANU-PF, whether at a roadblock or in the course of a search of a high-density urban area for MDC activists and supporters who might be on a list, that risk is currently sporadic and random. As such, it cannot properly be

compared with the risk identified in the country guidance in RN. The report in the Zimbabwean.co.uk of 28 December 2010 that "the dreaded military police" had been "roped into manning roadblocks" is somewhat vague and does not indicate that the sort of problems experienced at roadblocks in 2008 are being experienced at the present time.

154. Although we have had regard to the reservations voiced by Mr Henderson regarding the usefulness of the evidence of the seven returnees who featured in the FFM report, we consider, for the reasons we have already given, that some weight can be placed on this evidence. None of the returnees suggested in any way that he or she had been required to demonstrate loyalty to ZANU-PF, in circumstances where there was a real risk of serious ill-treatment, in the event of a failure to perform satisfactorily. We take account of the fact that some of the returnees had chosen not to disclose the fact that they had claimed asylum in the United Kingdom; but that is in no sense to be equated with the "loyalty test" which featured in the guidance in RN. Furthermore, looking at the evidence overall, we find that, as a general matter, the fact of having claimed asylum in the United Kingdom will not of itself be a factor of any particular significance in the assessment of risk. However, in some cases, such as that of a returnee to certain rural areas, it will be part of a package of attributes that may well give rise to a real risk (see below).

155. Ms Harland referred to a returnee from South Africa (who had never been to the United Kingdom) who was said to be an MDC activist and who had been murdered. True MDC activists, in respect of whom there is a real risk that ZANU-PF would regard them as a threat, may indeed be at real risk of persecution on return to Zimbabwe, whether from the United Kingdom or elsewhere. Ms Harland also spoke of an individual who had apparently left the United Kingdom for Zimbabwe in 2007, but gone to South Africa in 2008, before returning to Zimbabwe. He said that his attempts to re-register for teaching had been futile as he was being punished for having been away in the United Kingdom. He was said to be lying low for fear of victimisation. Even if one accepts all this at face value, it comes nowhere near being an example of a person who, on return, suffered serious harm amounting to persecution or Article 3 ill-treatment. Ms Harland spoke of a third returnee; but had no knowledge of how he had fared.

156. Accordingly, as we have already indicated in the section relating to the FFM report, the evidence of the seven returnees falls to be read in the context of there being no evidence before us of any returnee from the United Kingdom suffering ill-treatment on return, or subsequently. In so saying, we have had regard to the fact that the seven returned voluntarily. However, some returned on emergency travel documentation, such as would be provided in the case of certain of those involuntarily returned (that is to say, those who lacked passports). There is also the evidence of Mr Walker regarding forced removals of what appear to have been deportees. Again, there is no evidence of the deportees being ill-treated. Their escorts, however, were apparently detained by the Zimbabwe authorities.

157. Whilst noting the reservations expressed by the appellants concerning the British Embassy egrams (written submissions of 20 and 28 January 2011), we consider that the egrams contain assessments of the position during the period in question, which are in line with the other evidence before us. On 6 September 2010, the Ambassador, Mr Canning, wrote: "Had we in the chaos and violence of 2008 been offered a glimpse of the Zimbabwe of today, there is little doubt we would have seized it. Tsvangirai, harshly criticised for going into the coalition, has been proved right". An egram of 28 September spoke of Zimbabwe enjoying relative peace compared with 2008, although there remained pockets of violence. On 29 October the Ambassador wrote that the "majority of the population, and particularly the business community, would settle for a continuation of the present arrangement which, despite its manifest faults, has delivered a significant degree of stability, a reduction in human rights abuses, improved economic performance and the first GDP growth for 13 years". On 15 November, the Embassy again referred to the formation of the inclusive government securing "a significant reduction in the level of human rights abuses".

158. It is important to make two things clear. First, the fact that general levels of risk of persecution and other serious ill-treatment have materially declined since RN does not mean that the potential for a return to such levels does not exist, in the event of parliamentary and presidential elections being called. It was a major plank in the appellants' case that the likelihood of such elections taking place, and of the violence that might ensue, had to be taken into account in the Tribunal's conclusions on present risk. This is a matter to which we shall turn in due course. Secondly, we are here dealing with the general position, across Zimbabwe. As we shall see, the risk to a particular individual will very much depend on the place to which he or she would return.

Problems arising from the COPAC process

159. In making our findings, we have had particular regard to the activities of the Constitutional Parliamentary Committee (COPAC), which in the summer of 2010 undertook a large number of "outreach" meetings across Zimbabwe, with the aim of gathering the public's views on the proposed new constitution for that country. It is noteworthy that these meetings were well underway at the time that the civil society interviewees gave their views to the FFM team in August 2010. W66 said in oral evidence that he was sure that those who attended COPAC outreach meetings and had a political profile were at higher risk than those whose profile was low. W77 placed on the debit side of his "balance sheet" the continuing use of youth militia to attack suspected opposition figures and supporters, as well as those speaking out at constitutional outreach meetings (or even attending them). The present violence tended to be focused on the COPAC process. Professor Ranger referred to the violence when COPAC reached Harare, in September 2010, leading to the postponement of the outreach meetings in that city. This had overshadowed the COPAC process in Bulawayo, where the meetings were "violently noisy, if not subject to violence by means of sticks and stones".

160. Professor Ranger agreed that the COPAC process served as the focus for such intimidation and violence as there was at the present time. This chimed with the Peace Project report in appellants' bundle B, dealing with the position in August 2010. The MDC had provided a number of chairmen in the COPAC process, who had initially spoken about it highly. Professor Ranger considered that an ordinary villager would conclude from the activities of ZANU-PF at COPAC outreach meetings, that it was "too dangerous to support the MDC".

161. Anthony Reeler, in his statement, considered that people attending outreach meetings had to say the right things "otherwise they might be assaulted by militia". When COPAC reached Harare, ZANU-PF people had been bussed into the city in order to commit violence. Dewa Mavhinga of Crisis Zimbabwe Coalition, whilst noting that levels of organised violence were lower than during the election period, observed that the COPAC process had brought a wave of violence. The problems in Harare, which had left a person dead, had, he considered, "put to rest the idea that urban areas were safe". For the same reason, W78 had changed his earlier view that urban areas were still relatively safe from organised violence. W79 of the Zimbabwe Human Rights Association thought that, since being interviewed by the FFM team in August, the situation had deteriorated, owing to the COPAC process, with violence inflicted by people bussed in by "certain anti-democratic political parties". W80 of the Zimbabwe Human Rights NGO Forum likewise thought that ZANU-PF had imposed its authority on Harare through organised violence related to the COPAC process.

162. In its July 2010 summary on politically motivated human rights and food-related violations, the Zimbabwe Peace Project considered that villagers suspected of belonging to the MDC-T were being told to "shut up during COPAC processes and also selected ZANU-PF supporters were allowed to speak during the outreach meetings in most rural constituencies across the country". In its August 2010 summary, ZPP noted an upsurge "in the number of intimidation and harassment cases related to the COPAC outreach programme. The highest numbers of violations were recorded in the Manicaland province", which remained "a hotspot of violations". On the other hand, Matabeleland North and South recorded only "minimal cases of violations despite the enthusiasm that has been associated with the constitution making process". In Bulawayo, most cases reported were those of harassment and intimidation. A press report in September 2010 recorded that up to sixteen outreach meetings had been cancelled in Manicaland province because of violence from ZANU-PF supporters.

163. The Radio Africa correspondent in Harare thought that Mugabe and ZANU-PF were using the outreach exercise "not only to test the waters but to remind people just how violent his thugs could be and how far they were willing to go to get their way". On 7 November, there was a report that at least fifteen resettled farmers near Masvingo had been "severely tortured by ZANU-PF youths … for failure to attend a rally held in Manwenge area". The farmers were "too afraid to go to hospital". On

the other hand, a report of 10 November, also from Masvingo, noted that villagers were refusing to pay a levy of two goats per family or a $70 fine for refusing to support ZANU-PF-imposed village heads and that attempts by ZANU-PF to reorganise their party's leadership at grassroots level was facing resistance from villagers who "vowed to challenge the goat levy in the courts". A report of 11 November describes something called "Operation Headless Chicken", described by an anonymous ZANU-PF official as identifying youths and party leaders "who will be trained in beheading people".

164. In the FFM report, ZimRights, whilst noting that the COPAC process had been used by ZANU-PF to trigger violence, was encouraged by the fact that, contrary to expectations, people were happy to speak direct to a video camera, as part of a ZimRights project, and that "they were clearly not afraid". In the rural areas people had not been turning up to COPAC meetings "simply because they don't want to hear from or about ZANU-PF anymore". It would be difficult for ZANU-PF to regain control in areas such as Manicaland. The fact that, in rural areas, villagers were not, as a general matter, coerced into attending COPAC meetings is also borne out by the article of 12 July in the Zimbabwean, concerning the touring play "Waiting for the constitution". The article described people saying that COPAC asked them to gather at certain venues "where they could not go because they were being watched". The people knew they "have power for a "NO" vote if they are prevented from speaking out during the constitutional process". The Research and Advocacy Unit (Anthony Reeler) told the FFM team that now that the constitution making process had begun, political space was closing down dramatically and there were increasing reports of political violence and intimidation. Zimbabwe Lawyers for Human Rights told the team that with the advent of COPAC, violence had surfaced again in a number of provinces and COPAC outreach meetings had had to be cancelled in some areas due to intimidation, disruptions and monitoring.

165. The Counselling Services Unit considered that, although there would still be intimidation as seen in the COPAC process, ZANU-PF would try to suppress large-scale pre and post-election political violence, out of a fear of being indicted by the International Criminal Court. The international organisation interviewed on 12 August, whilst noting that violence was occurring in the outreach process, considered that ZANU-PF "has taken an active decision not to unleash the full force of political violence in relation to the constitutional referendum, not least because to have done so would have infuriated the South Africans during the soccer World Cup". The Zimbabwe Human Rights NGO Forum told the team that the violence linked to the outreach process was "not systematic but such as there is tends to be perpetrated by war vets". Although ordinary people "who say the wrong things at meetings" might be threatened, or worse, higher profile figures were liable to be arrested and, if so, tortured. Otherwise, levels of political violence were low with more emphasis on threats.

166. Although physical violence undoubtedly occurred from time to time during outreach meetings (as to which we have noted the MDC's list of some incidents it said had

then occurred, mainly in Mashonaland and Masvingo), it is evident from the evidence as a whole, including the Zimbabwe Peace Project reports, that most of the violations did not involve physical violence. For example the Harare/Bulawayo report – shadowing the outreach process – recorded only 3% of violations as involving violence, with the majority relating to coaching, political interference and harassment. There were, however, disturbances that were said to have rocked outreach meetings in Mbare, Harare. It was, in our view, significant that the decision was very quickly taken to suspend the outreach meetings in Harare, rather than let the difficulties continue. A further report of the Peace Project described the resumed consultations in Harare on 30 and 31 October 2010, following the September suspensions. The report identified the reason for the suspension as "inter-party violence between supporters of the two main rival parties, ZANU-PF and the MDC-T". The MDC list, to which we have referred, describes a small number of physical assaults, involving MDC members and supporters, at outreach meetings.

167. At the resumed October meetings, COPAC was applauded for deploying police to all outreach venues, albeit that this created "a somewhat intimidating, subdued, sombre and agitated atmosphere". The political mood in October was described as "brittle, temperamental and visibly polarised along party lines". It appears that ZANU-PF, no doubt through the bussing in of supporters, were able to turn many outreach meetings into political rallies. In Harare North there were no reported incidents of political skirmishes or violence, although "hate language" was said to have haunted the proceedings.

168. Despite the problems experienced in Harare during the COPAC activities, it is plain that they were on nowhere near the scale of the 2008 election violence. Unlike reports in respect of certain rural areas, where there is suggestion that villagers may have been threatened or otherwise cajoled to attend meetings, the evidence in respect of Harare does not indicate that (leaving aside ZANU-PF supporters who were bussed there), attendees at meetings were there otherwise than of their own free will.

169. It would also be wrong to categorise the COPAC outreach meetings as entirely negative. In a press report of 5 November, it was said that the deliberations exhibited "a general consensus that the new constitution shall have a bill of rights and that people should be guaranteed their freedom of expression and association". This supports positive statements made in respect of the process by Morgan Tsvangirai and an MDC spokesman, who indicated that it would be wrong to think that the MDC would campaign for a "No" vote in any future referendum on the constitution. It also fits with the evidence regarding the separate "transitional justice" process, commented on by Professor Ranger, who acknowledged there had been relatively open discussions in connection with that process. Likewise, the British Embassy in Harare reported to the FCO on 29 October that, despite ZANU-PF's mobilising to dominate many outreach meetings, "the outreach process has educated and empowered many Zimbabweans" and that despite the serious flaws "it has been remarkable to see an exercise of this scale unfold in the way it has".

170. The Zimbabwe Peace Project reports in respect of COPAC activities in Bulawayo indicate that these "generally went well though with a few isolated chaotic incidents". This reflects the general position in that city, which we shall describe in more detail in due course.

171. Instances of significant problems, including intimidation backed by threats designed to instil serious fear, are, however, much more evident in reports relating to rural areas (other than Matabeleland), although these were not always overt. The Zimbabwe Peace Project report entitled "Shadowing the Outreach Process" spoke of outreach violations in rural communities as being "craftily committed through an array of hard to detect strategies that include ferrying of party supporters from one venue to another, posting party youths/supporters at outreach venues, grouping communities under their head men and conducting of roll calls after meetings" etc. According to the same report, cases of harassment remained "disturbingly visible".

172. The suggestion that all outreach meetings were dominated by ZANU-PF is, however, to some extent contradicted by a passage in the Zimbabwe Peace Project weekly report of 19 to 25 July, which describes responses at meetings as being along political lines with ZANU-PF and MDC-T "actively involved in selling their constitutional positions by way of distributing flyers before the arrival of COPAC teams". Contributions either reflected MDC-T or ZANU-PF positions "depending which political party was dominating at the outreach meeting". Compatibly with what we have earlier noted, the reports said that areas that were less politically sensitive appeared to result in "consensus after serious debates", at least in the case of meetings in Midlands province.

173. Overall, we do not consider that the problems emanating from the COPAC exercise in the period June-October 2010 justify the view that there has been a significant deterioration in general country conditions, as seems to have been asserted by some of the appellants' witnesses. The COPAC exercise has, however, served to underscore the difference in circumstances between those living in urban and rural areas respectively. In particular, in some instances at least, the combination of coercion to attend meetings and the nature of the threats made, appear to us to be capable of being persecutory, within the ambit of the Refugee Convention. We do not, however, consider as a general matter that everyone living in rural areas is currently suffering persecution. But the evidence regarding COPAC points to differences between urban and rural areas, and between rural areas themselves, which have relevance to the position of a person returning from the United Kingdom, and which require a detailed appraisal. It is to this that we now turn.

Geographic differences

174. In RN, the Tribunal identified significant differences in the risk of serious harm, depending upon whether a person was returning to an urban or rural area. As regards urban areas, the Tribunal also found that differences existed between, on the one hand, high-density areas and, on the other, low-density ones. As can already be

seen from the present determination, this Tribunal has had evidence adduced to it which plainly discloses material differences between urban and rural areas, as well as between different kinds of urban areas. The evidence before us on these matters is more detailed and precise than that in RN and calls for close scrutiny.

175. The civil society interviewees in the FFM report spoke consistently of rural areas being more problematic than urban ones. However, a common thread running through these responses and, indeed, the rest of the evidence, was that not all rural areas of Zimbabwe were the same, so far as problems from ZANU-PF were concerned.

176. ZimRights stated that urban areas were politically more open than rural ones and that violence was more common in "Mashonaland, Midlands, Manicaland and Masvingo. These are all ex-ZANU-PF strongholds that ZANU-PF wants to win back from the MDC. They are doing this by cracking down on the people that they think made them lose." A little later, the same organisation stated that the "remotest parts of the rural areas are the most affected by violence". So far as Manicaland was concerned, however, the interviewee thought that it would be very difficult for ZANU-PF to regain control, as the Zimbabwean people "have lost their patience". The first now anonymous interviewee (paragraph 97 above) told the FFM team that Harare was "more politically open than the rural areas. Areas that were strongly contested during the last election and where majorities are slim are still battlegrounds in political terms." In this regard the interviewee referred to Bindura (in Mashonaland Central) and Buhera (in Manicaland).

177. The Research and Advocacy Unit said that there was a "large pool of youth in the rural areas that ZANU-PF can draw upon in terms of recruitment for the militia". As for political violence and repression, the rural areas were "more affected. ZANU-PF are massively outnumbered in the urban areas but there is violence in the per-urban (sic) areas such as Epworth in Harare." In terms of rural areas with high levels of violence, RAU referred to Mashonaland East, West and Central and also areas of Masvingo, Manicaland and Midlands, which were said to "experience violence".

178. During elections, RAU said that movement in rural areas was tightly controlled, particularly in Mashonaland. The Zimbabwe Association of Doctors for Human Rights told the FFM team that Masvingo and Mashonaland East and Central had been "particularly difficult to access in order to conduct surveys". This organisation identified Mashonaland East and Central, North Manicaland and border areas between Midlands, Masvingo and Manicaland as having "higher levels of violence than other areas". Zimbabwe Lawyers for Human Rights identified Mashonaland East, Central, and West, Manicaland and Masvingo as having a "higher level of violence than other areas", with Midlands province having had "some sporadic violence".

179. The Counselling Services Unit noted discrimination and irregularities in the provision of aid in Mashonaland Central and East, described as "dreadful", whilst

Manicaland and Mashonaland West were "difficult", in the latter case because of a leadership struggle within ZANU-PF. The major international organisation interviewed on 12 August said that the violence in 2008 had been concentrated in Mashonaland Central and East, Manicaland and Masvingo, in an attempt by ZANU-PF to regain ground lost to the MDC. Current and future political violence was thought by that organisation to follow the same pattern. An anonymous organisation, interviewed on 11 August, considered that in rural areas there was "some fear of reprisal for speaking against ZANU-PF", although people could talk about politics "more freely than previously but are still inhibited by memories of past persecution". A major NGO, interviewed on 11 August, noted political interference in the distribution of aid in Mashonaland Central and East and Manicaland. The Catholic Commission for Justice and Peace Zimbabwe said that its programmes undertaken throughout Zimbabwe indicated that some people had been deterred from participating, especially in rural areas, because they feared awkward questioning about why they had attended the Commission's events. The Commission considered that although levels of actual physical violence were low across Zimbabwe, the potential for a resurgence in such violence was greatest in Mashonaland Central, Mashonaland East, Masvingo, Manicaland and Midlands provinces. Again, the reason for this was given as ZANU-PF's desire to reclaim lost political ground. Bulawayo Agenda spoke of decline in threats of physical violence in Matabeleland North and South, Bulawayo, Midlands, Masvingo and Manicaland, since the formation of the GNU.

180. An anonymous faith-based organisation interviewed on 16 August said it had no problems working in Matabeleland and the Midlands but that working in Mashonaland East and Central was made problematic by ZANU-PF. The same organisation described as more problematic Mashonaland East, Central and West and Midlands, whilst in Mutare (Manicaland) there were said to be "pockets of violence during COPAC meetings". Another organisation spoke of traditional leadership structures, such as chiefs and headmen, being "extensively used in rural communities. Informants in rural areas are also used." The major NGO interviewed on 11 August drew a distinction between urban and rural areas. In the latter "violence can more easily be hidden" and those areas were "where the ZANU strongholds tend to be located".

181. The oral evidence on behalf of the appellants painted a very similar picture. W77 accepted that there were differences between areas and that a distinction fell to be drawn between rural and urban areas, given that chiefs and headmen, loyal to ZANU-PF, had a particular role in the former. In the urban areas, there were local government structures and the police force. The MDC controlled local structures in Harare, although local councils had been abolished by ZANU-PF, after these had been taken over by the MDC. W77 agreed that a person who moved to an urban area in a non-election period may face a risk that was not particularly acute (albeit that he stressed the word "particularly").

182. Professor Ranger, asked about the report "A Place in the Sun" in appellants' bundle B, agreed that a distinction fell to be drawn between threats made in rural areas and small towns and the position in Harare and Bulawayo. As that report indicated, there was a picture of the magistracy retaining a degree of independence and resisting intimidation in the major urban centres. Professor Ranger said that that was so "even in 2008". To this extent he accepted that his written report fell to be qualified. Professor Ranger also agreed that the Peace Project reports on the COPAC process disclosed regional differences in problems arising from that process.

183. For reasons which we develop below we do not consider that rural areas and high density areas raise the same problems of risk, or can be considered basically the same as W66 appeared to suggest at some points in his evidence. Neither did we find W77's contention that few areas are "completely safe" as helpful to the task we face.

184. The report, "A Place in the Sun", produced by the Commonwealth Lawyers Association in June 2010, about which Professor Ranger was asked, noted that what was described as a government strategy of threats and intimidation had been effective in smaller towns and rural areas but had not been as successful in the two major cities of Harare and Bulawayo "where magistrates still retain some independence. This is reflected in the reports of other organisations on this subject".

185. The Zimbabwe Peace Project's monthly summaries have already been described in this determination. Whilst bearing in mind what we have noted regarding the wide scope of what are described as politically motivated human rights and food-related violations, it is significant that the Project's reports point to Manicaland, Mashonaland East, Mashonaland Central, Midlands and Masvingo as being particularly volatile. That is also borne out in various press reports. Memories of what happened in many rural areas during the 2008 presidential election process have made residents of those areas understandably concerned about the reports (of which there are a significant number) of so-called torture bases being re-established, although there is little, if any, evidence to suggest that such bases, if they have been re-established, are being used to commit human rights violations.

186. Some reflection of the different experiences and concerns of rural and urban areas can be seen in two press reports on the same day, 10 November. In the district of Muzarabandi in Mashonaland Central, a villager at a "Heal Zimbabwe" meeting offered to sell his chickens in order to pay for international election observers, stating that his community could not face a repetition of 2008 when "SADC observers were relaxing in hotels while we got beaten here". In a different report on the same day, it was reported that ZANU-PF had failed to sell membership cards to the electorate in urban areas, according to a ZANU-PF "insider".

187. A report of 22 November described marauding ZANU-PF youths burning houses near Mhangura in Mashonaland West whilst on 1 December it was asserted that soldiers in Mashonaland East had been holding training drills in villages as part of a drive to intimidate the inhabitants into backing Mugabe. The next day, residents of a

volatile area in Mashonaland were said to have equated talk of elections with "a war situation", urging the development of protection strategies for citizens. Appellants' bundle 'F', containing press reports regarding the position up to 12 January 2011, includes several instances of problems in Masvingo Province, one of which involved the beating up by "thugs" of a MDC activist. The appellants' further evidence, taking matters up to 28 January, contained reports of further incidents in Masvingo Province, as well as intimidation in a small town in Midlands.

188. The respondent sought to rely on the response in the FFM report from the Zimbabwe Association of Doctors for Human Rights, who considered that, even in rural areas, there was usually no sinister basis for questions that returnees might be asked and that "those who do not participate in political activity on return will not have any additional problems, when compared with other residents".

Eastern Provinces

189. Although, as a general matter, the risk of persecution and other serious ill-treatment in Zimbabwe, including the rural areas, has significantly declined, as at 28 January 2011, compared with the position under review in RN, the evidence before us raises serious concerns as to the position of a Zimbabwe citizen without ZANU-PF connections, returning from the United Kingdom after a significant absence to live in Mashonaland West, Mashonaland Central, Mashonaland East, Manicaland, Masvingo or Midlands province. Such a person, returning to a rural part of such a province, where the chief or headman is likely to be an acolyte of ZANU-PF, may well find it difficult to avoid adverse attention, amounting to serious ill-treatment, from ZANU-PF authority figures and those they control, unless, of course, the Immigration Judge is entitled to conclude that the returnee is likely to be associated with such elements. An Immigration Judge would be so entitled to find where the appellant's evidence of past history, place of residence and family and social connections is to this effect, or where a case has been rejected and the proper inference is that the denials on these issues were untruthful: see MA (Somalia) [2010] UKSC 49. In these cases the Immigration Judge is entitled to conclude that loyalty would not be challenged or that it would otherwise not create a difficulty. Apart from this category, however, we conclude that returnees to these areas would face a real risk of persecution because of a continuing risk of being required to demonstrate loyalty. In the light of the judgment of the Court of Appeal in RT (Zimbabwe) [2010] EWCA Civ 1285 we recognise it is no answer to a loyalty challenge that the returnees could be expected to mislead the inquirer as to where loyalties lay.

190. Having said this, two matters need to be emphasised. First, although what we have just said appears from the evidence to be the general position in the Eastern provinces, some of these are more problematic than others. For example, Mashonaland East featured consistently in the evidence to which we have just referred; Midlands less so. Secondly, bearing in mind that the occurrence of problems within the Eastern provinces is not uniform, there may be reasons why a particular individual, although at first sight appearing to fall within the category we have

described, in reality does not do so. For example, the evidence might disclose that, in the particular village in question, the chief or headman is not ZANU-PF, or that ZANU-PF power structures are weak or absent. That such a state of affairs is not fanciful is demonstrated by the entry in the Zimbabwe Vigil diary of 20 November, in which a "visionary chief" named Chaka in Mashonaland held a meeting in which he told the crowd that "people should be free to live in harmony and that if he heard that a youth had burned a house or beaten someone because of politics 'then you have to depart from my area'. He said that as of today he would not tolerate any form of intimidation or any form of violence against the people of Manhova and Chaka."

Matabeleland

191. Apart from the metropolitan provinces of Harare and Bulawayo, the remaining provinces are Matabeleland North and Matabeleland South. These comprise, roughly, the western part of Zimbabwe. It was a striking feature of the evidence before us that the position in the Matabeleland provinces at present is markedly different from that in the other provinces to which we have referred. In the FFM report, ZimRights described how the police had recently refused the MDC-T permission to hold a rally in Hwange, which is in Matabeleland North "but the party, led by … Morgan Tsvangirai, held the rally anyway and there was no interference". The Research and Advocacy Unit identified Matabeleland North and South as areas which had not experienced the same levels of violence as the Mashonaland provinces, Masvingo, Manicaland and Midlands. The same point was made by the Zimbabwe Association of Doctors for Human Rights and the international organisation mentioned in paragraph 97 above. The Zimbabwe Human Rights NGO Forum went further, describing Matabeleland as "very safe, with very little political violence there even in 2008". The Catholic Commission for Justice and Peace Zimbabwe considered that in Matabeleland "ZANU does not exert sufficient control to orchestrate large scale violence, although there is the potential for incidents of targeted violence". The "major NGO" is recorded in the FFM report as saying that the potential for political violence was significantly higher in most rural areas "with the exception of Matabeleland North and Matabeleland South".

192. Although we have approached with some caution the views of Bulawayo Agenda regarding the position outside that city and its surrounding area, what it had to say about Matabeleland is, we consider, within its remit. Bulawayo Agenda described there being a decline in threats and physical violence since the formation of the GNU. In addition, war veterans and ZANU-PF youth were no longer as vicious as they once were in Matabeleland "as they are no longer taking instruction following the formation of the GNU and are instead living peacefully within their communities".

193. Zimbabwe Peace Project's monthly reports, likewise, distinguished between Matabeleland and other provinces, in terms of politically motivated human rights and food-related violations. In September 2010, Matabeleland South was described

as "relatively peaceful" and Matabeleland North as "relatively calm with very few cases of politically motivated violations".

194. In his statement on behalf of the appellants, Mr Reeler of the RAU said it could not be assumed that Matabeleland "would be safe during an election period". The election was "still difficult in 2008 in Matabeleland". He acknowledged, however, that "there is currently a low level of violence there". Likewise, in his statement for the appellants, W80 (Zimbabwe Human Rights NGO Forum) said that Matabeleland had indeed experienced comparatively less violence than other areas as it was not such a priority electorally to ZANU-PF. He said, however, that "no area can be regarded as safe in the run-up to the election". Both here and elsewhere we have, of course, reminded ourselves that our task is not to assess whether a place is "safe" but, rather, to determine whether there is a real risk or reasonable likelihood of persecution or other serious ill-treatment to a returnee from the United Kingdom.

195. The Zimbabwe Peace Project's August 2010 report was even more positive about Matabeleland. Its provinces had recorded "minimal cases of violations despite the enthusiasm that has been associated with the constitution making process".

196. In press reports, it was said on 29 November that a split between the two MDC factions in Matabeleland might enable ZANU-PF to be an indirect beneficiary, in any future elections. However, on the following day, it was reported that the MDC's Matabeleland North provincial executive had held a press conference to announce that seventeen members of the MDC-M party had rejoined the MDC-T "in a bid to comprehensively win the next elections as a united front". A report from Radio Netherlands Worldwide on 12 January 2011 claimed a "secret" document purporting to be from the MDC had been uncovered, in which the MDC were said to regard their enemies as the Ndebele people, whether in ZANU-PF or the MDC itself, rather than Shonas in ZANU-PF. An MDC spokesman denied his party was responsible for the alleged document and, judging by its terms, as set out in the article, it would appear to be a crude attempt to smear the MDC in Matabeleland. As such, it falls to be regarded as a further sign of ZANU-PF's relative weakness in that part of Zimbabwe.

197. Even in Matabeleland North and Matabeleland South, however, there may be occasional instances of a particular village or other area being under the sway of a ZANU-PF chief, or the like. Indeed, this was the position in the home village of the appellant in RN. That this is so may account for the report in a more recent segment of the appellants' evidence, that chiefs in two districts in Matabeleland North were reported to have told their people "that soldiers will soon be deployed in the area as peacekeepers ahead of elections". As a general matter, however, we are satisfied on the entirety of the evidence before us that, at the present time, a person returning from the United Kingdom to Matabeleland is highly unlikely to face any significant difficulty from ZANU-PF elements, including for this purpose members of the security forces. This would be so even if the person is a MDC member or supporter.

Although the police in Matabeleland are said to be Shona, the evidence does not disclose that they are causing significant problems.

Harare and Bulawayo

198. Harare and Bulawayo are, by some margin, the main urban centres in Zimbabwe, each having the status of a Province. Our general assessment of the evidence before us is that, in both of these cities, ZANU-PF's inclination and ability to control and coerce the population is significantly less than in the rural areas of, for example, Mashonaland and Manicaland, where the party has not lost hope of securing electoral success. We have already described the events regarding the COPAC outreach meetings in Harare. Although there was some violence involving the September meetings, the outreach process was quickly postponed when violence flared. This lends support to the view of those, such as the anonymous organisation in Zimbabwe quoted in the FFM report, that the police are generally better disciplined and less tolerant of political violence, in the main urban areas. We have also noted the evidence in the "A Place in the Sun" report, concerning the greater independence of magistrates in those areas, which found support in the evidence of Professor Ranger. The October meetings in Harare went off without any significant violence, albeit that they fell far short of COPAC's wish to engender full and frank discussions between the rival political parties.

199. The Tribunal in RN noted a difference between the position in, respectively, high and low-density areas of Harare. A person living in a low-density area would, in summary, not be reasonably likely to face a "loyalty" challenge from militia or war veterans. In relation to the period under consideration in RN, however, it was found that the situation would be otherwise in high-density areas.

200. The evidence before us demonstrates that there are difficulties faced by those living in high density areas not faced by those living in other urban areas: there is a greater prevalence of criminal disorder and reduced personal security; where it is available at all accommodation will be very crowded and a lower standard; street traders working in the informal economy may be the subject of harassment from state officials; persons perceived to be active in MDC politics may face the risk of targeted reprisals. The Zimbabwe Lawyers for Human Rights described high-density areas as experiencing "occasional arrests and beatings". The evidence taken as a whole does not present a picture of such intensity or regularity as to suggest that any resident of a high density area having no active involvement in MDC politics would be at risk of harm. The picture of ZANU-PF activity in these areas is significantly different from rural areas: the system of control through ZANU-PF chiefs and village headmen and the ability to monitor the identity of new arrivals in rural communities have no proper counterparts in Harare. We are accordingly unable to accept the evidence of those witnesses who suggested that the risk level was the same in the rural and high density urban areas.

201. It is common ground that the MDC tend to dominate high-density areas. In his response to the FFM team, W80 of the Zimbabwe Human Rights NGO Forum said that it would be difficult for ZANU-PF to harm MDC supporters in MDC dominated areas "because the MDC tend to be quite well-organised in those areas and can protect those who might otherwise be at risk of political violence by the threat of retribution". In his statement on behalf of the appellants, W80 sought to qualify those remarks. He said that what he was referring to were isolated pockets of resistance that had appeared on occasions and he did not mean that there were areas of the country that the MDC controlled or that the MDC could generally protect its supporters. The infrastructure of violence was still intact and ZANU-PF remained in total control of the coercive arms of the state.

202. We accept W80's point that, since ZANU-PF does indeed remain in de facto control of the army, police and similar services, it is wrong to speak of any particular area of Zimbabwe as being "controlled" by the MDC. Nevertheless, it is apparent that in his response to the FFM team, W80 was describing the present position, where in practice it is indeed "difficult for ZANU-PF supporters to harm MDC supporters in MDC-dominated areas". The position might, of course, be different if, immediately prior to an election, Mugabe and ZANU-PF were to launch a significant campaign of violence in Harare, such as in 2008. That is not, however, the position at present.

203. We say this, having particular regard to the latest evidence, from January 2011, concerning various disturbances in Harare, which are said to have been instigated by ZANU-PF elements. The alleged establishment in high-density areas of campaign bases in the homes of ZANU-PF leaders falls significantly short of the kind of militia bases described in the evidence in relation to certain rural areas. There continues to be an absence of reliable evidence that militia bases have been established in Harare. The setting up of campaign bases in peoples' homes is, if anything, an indication of the relative weakness of ZANU-PF in the capital. The report of 26 January 2011 that carried the story of these bases referred to ZANU-PF and MDC youths being engaged in clashes, which, again, differs from the descriptions of what is going on in rural areas, where the picture is often one of villagers being coerced into silent submission by a ZANU-PF gang. Overall, we find that this and the other most recent evidence underscores the position that emerges from the earlier evidence, which is that the focus of such current ZANU-PF activity as there is in the high-density areas of Harare is on MDC activists, as opposed to the general population.

204. We accordingly conclude that, at the present time, although a person having no significant MDC profile, returning to a high-density area of Harare, is likely to face more difficulties than someone returning to a low-density area, he or she would not at present face a real risk of having to prove loyalty to ZANU-PF in order to avoid serious ill-treatment. So far as living conditions in high-density areas are concerned, the only witness to assert that the housing in such areas was unfit for human habitation was the person we have described as W79 of the Zimbabwe Human Rights Association. We do not conclude from this that anyone having to live in such a high density area would be exposed to inhuman or degrading treatment contrary

to Article 3. Mr Henderson did not attempt to submit to us that this was the case. Whether any individual having to live rough in shanty accommodation or other grossly overcrowded and insecure arrangements would be exposed to treatment of this level of severity would depend on an individual assessment of circumstances including age, gender, health, earning capacity, social assistance arrangements, the presence of young children and the like.

205. We have spoken so far of high and low-density areas in Harare. Professor Ranger, however, told us that there were three kinds of zone in Harare. The low-density areas comprised the white community, the coloured community and Africans "who were not so poor. The low-density areas had more Africans than in the past." Then there were areas of intermediate-density. Here, although there were problems with dereliction, there were not problems with gangs. These he categorised as "medium-density areas". Finally, there were the high-density areas, which, although they had problems, nevertheless "had some services". The Tribunal also notes that appellant JG described her home area of Queensdale as "kind of medium-density". She said that it was not far from Epworth "where many rowdy gangs" existed; and Queensdale might therefore be "a vulnerable location". Many cities in the world, including, ones in the United Kingdom, have areas of affluence adjacent or close to areas of relative deprivation. This fact would generally not give rise to a claim for international protection or furnish evidential support for a contention that it would be unduly harsh to expect a person to relocate to accommodation there. Particularly given what we have had to say about the present position of the high-density areas in Harare, we do not consider that the distribution of high, medium and low-density areas has significance, as regards the matters with which we are concerned.

206. We turn now to the position in Bulawayo. Just as the general situation in rural Matabeleland is better than that in the rural areas of the other provinces of Zimbabwe, it is apparent from the evidence that the position of Bulawayo is better than that of Harare. W66 was not aware directly of political violence in Bulawayo. W77 agreed that the COPAC outreach meetings had gone better in Bulawayo than in Harare. Similarly, Professor Ranger, describing the COPAC meetings in Harare and Bulawayo in September, agreed that there had been less violence in Bulawayo. Indeed, he then went on to indicate that the violence in Bulawayo was not physical but concerned the meetings being "violently noisy". Although Professor Ranger described an incident involving the closure of the art gallery in Bulawayo, the overall thrust of his evidence was that Bulawayo remained a more tolerant city in many respects. As in Harare, Professor Ranger agreed that in Bulawayo the magistracy retained independence and was able to resist intimidation. The representative of GALZ was referred to in the FFM report as saying that people in Bulawayo "are more politically active and willing to push for their rights. There is a gay nightclub in the middle of town." The GALZ representative considered that this different attitude might be related to Bulawayo's proximity to South Africa.

207. Zimbabwe Lawyers for Human Rights considered the police in Bulawayo were "better than in Harare, although they are also known to act arbitrarily". The

Bulawayo Progressive Residents Association described the current situation as "peaceful – for the moment, at least". Most of the political violence seen at meetings was "between two individuals who have contrasting ideas, rather than as part of a systematic campaign". There was, however, the potential for future violence should a "big event happen". The Zimbabwe Peace Project "recorded the least number of violations during the month of September [2010] with only three incidents directly linked to politically motivated human rights violations" in Bulawayo. Although there were reports of police moving around the city centre and the western suburbs just before the COPAC outreach team visited the city, any difficulties "eventually fizzled out and there were no incidents that were linked to constitutional outreach meetings". Radio Dialogue told the FFM team that Bulawayo was "more open than Harare and many civil society groups operate from there". The Zimbabwe Peace Project considered that the outreach consultations in Bulawayo generally went well with only a few isolated chaotic incidences. Nothing in the most recent evidence suggests that there has been any material change in Bulawayo.

208. In November 2010 the MDC Mayor of Bulawayo was described as having a conducive working relationship with all councillors regardless of political affiliation. The Mayor said councillors did not allow anyone to interfere in the running of the city and he had currently given priority to the provision of clean and sufficient water for residents, sewers and road repairs, refuse collection, maintenance of clinics and clearing of city's housing backlog, which currently stood at 100,000. That last point chimed with the evidence of Professor Ranger, who said that there were housing shortages in Bulawayo, given its generally low-density nature.

209. We conclude that a person returning to Bulawayo at the current time from the United Kingdom is not reasonably likely to face a "loyalty test" or otherwise suffer the adverse attention of ZANU-PF (including the security forces). That is so even if he or she has a significant MDC profile.

The economy

210. It is plain from the evidence before us that the abolition by the Government of National Unity of the Zimbabwean currency, and its replacement by US dollars or (in Bulawayo) the South African rand, has had a transformative effect upon the economy of the country. The unprecedented hyperinflation seen at the time of RN has gone. According to W77, the majority of the population appeared to credit the MDC with turning around the economy. The Amnesty International Report of 2010 said there was now an improved availability of food in the shops, although many poor households had no access to foreign currencies and could not afford fees for education and healthcare. In a similar vein, the COI Report of 30 September 2010 said that although the stabilisation of the economy had normalised life in tangible ways, the benefits of this remained outside the reach of many. The Consumer Council of Zimbabwe had noted that an average family of six needed at least $496 a month for a basic basket of goods, including food, transportation costs, electricity and water etc. Civil society interviewees recorded in the FFM report painted a

similar picture. The importance of continuing the improvement in the economic position appears to have been recognised within ZANU-PF. On 10 January 2011, the standard.co.zw reported that the proposed indigenisation law, under which certain foreign-owned enterprises would be taken over, had been "frozen" after the government admitted it was discouraging badly-needed foreign investment. This was despite moves before ZANU-PF's annual conference to push for implementation of the law.

211. Although there was some suggestion in the appellants' evidence that the currency reforms might have reduced the opportunities that previously existed to work in the large informal economy of Zimbabwe, we do not find that the evidence overall indicates that there has been any significant overall reduction, as a result of the reforms, in a person's ability to find gainful work in Zimbabwe, whether formally or informally.

212. A report of 2 October 2010 described Zimbabwe's large informal sector as constituting up to 60% of the country's economic activity and the US-based Centre for International Private Enterprise and the US Chamber of Commerce were of the view that Zimbabwe topped the world list of economies with an informal sector economy. An earlier report of 29 April had suggested that the informal sector might be shrinking. However, a study produced in February 2010 by a student at the University of Kwa Zulu-Natal, Durban noted that, according to the international definition of employment, growth in the informal sector in Zimbabwe had had the effect of keeping the reported unemployment in that country at below 10%. The report interviewed 78 respondents, spread across street vending, home industry, flea market and home-based enterprises. Those working in the flea market and home-based enterprise classes appeared to be more educated than those in the street vendor and home industry classes. Enterprise owners in low-density suburbs were comparatively better educated than those in other locations. The median figure for start-off funds for businesses was $300. $1,000 was needed for a flea market but only $100 for a street vendor. The street vendor class was described as "clearly survivalist", in comparison with the "entrepreneurial" flea market class. 96% of all respondents said that their activities allowed them to support their families. The study concluded that this was surprising, particularly for the street vendor class, but it could probably indicate a very basic level of sustenance for respondents in that activity class.

213. The study found that the police were using increasingly brutal methods to try and control unlicensed street trading in the townships and central business district of Harare. Informal sector workers were being negatively affected by political wrangles resulting from the opposition led council in Harare that found it difficult to work with ZANU-PF. This resulted in mixed messages being sent out by politicians as a way of currying favour with the important segment of society comprising the informal sector and also had an adverse effect on the local authority's ability to allocate stalls. There had nevertheless been a lot of new entrants into the informal sector and these seemed to be "younger and more educated. These new entrants

seemed to have made strategic decisions on location, types of products they sell and the way they run their enterprises."

214. Asked about the study report, W66 agreed in oral evidence that the informal economic sector was expanding and it might be possible for someone to establish themselves there. However, he still considered that it would be difficult for a returnee to survive economically in an urban area. If a person were young and dynamic this would be possible: "It depended on the circumstances of the individual". A person with no skills and no family back-up or housing might find it difficult to break into economic self-activity to survive, without support from someone outside Zimbabwe.

215. As in RN, it will remain important in Zimbabwe cases to make findings regarding the social and economic situation that is reasonably likely to face a returnee from the United Kingdom. At one end of the spectrum, a person may be found (despite assertions to the contrary) to come from a middle class family in a low-density area of Harare or Bulawayo, and to be able to be supported by that family on return and/or commence economic activity, whether in the informal or formal sectors, which would not give rise to problems with ZANU-PF or authority elements answering to it.

216. At the other end of the spectrum, a person who has demonstrated he or she is not reasonably likely to have any family or other support, who would be returning to a high-density area of Harare, may have no option but to call upon the financial package in the Voluntary Assisted and Reintegration Programme in order to get started in the informal sector. Many of those seen by Ms Harland of the Zimbabwe Association in the course of her work she described as vendors, who she said were "extremely ingenious but lacking in qualifications". Depending on age and personal circumstances, we would generally expect it to be possible for such a person to use the relocation grant and reintegration assistance in order to establish themselves in the informal sector. This would include paying for any necessary permit that might be required by the authorities, as well as unofficial payments to facilitate one's activities. Even so, street vending is the most challenging form of employment in the informal economy; but it is far from being the only form.

217. We accept the evidence of Mr Walker, that a survey undertaken by UKBA of Zimbabwe asylum claims shows that nearly two thirds of applicants originate in the large urban areas of Zimbabwe. We also note Ms Harland's evidence, that Zimbabwe asylum seekers come from all classes of society in that country. Also relevant was the evidence of Professor Ranger, that some Zimbabweans in the United Kingdom did not wish to return home because they could not do so "in splendour"; and that there was accordingly a fear of losing face in their reluctance to return.

218. Before leaving this topic, it is necessary to state that we do not consider the evidence before us to show any deterioration in the humanitarian situation in Zimbabwe,

compared with RN. None of the interviewees asked about the provision of aid by the FFM team suggested that "dollarisation" had significantly increased the numbers of those requiring food aid. Overall, there is no reason to doubt the British Embassy's assessment of 6 September 2010, that "the quality of life for many Zimbabweans is now considerably better. Schools and hospitals are open. Cholera has been largely absent this year. Around 15% of the population now requires food aid. The shops are open and the shelves full. Most Harare residents are getting some water and electricity for the first time in years".

Internal relocation

219. Before analysing the scope for those at real risk of persecution in their home area to relocate to another part of Zimbabwe, it is necessary to clarify what is meant by "home area" in this context. In common with many other parts of Africa and, indeed, other parts of the developing world, Zimbabwe has seen a process of urbanisation, whereby persons from rural areas have migrated to the cities, for the purpose of seeking work. For instance, Professor Ranger described Shona migrating to Bulawayo, when that city was the manufacturing hub of the country.

220. A person who has migrated from the countryside to city, or whose forebears did so, may well look on his or her rural place of origin as their "home area". This emerged from the evidence of Ms Harland and W66. For our purposes, however, in determining whether a person is entitled to asylum or other international protection, a person's home area must be established as a matter of fact. Someone who, for example, has for years before leaving Zimbabwe made his or her home in Harare must have a claim to international protection assessed by reference to whether that person is at real risk of persecution in Harare; and, if so, whether he or she can reasonably be expected to relocate to another part of Zimbabwe, where no such risk exists and where it would not be unduly harsh to do so (see Januzi [2006] UKHL 5; AH (Sudan) [2007] UKHL 49). The fact that the person concerned feels an attachment to a rural area, and even has relatives living there, does not mean that that area falls to be treated as the home area for the purposes of determining entitlement to international protection.

221. Having said this, it is highly unlikely that, for a person from a major urban centre such as Harare who establishes he or she is at real risk of persecution there, going to a rural area will constitute a viable internal relocation. In the light of our findings regarding the general situation at the present time, any risk of persecution to such a person in Harare is most likely to be because he or she has a significant MDC profile. In such a case, given what we have found about the position of rural areas other than Matabeleland North and Matabeleland South, it is difficult to see how such a person could avoid persecution by going to a rural area, where, in the words of one of the appellants' witnesses, they would "stick out like a sore thumb" and attract the adverse attention of ZANU-PF headmen. We do not say that such a scenario is impossible; but any finding to that effect would have to be cogently justified.

222. A more realistic scenario is the converse; that is to say, where a person facing a real risk of persecution in what is his or her home area in rural Zimbabwe (as addressed above) is said to be able to relocate to a large urban centre, such as Harare or Bulawayo.

223. Here, the social and economic position of the person in question will assume particular importance. In particular, whilst it might not be contrary to Article 3 of the ECHR to expect a person without family or friends to set themselves up in the informal sector as a street trader, bearing in mind the distinction identified in AH (Sudan) between Article 3 ill-treatment and reasonableness or undue harshness in the case of internal relocation, it might well, on the facts, be unreasonable or unduly harsh to expect such a person to relocate on that basis. The ultimate answer will, however, depend on the particular circumstances of the case.

224. Perhaps because the evidence shows that, at present, the best place in Zimbabwe to be if one is not a ZANU-PF supporter is Bulawayo, considerable attention focused at the hearings on the possibility of relocation to that city.

225. We accept the evidence of the appellants that a Shona, without family or other significant contacts in Bulawayo, seeking to move to that city from outside Matabeleland, is likely to face social difficulties, in addition to others of the kind we have just described. In particular, he or she may face discrimination in relation to jobs and housing. It is, however, apparent from the evidence of Professor Ranger and the civil society interviewees in the FFM report, that in previous decades there was a significant pattern of migration of Shona to Bulawayo in search of work, and that, as a result, some 20% of the population of that city is Shona. It would, accordingly, not be necessary for the newcomer to speak Ndebele, in order to get by in Bulawayo, although linguistic problems may be relevant in determining the issue of whether it would be unreasonable or unduly harsh for such a person to live in that city.

Teachers

226. At paragraph 261 of RN, the Tribunal in that case found that there was clear evidence that teachers in Zimbabwe had, during the period under review, once again become targets for persecution. The fact of being a teacher or having been one in the past was, it was found, again capable of raising an enhanced risk, whether or not the person concerned had been a polling officer, because when encountered it would not be known what a particular teacher did or did not do in another area.

227. In the present appeals, the respondent acknowledges that teachers remain in a category where there is a heightened or enhanced risk. That is plainly right. Various news reports submitted by the appellants demonstrate the fact that teachers can face problems from ZANU-PF. For example, on 3 August 2010, teachers on assault charges claimed that they were being victimised for challenging soldiers at a meeting. A day earlier, the Teachers Union had accused the Ministry of Education of

failing to speak out about the alleged intimidation of, and violence against, rural teachers "who were politically targeted during the turbulent 2008 election period". Teachers countrywide were said to be being harassed by ZANU-PF supporters at meetings. On 29 July, teachers at a rural primary school accused war veterans of interfering with the day-to-day running of the school. Also in July, a teacher told The Zimbabwean that teachers were afraid of participating in the COPAC meetings "as we have always been victimised and cast as MDC supporters". On 4 November, three teachers were said to have been severely assaulted by suspected ZANU-PF youths, whilst in December there were concerns expressed about the whereabouts of six teachers who were said to have been abducted in Mashonaland East. This was later, however, described as a "botched abduction attempt by a member of the notorious Central Intelligence Organisation".

228. Zimbabwe Lawyers for Human Rights told the FFM team that teachers, politicians, lawyers and members of the Zimbabwean Electoral Commission had had charges dating from 2005 to 2008 reviewed as what was described as "an intimidatory tactic and to hamper their ordinary work and activities". The British Embassy's egram of 15 November referred to teachers having traditionally been targeted by ZANU-PF. On 12 January 2011, according to the Zimbabwean.co.uk, in Mashonaland East "hooligans began the school year by disrupting classes and trying to push out teachers who were alleged to support the MDC".

229. Being in a heightened risk category is not, however, to be equated without more as being at real risk of persecution. There needs to be an individual assessment of the circumstances (TM (Zimbabwe) [2010] EWCA Civ 916). A good instance of this point is to be found in the case of appellant JG. It is accepted that she taught for a period at Prince Edward School, an elite educational institution to which senior functionaries of the regime amongst others might send their children. She claimed to have been discriminated against at the school because of the perception of her loyalties, while the Immigration Judge concluded that the fact of having taught at the school would enable her to demonstrate loyalty to the regime. Having heard the evidence of Professor Ranger who knew the school well and pointed out instances of how it had asserted and maintained its independence from directives of the Ministry of Education, we conclude that she was not exposed to risk of ill-treatment by having taught there, nor would she be imputed to be a ZANU-PF loyalist for having done so. JG had also taught at a high school in Epworth. Again her past experiences there and Professor Ranger's assessment of the consequences of having done so do not indicate to us that there is a real risk that, on return to Harare, she would be imputed to have either MDC or ZANU-PF sympathies from having done so. In short her past employment as a teacher simply did not in her case yield evidence of a risk of future ill treatment or a requirement to demonstrate loyalty to ZANU-PF that would be objectionable on RT (Zimbabwe) grounds.

230. It is also noteworthy that, on 28 September a news article stated that the Minister of Education, Sports, Arts Culture had begun recruiting qualified and temporary teachers to fill vacant posts throughout Zimbabwe, after the Public Service

Commission and the Minister of Finance had granted the Education Ministry permission to do so. Preference will be given to returning qualified teachers. The Minister is an MDC senator.

231. We do not agree with the respondent's submission that harassment of teachers is now "relatively rare". Those who are or have been teachers accordingly require to have their cases determined on the basis that this fact places them in a risk category, the significance of which will need to be assessed on an individual basis.

G. THE SIGNIFICANCE OF FUTURE ELECTIONS

232. As we have already said, it was a major part of the case for the appellants, as advanced by Mr Henderson, that regardless of the actual country conditions as at late January 2011, the Tribunal's assessment of risk to the appellants and its associated country guidance should be made by reference to the fact that fresh parliamentary and presidential elections in Zimbabwe were reasonably foreseeable, and reasonably likely to occur in mid-2011, and that, in view of the violence associated with the presidential elections in 2008; that ZANU-PF continued to control the instruments of state power and that the evidence suggested the party would use those instruments mercilessly to ensure electoral success at whatever price, we should decline to depart from the country guidance in RN, except in a way that was more favourable to appellants.

233. In order to address this issue, it will be necessary for us to consider the authorities, upon which the parties respectively relied. Before doing so, however, there needs to be an analysis of the evidence, both as to the likely point in time at which any such future elections will fall and as to their potential to generate risk to returning failed asylum seekers from the United Kingdom. Our summary of that evidence is set out in Appendix B. Our analysis of it is as follows.

Analysis

The Issues

234. For all its problems we recognise that Zimbabwe remains a democracy with parliamentary and presidential elections. The election process has given rise to periods of political tension and violence on previous occasions and was the occasion of the peculiarly intense violence beginning in mid-2008. Whilst political events have resulted in significant changes to the daily lives of Zimbabweans since then, the leadership of the military and other security forces remains fundamentally unchanged and the possibility of a return to the abuses of mid 2008 cannot be discounted as unreal.

We are faced with three problems of assessment:-

(i) the likelihood of when and in what circumstances elections will be called;

(ii) whether such elections will be accompanied with enhanced protections against abuse by both internal electoral arrangements and robust independent external monitoring;

(iii) what contingencies we should take into account in considering whether there has been a durable change of circumstances since RN and how long such a change may endure in the future.

(i) When will elections be called?

235. Around the middle of 2010, the evidence indicates that there were messages coming from both Mugabe and Tsvangirai to the effect that both wanted there to be early elections, in order to resolve the political impasse. The point in time most often spoken about was the middle of 2011. Other evidence, however, including the more recent, suggests that elections in mid-2011 or even 2011 itself are by no means probable. The present position appears to us to be well-summarised in the British Embassy egram of 29 October 2010, that it is "impossible to predict" when elections might be. Commentators have drawn a distinction between the public and private pronouncements of the leadership of ZANU-PF and the MDC, in effect suggesting that both have seen fit to make public pronouncements for tactical purposes, which do not represent their true intentions. The pattern of evidence before us, covering a longer period of time than was envisaged at the beginning of the hearing in October 2010, supports this analysis. In particular, public pronouncements by Mugabe of an intention to call early elections contrast starkly with the other evidence that, in private, he is at least unpersuaded of this course.

236. In addition, other forces, contending for later rather than earlier elections, appear to be gathering strength. Notwithstanding the party's public declaration that elections would be held around June 2011, there is a suggestion that ZANU-PF MPs, no doubt fearing for their political futures, may be opposed to early polls. As for the MDC, there is an understandable desire to maximise the chances of new elections being fully free and fair, since otherwise a repeat of previous attempts at coercion and gerrymandering is feared. As for other players, whilst we do not overestimate the power of the Zimbabwe Electoral Commission, we note the evidence that its Chair is an internationally respected jurist, who has already indicated a reluctance to be rushed into elections, before proper preparations have been made; in particular, reform of the electoral roll. More important will be the attitude of the SADC and, in particular, the government of South Africa. Again, the earlier evidence in this regard to which we have been referred paints a somewhat uncertain picture. However, the later evidence indicates a greater degree of commitment to ensuring that any future elections in Zimbabwe are not characterised by the sort of violence seen in 2008. President Zuma's meeting with Mugabe and Tsvangirai at the end of November 2010 seems to us to be of a different order from at least some of his earlier interventions. This is supported by the Embassy egram of 1 December, confirming Zuma's being "engaged on Zimbabwe" and concerned to see that elections proceed without violence in a free and fair manner. It is further supported by the Minister's statement

in the House of Lords on 27 January that the South African President is assuming personal responsibility for seeing that Zimbabwe is properly prepared for elections.

237. We accept that, whether or not buoyed by the financial rewards from exploiting Zimbabwe's supply of diamonds, Mugabe and ZANU-PF possess the theoretical capability to hold elections at a time of their choosing, regardless of regional and wider international concerns. Nevertheless, the pressure coming from the SADC and South Africa represents, in our view, a factor that diminishes the likelihood of elections as early as the middle of this year and points towards the end of 2011 at the earliest, although 2012 is increasingly being mentioned.

(ii) Protection Against Abuse

238. The evidence regarding SADC "roadmaps" touches on a further question; namely, whether presidential and parliamentary elections would in practice be held before Zimbabwe is given a new constitution. The COPAC timelines indicate that the process leading to the adoption of a new constitution is well behind schedule and that, if a referendum and the implementation of a new constitution are to occur before elections (which many consider should be the case), elections before at least the latter part of 2011 would not appear to be feasible. We are mindful of the strength of the evidence, to the effect that Mugabe and ZANU-PF can, and would, proceed before a new constitution is in place, if they thought early elections would suit their purposes. Nevertheless, the countervailing forces, including it seems within ZANU-PF, mean that it would be wrong to discount the constitutional process as a factor tending against the holding of early elections.

239. The appellants' submissions of 28 January sought to rely on the report that 80,000 youth militia etc will be mobilised across the country to cow the population in the run-up to elections, and that this process may already be beginning. The suggestion is that hardliners have decided to adopt this tactic as a means of pre-empting the deployment of international monitors to oversee the election campaign and voting.

240. Although the exposure of these alleged plans is to be given some weight, it must be borne in mind that the article may itself be part of a plan to pre-empt such a mobilisation, by exciting international interest; in particular, SADC and President Zuma. Furthermore, it is at present speculative whether hard-line elements within ZANU-PF and the military have the upper hand in what appears to be a power struggle within that party and whether they would, in the event, be prepared to resist international pressure, particularly given the reported concern of at least some of them at being brought before the International Criminal Court (see below). In conclusion, the picture regarding the timing of elections; in particular, whether they will occur before the new constitution has been agreed and without the safeguards generally seen as vital to ensure they are free and fair, remains at least as unclear as at 28 January 2011 as it was on the evidence adduced in October 2010: if anything, it is more so.

241. As we have already indicated, the question of the likely timing of elections is closely interwoven with the question of what might happen, in the event of such elections being held. There is a considerable body of evidence to the effect that, if elections were to be held early at the instigation of Mugabe and ZANU-PF, in defiance of international opinion, there is a real risk of violence on the scale of 2008. The Embassy egrams share this concern. In such a scenario ("the early election scenario"), a returning failed asylum seeker from the United Kingdom would face a situation in all essential respects akin to that identified by the Tribunal in RN. Roadblocks would proliferate in many rural areas, militia bases and so-called torture bases would be activated in such areas and "loyalty tests" - this time, of course, involving Mugabe and ZANU-PF rather than the government as such - would again become commonplace. A returnee to such an area would, except in the categories identified in RN and described in this determination, face a real risk of ill-treatment, in the event of a failure to pass such a "test". We have already explained why, based on the current position in these rural areas, we have concluded that serious difficulties will in many cases face a returnee from the United Kingdom, with the result that, in this regard, our country guidance represents no significant change from RN. The result of calling early elections would therefore be to exacerbate what is an already dangerous situation for such a person.

242. However, even in the early election scenario, the evidence before us does not suggest that Matabeleland North or Matabeleland South would be affected to anything like the same extent as the rural areas of the other provinces in Zimbabwe. There is significant evidence that in 2008, the violence in Matabeleland was significantly less than elsewhere. There is some evidence that the splitting of the MDC into the MDC-T and MDC-M factions might persuade ZANU-PF that Matabeleland is, after all, a place within their electoral grasp. However, there is also the report that the non - Tsvangirai faction in this part of Zimbabwe will make common cause with the Tsvangirai faction. In addition, the evidence suggests to us that it would be extremely difficult for ZANU-PF to expunge the memories of the atrocities committed in Matabeleland in the 1980s (as to which the continued animosity towards North Korea is relevant). It is, of course, always possible that evidence which comes into being after the production of this determination may indicate a different outcome; but the current evidence cannot be said to do so.

243. What we have just said about Matabeleland applies to Bulawayo, even in the early election scenario. As for Harare, whilst it may be reasonably likely that ZANU-PF militias etc would be bussed in to that city in order to cause problems during an election campaign, the present evidence is such that it would be merely speculative to conclude this would have a material impact upon those living in low-density areas. In addition, even in this scenario, we do not consider the present evidence suggests that ZANU-PF would be able to engage in the kind of systematic intimidation, which it would deploy in rural areas of the eastern provinces. In this regard, we note the absence of reliable evidence regarding militia bases. The report of 26 January 2011, regarding the alleged use of ZANU-PF leaders' homes in Harare as campaign bases, is said to be confined to high-density areas and, in any case, appears

to be of a different and lesser order to the sort of camps and bases established in rural areas in 2008. Whilst we accept the evidence of the appellants, that even in high-density areas in which it dominates, the MDC would be unable to resist a military or quasi-military assault, it is questionable whether ZANU-PF would, in 2011, choose to launch such an assault, given the high-profile nature of Harare and the international condemnation which would ensue. The evidence of January 2011 regarding disturbances in Harare instigated by ZANU-PF elements does not begin to amount to such a state of affairs, notwithstanding the report of Tsvangirai's having raised the disturbances with President Zuma. Those involved in the disturbances were MDC members and supporters (voanews.com article of 24 January) and the evidence of non-political residents suffering in this regard is sparse.

244. Without repeating what we have said regarding the SADC and President Zuma, it is apparent that, compared with 2008, there is a greater likelihood of future elections being conducted in a significantly different environment. Anthony Reeler of RAU has said publicly that Zimbabwe is not in the position of requiring a peacekeeping force, rather, intense monitoring during the elections and the preceding campaign. It is by no means fanciful to regard such monitoring as being a real possibility. Zimbabwe's civil society organisations, of which there are many, are pressing for this.

245. The Counselling Services Unit told the FFM team that ZANU-PF wished to avoid increasing the risk of finding individuals being indicted before the International Criminal Court. On its own, we would not accord that evidence significant weight. However, according to the voanews.com report of 9 November, about 50 Zimbabwean NGOs had urged the three parties in the country's national unity government jointly to engage senior military and other security service commanders "to reassure them of their future in return for guarantees they will not interfere in the transitional democratic process". The Zimbabwe Human Rights NGO Forum, meeting in Bulawayo, urged such engagement to discuss the interests and fears of the security chiefs, who were said to oppose a transfer of power from ZANU-PF to the MDC "out of fear that they might be prosecuted for past misdeeds". This appears to us to lend considerable force to the views expressed by the CSU. It also suggests a way in which there might be fair elections, free from significant political violence, leading to an orderly transfer of power from ZANU-PF to the MDC.

246. Given the recent history of Zimbabwe, it would be quite wrong to view these factors through Panglossian eyes. They nevertheless properly fall to be taken into account in deciding, according to the relevant legal principles, whether the issue of future elections is one which materially impacts on the claims of the present appellants to international protection, and on the giving of current country guidance.

(iii) The Legal Assessment of Future Risk

247. We turn to the submissions on the legal principles. Whilst it is the case that the Tribunal must assess the risk to the appellants by reference to the present time, since

the appellants are at present in the United Kingdom, the assessment of risk necessarily has a prospective element. As the ECtHR held in Chahal v UK (1997) 23 EHRR 413 in the context of an Article 3 claim:-

> "86. … as far as the applicant's complaint under Article 3 is concerned, the crucial question is whether it has been substantiated that there is a real risk that Mr Chahal, if expelled, would be subjected to treatment prohibited by that Article. Since he has not yet been deported, the material point in time must be that of the court's consideration of the case. It follows that, although the historical position is of interest insofar as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive."

248. For the appellants, Mr Henderson sought to emphasise the words "and its likely evolution" in the passage just cited. He also relied on Saadi v Italy (2009) 49 EHRR 30, in which the Strasbourg Grand Chamber held that:-

> "129. It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to art. 3. Where such evidence is adduced, it is for the government to dispel any doubts about it.
>
> 130. In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to the receiving country, bearing in mind the general situation there and his personal circumstances."

249. It is also, in our view, necessary to have regard to paragraph 131:-

> "131. To that end, as regards the general situation in a particular country, the Court has often attached importance to the information contained in recent reports from independent international human-rights-protection associations such as Amnesty International, or government sources, including the US State Department. At the same time, it has held that the mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of art. 3 and that, where the sources available to it describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence."

250. Mr Henderson also relied upon the Court of Appeal's judgment in Karanakaran [2000] EWCA Civ 11. In particular, he drew attention to what the Court had to say in that case about the Australian decision of Sackville J in Minister for Immigration and Multicultural Affairs v Rhaalingam [1999] FCA 719. The thrust of the Australian decision, according to Mr Henderson, was that the decision maker in a case involving a claim to international protection must not foreclose reasonable speculation about the chances of a future hypothetical event occurring.

251. At paragraph 18 of his judgment, Sedley LJ in Karanakaran said that there was, in cases of this kind, no "probabilistic cut off" and:-

> "everything capable of having a bearing has to be given the weight, great or little, due to it. What the decision-makers ultimately make of the material is a matter for their own conscientious judgment, so long as the procedure by which they approach and entertain it is lawful and fair and provided their decision logically addresses the Convention issues. Finally, and importantly, the Convention issues from first to last are evaluative, not factual. The facts, so far as they can be established, are signposts on the road to a conclusion on the issue; they are not themselves conclusions. How far this process truly differs from civil or criminal litigation need not detain us now."

252. Sedley LJ quoted, in this context, Simon Brown LJ in Ravichandran [1996] Imm AR 97:-

> "In my judgment the issue whether a person or group of people have a 'well founded fear … of being persecuted for [Convention] reasons' … raises a single composite question. It is, as it seems to me, unhelpful and potentially misleading to try to reach separate conclusions as to whether certain conduct amounts to persecution, and as to what reasons underlie it. Rather the question whether someone is at risk of persecution for a Convention reason should be looked at in the round and all the relevant circumstances brought into account. I know of no authority inconsistent with such an approach and, to my mind, it clearly accords both with paragraph 51 of the UNHCR Handbook and with the spirit of the Convention."

253. Also helpful is the passage in paragraph 19 of Sedley LJ's judgment, which immediately follows this quotation:-

> "While, for reasons considered earlier, it may well be necessary to approach the Convention questions themselves in discrete order, how they are approached and evaluated should henceforward be regarded not as an assault course on which hurdles of varying heights are encountered by the asylum seeker with the decision maker acting as umpire, nor as a forum in which the improbable is magically endowed with the status of certainty, but as a unitary process of evaluation of evidential material of many kinds and qualities against the Convention's criteria of eligibility for asylum."

254. Mr Henderson also relied upon cases of the Special Immigration Appeals Commission concerning Libyan appellants in respect of whom the United Kingdom government had secured from the Libyan government a memorandum of understanding (MOU), to the effect that, if returned, the appellants would not be subjected to judicial execution or other serious ill-treatment. The question was whether, notwithstanding this memorandum, there was a real risk that the Libyan authorities would ill-treat the appellants. The unpredictability of the Qadhafi regime was, SIAC concluded, such that there was a real risk of non-compliance. At paragraphs 359 to 361, SIAC held:-

> "359. Colonel Qadhafi may well regard the MOU as a favour done to the UK and could conclude at some point that Libya has done a great deal for the West in its rapprochement and that the West owed it favours in return. If Libya did not feel

that it was receiving enough for what it had done, it could take the view that the benefit was not worth full adherence to the MOU. There remains room for misunderstandings, although the diplomatic ties and other relationships are growing closer, more trusting and open.

360. We cannot say how far into the period of return any such incident could occur, for it could occur at any time, although we would expect the initial stages of return, detention and questioning to proceed as required and to be without any real risk of a breach of the MOU or of Article 3.

361. Indeed, we would accept that there is an element of speculation about how any change of approach might occur in what we have set out. That is inevitable in this case for what we are satisfied about is that there is a considerable element of unpredictability which we do have to consider. That is where the risk first arises and it could result from a number of actions. We have to do what we can to assess its degree, causes and impact. We are satisfied that there are real risks of such events occurring, which could lead to acts which diverge from the pragmatic course as Mr Layden would see it, even though the divergence would be occasional, responded to events, or temporary. These are not in our judgment unrealistic scenarios." (DD & Anor v Secretary of State for the Home Department [2007] UKSIAC 42/2005)

255. In AS (Libya) v Secretary of State for the Home Department [2008] EWCA Civ 289, the respondent's challenge in the Court of Appeal to the SIAC judgment failed. The respondent contended that SIAC had erred in principle by asking itself whether the pragmatism of the Libyan regime was sufficient to exclude a real risk of torture, when the test should have been put the other way round (paragraph 74). The Court of Appeal rejected this:-

> "75. We do not accept that submission. It was correctly accepted that (however the test is precisely formulated or defined), but for the assurances in the MOU, there were substantial grounds for believing that the respondents would face a real risk of torture on return. In these circumstances the question was indeed whether the pragmatism of the regime was sufficient to exclude that risk, or at least to reduce it to an acceptable level. This case is quite different from cases like *Mamatkulov and Askarov v Turkey* and *Shamyev v Georgia*. In any event each case must be decided on its own facts."

256. At paragraph 77, the Court of Appeal rejected the respondent's criticism of paragraph 361 of the SIAC determination:-

> "We reject Mr Sales' submission that SIAC there misapplied the test. It correctly said that it was for it to assess the degree, causes and impacts of the risk and said that it was satisfied that there were real risks of the contemplated events occurring. That was a correct statement of the test, with the nature of which SIAC was very familiar. Moreover the statement that those were 'not unrealistic scenarios' seems to us, when read in the context of the paragraph as a whole, to mean that they were realistic scenarios."

257. At paragraph 81, the Court of Appeal stated in conclusion that it did not accept that SIAC misunderstood or misapplied the test or that it failed to have proper regard to the evidence of Mr Layden. "Nor are we persuaded that SIAC lowered the test to take account of the unpredictability of future events. SIAC was bound to have regard to the unpredictability of the future. It had understood that the risk of mistreatment was contingent upon other events occurring; but that will often be the case."

258. In the present appeals, both sides agreed that, in Mr Henderson's words, there needed to be a "single holistic assessment of whether there is a real risk of serious harm in the event of return as opposed to a mere possibility" of serious harm, in the event of return. As we have already said, and as the case law plainly reveals, this inevitably involves an element of prognostication on the part of the Tribunal. In her closing submissions, Ms Grey acknowledged that the judgment in Saadi, which spoke of examining "the foreseeable consequences of sending the applicant to the receiving country," necessitated an examination of the risk of change to an existing situation. That was what SIAC had done in DD. According to Ms Grey, it is not suggested by the respondent that there is any "bright-line" test to be adopted, based upon some temporal rules; rather the Tribunal looks to see what are the foreseeable consequences of return. As the date at which events/risks might transpire or materialise becomes more remote, so their prospects become more uncertain; and the "real risk" test becomes progressively more difficult to satisfy.

259. We doubt that there is any material difference between the submissions of the parties on the application of Karanakaran to the present problem, but we find considerable assistance in the submission of Ms Grey. Support for it can be found in Karanakaran. The fact that it is reasonably foreseeable something may occur, whilst constituting a matter within the scope of the holistic assessment, will not necessarily play a determinative or even significant part in the finding of whether there exists a real risk to a person. The significance of the reasonably foreseeable state of affairs will depend upon a number of interrelated factors, including the predicted point in time at which the event may occur, the likelihood of its occurring and the directness and degree of its impact on the person concerned.

260. At one end of the scale would be the following example. A government enacts a law, which is to come into force in three years' time, under which adherents of a particular religion are to be executed, unless they then formally renounce their faith. The state in question is totalitarian in nature and there is no evidence to suggest that its government would change in the intervening period, or repeal the law. Notwithstanding the relative remoteness of the future position, it would plainly be a violation of the United Kingdom's international responsibilities to return an adherent of that religion to the country in question, albeit that the evidence shows he or she would live unmolested until the law came into force.

261. In the SIAC case involving the Libyan appellants, it was common ground that, without the memorandum of understanding, they faced a real risk of serious ill-

treatment, including torture, on return. Given that it was only the MOU that stood between them and this state of affairs, it was obviously right for SIAC to have regard to the volatility of the power systems in Libya with a view to determining whether there was a real risk that the MOU would, in the case of these individuals, not be followed. Whilst the evidence indicated that the MOU would be complied with on the appellants' return, the remoteness of the risk had to be weighed against the directness and seriousness of the harm, if the MOU were later to be ignored: the appellants would be targeted for torture, or worse.

262. Although we recognise that an evaluation of whether future elections would lead to a return to the intensity and generality of persecution identified in RN is an issue with which we must engage, we do not accept that the kind of assessment undertaken in the Libyan cases is required as a matter of law in the present cases. In the Libyan cases, but for the memorandum of understanding the individuals concerned were accepted to be at risk of being tortured because of their personal profiles. Here we are having to make an assessment of whether anyone returned to Zimbabwe would be at risk because of an inability to demonstrate loyalty.

263. Even in the early election scenario we have described, the evidence is very far from pointing to a real risk to any returning failed asylum seeker to any part of Zimbabwe, in any circumstances. Not only would the categories identified in RN as not being at risk still be likely to apply, it is very likely that geographic differences would play an important part in whether a particular person would be at risk. Furthermore, on the evidence before us, we conclude that the scenario of elections being held in mid-2011, or slightly later, in defiance of international (especially regional) opinion and the Electoral Commission, and in circumstances where, despite his indications to the contrary, Morgan Tsvangirai decides to expose the MDC to danger by contesting the elections, is an unlikely one, on the balance of probabilities, albeit that there is a chance it might happen. As matters stand, the further away the elections, the more uncertain are their consequences. In this regard, the factors we have identified as militating against a repeat of the violence of 2008 are not fanciful and require to be factored in to the overall assessment.

264. Drawing all these threads together, we do not conclude that our evaluation of who is or is not presently at risk if returned to Zimbabwe is undermined, by the possibility of a return to violence at 2008 levels in the event of elections being called in the foreseeable future. The combined effect of the evidential uncertainty of when elections may be called and what might happen when they are produces a picture that is too equivocal or obscure to amount to a real risk of future ill treatment.

265. We would emphasise that our findings on this issue do not affect what we have earlier said about the present general risk to those returning to rural parts of the eastern provinces of Zimbabwe. There is also the following important point. If, after promulgation of this determination, evidence emerges that elections will be held at a particular time, without any of the safeguards and other countervailing features we have described, then the structures underpinning the country guidance system

ensure that judicial fact-finders will be required to have regard to the new state of affairs, in reaching determinations on Zimbabwe cases. The effect of Practice Direction 12.2 is such that a country guidance case is authoritative in a subsequent appeal, only so far as that appeal relates to the country guidance issue in question and depends upon the same or similar evidence (our emphasis). By the same token, we would expect the respondent to take account of that situation, both in reaching decisions on asylum claims involving Zimbabwe (including fresh claims under paragraph 353 of the Immigration Rules) and in deciding whether to give directions for a person's removal to Zimbabwe.

H. COUNTRY GUIDANCE ON ZIMBABWE

At the point of return

266. It was common ground in the present appeals that the country guidance the Tribunal would give would not involve the position at the actual point of return to Zimbabwe of a failed asylum seeker from the United Kingdom, which in practice will be Harare Airport (now usually via South Africa). The appellants adduced no specific evidence regarding the position at the airport and the only potentially relevant evidence from the respondent was the material in the FFM report regarding the experiences of the seven returnees. The country guidance regarding risk at the airport accordingly continues to be as set out in HS (Returning asylum seekers) Zimbabwe [2007] UKAIT 00094, read with the findings on that issue in SM and Others (MDC – internal flight – risk categories) Zimbabwe CG [2005] UKIAT 00100 and AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061 (paragraphs 36 to 48 above).

New country guidance regarding the position after the point of return

267. In the light of our findings, evaluating the position as at the end of January 2011, the following country guidance replaces that in RN, as follows:

(1) As a general matter, there is significantly less politically motivated violence in Zimbabwe, compared with the situation considered by the AIT in RN. In particular, the evidence does not show that, as a general matter, the return of a failed asylum seeker from the United Kingdom, having no significant MDC profile, would result in that person facing a real risk of having to demonstrate loyalty to the ZANU-PF.

(2) The position is, however, likely to be otherwise in the case of a person without ZANU-PF connections, returning from the United Kingdom after a significant absence to a rural area of Zimbabwe, other than Matabeleland North or Matabeleland South. Such a person may well find it difficult to avoid adverse attention, amounting to serious ill-treatment, from ZANU-PF authority figures and

those they control. The adverse attention may well involve a requirement to demonstrate loyalty to ZANU-PF, with the prospect of serious harm in the event of failure. Persons who have shown themselves not to be favourably disposed to ZANU-PF are entitled to international protection, whether or not they could and would do whatever might be necessary to demonstrate such loyalty (RT (Zimbabwe)).

(3) The situation is not uniform across the relevant rural areas and there may be reasons why a particular individual, although at first sight appearing to fall within the category described in the preceding paragraph, in reality does not do so. For example, the evidence might disclose that, in the home village, ZANU-PF power structures or other means of coercion are weak or absent.

(4) In general, a returnee from the United Kingdom to rural Matabeleland North or Matabeleland South is highly unlikely to face significant difficulty from ZANU-PF elements, including the security forces, even if the returnee is a MDC member or supporter. A person may, however, be able to show that his or her village or area is one that, unusually, is under the sway of a ZANU-PF chief, or the like.

(5) A returnee to Harare will in general face no significant difficulties, if going to a low-density or medium-density area. Whilst the socio-economic situation in high-density areas is more challenging, in general a person without ZANU-PF connections will not face significant problems there (including a "loyalty test"), unless he or she has a significant MDC profile, which might cause him or her to feature on a list of those targeted for harassment, or would otherwise engage in political activities likely to attract the adverse attention of ZANU-PF.

(6) A returnee to Bulawayo will in general not suffer the adverse attention of ZANU-PF, including the security forces, even if he or she has a significant MDC profile.

(7) The issue of what is a person's home for the purposes of internal relocation is to be decided as a matter of fact and is not necessarily to be determined by reference to the place a person from Zimbabwe regards as his or her rural homeland. As a general matter, it is unlikely that a person with a well-founded fear of persecution in a major urban centre such as Harare will have a viable internal relocation alternative to a rural area in the Eastern provinces. Relocation to Matabeleland (including Bulawayo) may be negated by discrimination, where the returnee is Shona.

(8) Internal relocation from a rural area to Harare or (subject to what we have just said) Bulawayo is, in general, more realistic; but the socio-economic circumstances in which persons are reasonably likely to find themselves will need to be considered, in order to determine whether it would be unreasonable or unduly harsh to expect them to relocate.

(9) The economy of Zimbabwe has markedly improved since the period considered in RN. The replacement of the Zimbabwean currency by the US dollar and the South African rand has ended the recent hyperinflation. The availability of food and

other goods in shops has likewise improved, as has the availability of utilities in Harare. Although these improvements are not being felt by everyone, with 15% of the population still requiring food aid, there has not been any deterioration in the humanitarian situation since late 2008. Zimbabwe has a large informal economy, ranging from street traders to home-based enterprises, which (depending on the circumstances) returnees may be expected to enter.

(10) As was the position in RN, those who are or have been teachers require to have their cases determined on the basis that this fact places them in an enhanced or heightened risk category, the significance of which will need to be assessed on an individual basis.

(11) In certain cases, persons found to be seriously lacking in credibility may properly be found as a result to have failed to show a reasonable likelihood (a) that they would not, in fact, be regarded, on return, as aligned with ZANU-PF and/or (b) that they would be returning to a socio-economic milieu in which problems with ZANU-PF will arise. This important point was identified in RN, (see paragraphs 62 and 64 above) and remains valid.

I. RE-MAKING THE DECISIONS IN THE FOUR APPEALS

Appellant EM

268. Appellant EM failed without explanation to attend the hearings in October 2010. No explanation has subsequently been forthcoming. He failed to maintain contact with his representatives. His account was substantially disbelieved by the Immigration Judge and her adverse credibility findings were not challenged.

269. Although the Tribunal indicated in January 2010 that none of the Immigration Judge's findings were to stand, except that relating to the appellant EM's knowingly false use of a passport stamp, we see no reason why his failure to attend and give evidence should rebound to his benefit. Even if he did work as a supply teacher for a brief period prior to coming to the United Kingdom, it is not remotely credible that this fact would be known to the authorities on arrival in Zimbabwe or that they would be remotely interested, even if he were to disclose this fact to them. No reliable evidence has been put forward regarding the reason why family members in the United Kingdom may have been granted asylum here. Again, applying the relevant country guidance, there is nothing to suggest that the authorities at the airport would know about any such grant, let alone regard it as a reason to subject appellant EM to any form of interrogation at which serious harm is a real possibility, notwithstanding his time in the United Kingdom. What we have said applies, whether or not the authorities discover or assume that appellant EM has made an unsuccessful claim for asylum.

270. We are prepared to accept that appellant EM comes from the Mutoko area of Mashonaland East, north-east of Harare. This is a rural area in one of the Eastern

provinces and we therefore apply the country guidance in paragraph 267(2) above. Appellant EM has been absent from Zimbabwe for a significant period (nearly 12 years). The key issue, therefore, is whether appellant EM has shown there is a real risk that he lacks ZANU-PF connections, such as to displace the risk of adverse interest from ZANU-PF elements in Mutoko.

271. On his own account, appellant EM's parents were card-carrying members of ZANU-PF. We see no reason in the circumstances to believe his assertion that this was done only to ensure their protection. Even if it is true that appellant EM's father and brother had been teachers, this does not compel a finding that they had joined ZANU-PF only for reasons of self-protection. Whilst the generally prevalent view is that teachers are likely to be pro-MDC, this does not mean that all teachers in Zimbabwe must be of that persuasion. As the Immigration Judge found, the parents had lived without problems for many years and, like her, we see no reason to find that they left for Zambia as recently as 2008 for any reason other than to seek treatment for the father's illness, despite the assertion that their leaving was occasioned by an upsurge in violence in Mashonaland in late 2008. There may well have been such an upsurge; but, given the parents' ZANU-PF connections, there is no reason to assume that they would have been the victims of it. The parents had, after all, remained throughout all the previous problems, including those in the middle of that year.

272. There is also the point that, on appellant EM's account, the family home is still in Mutoko, and that it is being looked after by relatives. There is no credible suggestion that these relatives are not also ZANU-PF adherents. On the contrary, if they were not, and if the parents had been driven out by violence, it is hard to see how the relatives would be allowed by local leaders to stay there.

273. In conclusion, appellant EM conspicuously fails to discharge the burden of showing there is a real risk that, if returned to Mutoko, he would face persecutory or other serious ill-treatment. He would be returning as a member of a ZANU-PF family, whose parents were established in the area for very many years, and he would have a home and other relatives to go to. Given that he left Zimbabwe for the purpose of studying, there would be no reason for the locals to look at him askance because of his time in the United Kingdom, lengthy though that has been. Appellant EM has not been involved in any MDC activity in Zimbabwe or the United Kingdom. Indeed, there is no reason to assume he harbours any positive feelings towards the MDC and good reason to assume the opposite.

274. Particularly given the Zimbabwe government's recruitment drive for teachers, appellant EM has failed to show he would be without the means of earning a living, if returned. He is 35 years old with no significant health issues. If he did not work as a teacher, he still has a home to go to and there is no reason to find that he would have difficulty getting some kind of employment, including in the informal sector.

275. Mr Henderson did not advance any Article 8 case on behalf of appellant EM. That was understandable, given the uncontested findings at paragraphs 15 and 16 of the Immigration Judge's determination. Appellant EM has no protected family life in the United Kingdom and although he appears to have a NVQ qualification his private life is remarkably exiguous, comprising little more than reading and going to the gym.

276. We re-make the decision in the case of appellant EM by dismissing his appeal on asylum and human rights grounds. He is not entitled to humanitarian protection.

Appellant COM

277. As we have already recorded at paragraph 19 above, on 22 October we indicated that we would re-make the decision in appellant COM's appeal by allowing it. Our reasons are as follows.

278. In the present proceedings, the credibility of appellant COM has not been put in issue, as regards his account of his experiences in Zimbabwe and his MDC activities in the United Kingdom. Besides those described in the determination of the Immigration Judge, summarised in Part B above, it is relevant that appellant COM has been interviewed at a demonstration in the United Kingdom involving those said to have fled despotic regimes and that the interview was reported on the internet, where appellant COM was quoted and named. Appellant COM's MDC activities in the United Kingdom have been substantial. He has adduced credible third party evidence to that effect. Besides attending demonstrations and vigils, which may well not in themselves be such as to cause difficulties at the point of return to Zimbabwe, appellant COM has been active in fundraising for the MDC in this country.

279. In the light of appellant COM's activities in Zimbabwe, these United Kingdom activities strike us as being genuinely undertaken and thus ones which, if within the knowledge of the authorities, would strike them as different from the activities of an apolitical opportunist, from whom no trouble might be expected once he had returned to Zimbabwe.

280. As we have indicated, appellant COM was active on behalf of the MDC whilst in Zimbabwe. Those activities earned him a beating and a night spent sitting in cold water, whilst detained by ZANU-PF youths, who warned him not to support the MDC. The Immigration Judge regarded this treatment as falling short of persecution. We disagree; and therefore apply paragraph 339K of the immigration rules, whereby past persecution is to be regarded as a serious indication of future persecution, absent good reasons to consider it will not be repeated. Appellant COM's employment in Zimbabwe as a credit controller for an international courier company brought him to the attention of the CIO.

281. In view of all of the above, applying the country guidance relevant to the point of return (paragraph 266 above), we find that there is a real risk that, if returned,

appellant COM will be taken for second-stage questioning at Harare Airport, and thus be at real risk of serious harm at that point. The internet interview strikes us as particularly significant and may well have come to the attention of the CIO, given their past interest in him. We also regard his significant MDC activities here as ones that, in the circumstances, may well have come to the attention of the CIO, through informers in the Zimbabwean community.

282. Although it was for the above reasons we indicated we would allow the appeal of appellant COM, it is apparent that, even if he were to get back to his home area of Highfield, a high-density area of Harare, he has shown himself to be a MDC activist who (unless deterred by fear of persecution) is reasonably likely to resume such activities following his return. In the light of our country guidance at paragraph 267(5) above, appellant COM would be at real risk in Harare at the present time. He may well come to feature on a list of those targeted by ZANU-PF elements and/or be involved in attacks on MDC activists, such as have recently occurred in that city. He plainly has no viable internal relocation alternative to the Eastern provinces. His rural home appears to be in the area of Chinhoyi in Mashonaland West and there is nothing to suggest any connection with Matabeleland (paragraph 267(7) above).

283. We re-make the decision in the case of appellant COM by allowing his appeal on asylum and human rights grounds (Article 3). He is not entitled to the grant of humanitarian protection.

Appellant CLM

284. As indicated earlier, the Designated Immigration Judge's findings of fact are preserved, both as regards appellant CLM's account of events in Zimbabwe and the United Kingdom and as regards the evidence of the Chair of the South West District MDC United Kingdom, who confirmed appellant CLM was a member of a particular local branch of that organisation.

285. The Designated Immigration Judge made adverse credibility findings at paragraphs 70 to 72 of the determination. Amongst the matters that concerned the Judge were that appellant CLM had waited some two years before joining the MDC United Kingdom, notwithstanding his asserted activist role in the party whilst in Zimbabwe (organising secretary for the Hatfield area of Harare, responsible for arranging meetings and rallies), and that he had seen fit to claim asylum only in 2009. It is plain from the determination that, as a result, the Designated Immigration Judge did not accept appellant CLM's evidence about what he had done for the MDC in Zimbabwe and what had happened to him as a result (namely, some beatings at the hands of ZANU-PF thugs). The Designated Immigration Judge's finding, which he was plainly entitled to reach on the evidence before him, was that "any political profile that the Appellant had with the MDC [in Zimbabwe] was at the lowest level" (Paragraph 71).

286. In his closing submissions, Mr Henderson sought to make appellant CLM's claim to international protection primarily by reference to risk at the point of return. Applying the relevant country guidance, Mr Henderson submitted that appellant CLM's United Kingdom activities with the MDC would be known by the authorities in Zimbabwe and that these would put him at real risk of serious ill-treatment at the airport. Amongst other passages, Mr Henderson relied on the record of what Witness 6 (who had worked in a relevant capacity in Harare Airport) had said to the Tribunal in AA (No 2), that "People in Harare are well briefed by people in London so they know who they are interested in. If you do any activities in the U.K you put yourself in a situation" (paragraph 67). He also relied on the observation in paragraph 104 of HS that "the regime has invested considerable resources in seeking to infiltrate groups in the United Kingdom to identify those who support the opposition or who are 'activists in the country'". Drawing on this and paragraph 260 of RN, Mr Henderson, at paragraph 261 of his written closing submissions, submitted that it was "therefore clear from the Country Guidance that the CIO's intelligence gathering operation in the UK may identify those asylum seekers who have actively supported the MDC in the UK and that they will be taken for 'second stage interrogation' by the CIO with consequent risk of ill-treatment".

287. These submissions seek to lead us too far. There is nothing in the relevant country guidance that constitutes an authoritative finding that the CIO in Harare are reasonably likely to know about everyone who participates in MDC activities in this country, of whatever kind and for whatever reason, and that the CIO are reasonably likely to detain and ill-treat everyone whom they have reason to believe has had any kind of involvement with the MDC, whilst here. As indicated at paragraph 104 of HS, it is with the identification of activists that they are likely to be concerned.

288. Does the evidence before us show a real risk that appellant CLM will be so regarded? Pursuant to rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 appellant CLM has adduced written evidence that was not before the Designated Immigration Judge. Since the hearing in Newport in October 2009, appellant CLM has managed to obtain the minutes of meetings of the relevant local branch of the MDC between 19 May 2007 and March 2010. He has also obtained a number of photographs of these meetings, posted on flickr.com.

289. Appellant CLM failed to attend half of the 14 meetings covered by the minutes. In his latest statement he says this was due to lack of funds, although his address is given as being in the town to which the local branch relates. Of the 7 meetings he attended, the minutes do not show him as standing for any kind of office or, indeed, as having said anything worthy of recording in them. The one exception is in the minutes of 10 January 2009, where the Food Secretary appears to have allocated to appellant CLM the task of providing "salt/ pepper/onion/ tomatoes", to the value of £5, apparently for a meal to be supplied at the next meeting.

290. This conspicuous lack of activity sits poorly with appellant CLM's claim to have been a MDC organiser in Harare and reinforces the Designated Immigration Judge's

adverse credibility findings on that issue. It also colours the reading of the Southwest District Chair's letter of 20 February 2009, which was before the Designated Immigration Judge, and which claimed appellant CLM had been actively involved in branch activities. Furthermore, if his branch of the MDC has been infiltrated by ZANU-PF informants and/or CIO operatives, they cannot have failed to notice appellant CLM's lack of activity. That they should see fit to report to Harare that he is someone worthy of intensive interest, should he return, is fanciful in the extreme.

291. The flickr.com photographs have been marked for our purposes to identify a person said to be appellant CLM, whom we are prepared to accept is him. The photographs show various groups of people, none of whom is identified by name in a caption or similar. Appellant CLM is at the back of most of the photographs, his features barely discernable, or else apparently completely absent in others (ie. no identification marker relating to him). In only one is he shown at the front of the group, waving to the camera.

292. It is speculative whether these photographs, even if in the possession of the CIO, would enable that organisation to identify appellant CLM, were he to return to Harare. But, even if they could, it is not reasonably likely that they would cause or contribute to the identification of appellant CLM as a person in whom they might decide to take a significantly adverse interest.

293. In conclusion, we find there to be no reasonable likelihood that appellant CLM would face serious ill-treatment at Harare Airport. In so finding, we have had regard to his having claimed asylum, to his time spent in the United Kingdom and to the assertion that appellant CLM has been on demonstrations. Mr Henderson submitted that appellant CLM should have his appeal allowed, on the same basis as we had indicated we would allow that of appellant COM. But, as can be seen, their cases are substantially different. The evaluation of risk at the point of return, as well as later, is a fact-sensitive exercise. Appellant COM was entitled to the finding as to his significant degree of activity in MDC affairs in the United Kingdom, in part because of the evidence showing that he had been so active in Zimbabwe. This is not at all to ignore Danian [1999] EWCA Civ 300 and the possibility of cynical *sur place* activities creating a real risk. Appellant CLM *might* have been able to make good such a claim; but he has failed to do so on the totality of the evidence.

294. Mr Henderson submitted, much more briefly, that additionally or alternatively to the airport issue, appellant CLM would be unable to demonstrate loyalty to ZANU-PF and would be regarded as an opponent of the regime. His long stay in the United Kingdom would confirm this risk.

295. Appellant CLM is now 58 years old and has been in the United Kingdom since February 2005. He would be returning to the Hatfield suburb of Harare, described by appellant CLM at interview as a low density suburb. His assertion that he had to move from the property he owned in that area is not credible, given the general problems identified with his credibility. However, even if his last place of residence

in Zimbabwe was Hatcliffe (sic), appellant CLM could return there. Immediately before leaving Zimbabwe, appellant CLM said he was undertaking market research for an aunt regarding a property in Borrowdale. He also worked as a small businessman (letter of refusal, paragraphs 49 to 51). He was able to afford the air fare to the United Kingdom. Appellant CLM has failed to show a reasonable likelihood that, if returned, he would lack accommodation and support from relatives, including three adult children living in Harare, until he could resume economic activity. His high blood pressure and cholesterol can both be treated in Zimbabwe, on his own admission (albeit at a cost). We do not find that his health issues are such as to preclude him from working. In view of the evidence discussed earlier, it is plain that appellant CLM could work, if need be, in the informal sector, otherwise than as a street vendor which, given his age, we accept might be problematic.

296. There is no reason to believe that appellant CLM's vestigial connections with the MDC would put him at risk in Harare of adverse action, including having to demonstrate loyalty. This is especially true if he resides in the low or medium density suburbs with which he has been historically connected and to which his economic capacity indicates that he could return. Even in the unlikely event of his living in the high density suburbs, we conclude that there is no real risk of his being subjected to a loyalty test or serious harm, applying the country guidance at paragraph 267(5) above. There is no reason to believe that his connection with the MDC would become more significant on return in the light of the Designated Immigration Judge's conclusion about absence of significant activity in the past.

297. No Article 8 case has been advanced on behalf of appellant CLM and we can see nothing in the evidence to suggest why one might have been. A 20 year old son lives in Oldham, Lancashire, with whom appellant CLM speaks daily (presumably by telephone) but the other children live in Harare. He is separated from his wife. His private life appears to involve occasional gardening and other odd jobs, and going to the MDC meetings, as found above.

298. We re-make the decision in the case of appellant CLM by dismissing his appeal on asylum and human rights grounds. He is not entitled to the grant of humanitarian protection.

Appellant JG

Claim to international protection

299. Having had the opportunity of hearing appellant JG give evidence, we formed a poor view of her credibility, as regards her claim to be in need of international protection. Her oral and written evidence was characterised by discrepancy and exaggeration. At paragraph 13 of her witness statement of September 2009 she claimed her home in Zimbabwe had been destroyed, an assertion not mentioned in her asylum interview and inconsistent with her subsequent assertions, that her mother had continued to

live there, on the basis that the destruction had been only partial, and that the property was still worthy of being coveted by other relatives. She was inconsistent as to who these relatives were. As we have already seen, appellant JG's assertions regarding Prince Edward School were contradicted by Professor Ranger, whose evidence on this issue we prefer. In her oral evidence to us, she disowned statements contained in the social worker's report, regarding the threat posed by her ex-husband in the United Kingdom, which could only have come from her. She tried to give the impression that, whilst teaching at Prince Edward School, she had been prevented from meeting the Queen; an impression she later had to correct.

300. Appellant JG claimed that her mother was assaulted in the street in Queensdale, Harare by youths from the nearby high-density area of Epworth and that they made comments about her mother having kids in England. Whilst we do not regard the error by appellant JG as to when this occurred as significant (witness statement of 24 November 2010), it is apparent from the statement of 29 September 2010 that the incident was a random one. Its significance is further undermined by appellant JG's oral evidence, that her mother was planning a visit to Canada to see her accountant daughter there, but would be returning to Zimbabwe after a short period.

301. Appellant JG sought to make much of her medical condition, particularly as concerns her ability to work. However, her own consultant's letter of 8 October 2010 says that she would "generally would cope with life and although this disease [chronic haemoptysis, following previous tuberculosis] causes tiredness this should not really limit her function too much". Appellant JG accepted in cross-examination that this letter was written in the context of her possible return to Zimbabwe and then agreed with Ms Grey that teaching was, in fact, a job with which she would be able to cope.

302. The Immigration Judge did not find credible appellant JG's alleged fear of her in-laws in Zimbabwe, who have a close association with ZANU-PF. On the totality of the evidence, we do not find it credible either. The general problems with her credibility mean she has no entitlement to be believed on this issue. In any event, appellant JG's own family is manifestly middle class, as evidenced by her previous employment at one of Harare's most prestigious schools, her ability to come here on a three year student visa, her mother's ability to travel to Canada and back and her sister's profession as an accountant. The evidence points clearly to appellant JG's own family falling within the category identified in RN as being either ZANU-PF – inclined or, at the very least, one which has established a way of living with Zimbabwe power structures, which would obviate any risk of being challenged to show loyalty to ZANU-PF, even in such a period as was under consideration in RN.

303. Mr Henderson asked us to accept that, if returned, appellant JG would have to find work as a teacher and that this would put her at real risk. He relied upon Professor Ranger's contradiction of appellant JG as to how she would be perceived, submitting that she would in fact not be seen as associated with ZANU-PF because of her past employment (written closing submissions, paragraph 224).

304. We agree that teaching is the obvious and perhaps only profession that appellant JG would pursue, if returned. We disagree, however, with the submission that this will put her at real risk. As we have found, being a teacher in Zimbabwe puts one in a risk category; but whether this equates or contributes to there being a real risk will depend on the individual facts of the case. In appellant JG's case, it is clear that working as a teacher will not do so. There would be no need for her to go to teach in a rural area, where reports suggest the distrust of teachers as MDC indoctrinators is most prevalent. She claimed she would be unable to find employment, as before, in the private sector in Harare but she has adduced no evidence to support this assertion and we find it to be another example of her willingness to paint a false or exaggerated picture.

305. We accept that the presence of her children (hypothetical as it is in view of the Article 8 decision) would impact on appellant JG's ability to work; but the presence of her mother and continuing financial support from her sister in Canada will enable appellant JG to be economically active, despite the presence of her children. She has a house to go to, which we do not find has been destroyed in whole or part, and which is at worst in a medium-density area of Harare. We do not accept that the proximity of Epworth means it would be seriously problematic for appellant JG and her children to live there. In short, appellant JG has signally failed to show that, if returned, she faces a real risk of persecution or other serous ill-treatment, or that her living conditions would breach Article 3 of the ECHR.

306. For completeness, we do not find the evidence suggests that appellant JG would be held for potentially persecutory interrogation at Harare Airport. She has no MDC profile of any kind. It is highly unlikely that her teaching history would be revealed in the course of her transiting immigration, but if it was, there is enough ZANU-PF involvement in her background to obviate any difficulty this might cause. The somewhat special nature of Prince Edward School is also very unlikely to be lost on officials working in Harare and would not cause her to be regarded as MDC (notwithstanding we accept Professor Ranger's evidence that it would not mark her out as ZANU-PF either). We do not find that her having claimed asylum in the United Kingdom will be reasonably likely to cause or contribute to any problems, even if it came to light.

307. We re-make the decision in appellant JG's asylum appeal by dismissing it on those grounds and on Article 3 grounds. She is not entitled to humanitarian protection.

Article 8

308. In the light of the grant of humanitarian leave to remain on Article 8 grounds, this issue is no longer before us and cannot be the subject of a judicial determination. We are conscious, however, that there may be a considerable number of people in a broadly similar position who now face a real prospect of removal to Zimbabwe, but for the application of Article 8. If the Secretary of State had not accepted appellant JG's Article 8 case we would have allowed her appeal on this head and here briefly set out what would have been our reasons for doing so:

(i) JG has been resident in the UK for 11 years as at the date of decision and approaching 12 years now, with the exception of a short return visit to Zimbabwe in the early years.

(ii) She has three children for whom she has responsibility now aged 13, 9 and 6 the first of whom has been resident here since 2002 and the other two all of their lives.

(iii) JG's leave to remain expired in 2001 when she could no longer fulfil the requirements to study, but by then the general security situation in Zimbabwe was deteriorating and in 2002 a moratorium on enforced returns to Zimbabwe was begun which has for one reason or another been continued until the outcome of this country guidance case, as the Secretary of State and the judiciary have responded to the sequence of developments in that country.

(iv) Whether JG could ever have substantiated a protection claim to remain or not, it is understandable that she would be unwilling to return voluntarily to a society so ravaged by violence, insecurity and an absence of sound governance as was Zimbabwe under ZANU-PF.

(v) On the evidence before us, each of her children is well integrated into the educational system of the United Kingdom and the social connections and support such participation brings.

(vi) Even where neither the children nor any parent has the status of a British citizen, the welfare of the children is a primary consideration in administrative action affecting their future and accordingly the balance of competing interests under Article 8 must reflect this factor as a consideration of the first order, albeit not the only one (see LD (Article 8 – best interests of child) Zimbabwe [2010] UKUT 278 (IAC) and ZH (Tanzania) [2011] UKSC 4).

(vii) The public interest in interfering with the private life of JG and her three children established in the United Kingdom is the preservation of the economic interests of society by enforcement of immigration control rather than the protection of the public from crime and criminality.

(viii) In the absence of any other policy guidance from the Secretary of State, it remains legitimate for Immigration Judges to give some regard to the previous policy that seven years residence by a child under 18 would afford a basis for regularising the position of the child and parent in the absence of conduct reasons to the contrary, in making a judicial assessment of whether removal is proportionate to the legitimate aim having regard to the best interests of the child.

Signed
Mr Justice Blake
President of the Upper Tribunal,
Immigration and Asylum Chamber

APPENDIX A

SUMMARY OF ORAL EVIDENCE

Appellant COM

1. COM spoke to his witness statement dated 5 October 2010. He adopted the contents of that statement in which he said that, since his last appearance at the Tribunal in 2009, he had continued to be politically active. This was evidenced by photographs of COM at vigils as well as meeting minutes to show that he was still attending MDC meetings in the United Kingdom. On this basis, COM considered that he was "factually an opponent of the regime" (paragraph 4).

2. Were he to be returned to Zimbabwe, COM said that he was likely to go to Highfield, Harare "which is a high density urban residential area". Although Highfield was an area where ZANU-PF had begun as a political party, it was also where the MDC had dominated in the elections, since the formation of that party. ZANU-PF had been using violence to try to get back the ZANU-PF votes in preparation for a new election, which COM said was rumoured to be in 2011.

3. COM said that if returned it would be difficult for him to survive as he would have no job or money as well as no family. He had no house in Zimbabwe and could not relocate as there was no family to support him. Although his mother and children remained in Zimbabwe, COM could not go to live with them since he would be placing their lives at risk because of his political activities in the United Kingdom. If he did try to relocate, he would be asked his history, activities in the UK and political opinion; and once it was discovered that he had been in the United Kingdom for so long "I will be seen as a traitor and treated as an outsider".

4. COM considered that he would be at risk in the airport in Harare, since his pictures had been displayed on the internet and would therefore be in the public domain. Even if he managed to get past the airport security, he would be more than likely to face ZANU-PF party members, war veterans and militias at roadblocks. COM would be asked to produce a ZANU-PF card and sing the latest songs and slogans. He would be unable to do this. He would also be unable to produce a ZANU-PF card.

5. In oral evidence, COM said that he had had about 50 photographs of him put on the website. If returned to Zimbabwe, he said he would continue with his MDC activities since it was "fundamental" that if he started something, he had to keep on going. If asked by the CIO at the airport, COM said that he would say he had been involved with the MDC. The CIO would, in any event, already know this.

6. In cross-examination, COM said that he had worked for an international commercial company whilst in Zimbabwe. However, most such companies had subsequently closed. It was put to COM that he had attended the airport in Zimbabwe frequently as an employee for a courier company, when he would have been asked questions for the CIO. COM said, however, that he had only been asked questions about his employment. He had not been asked about his MDC activities.

7. COM said that his mother-in-law and two children lived in a house in Highfield but he would not wish to return to that house because he did not want to put them at risk. Asked whether Highfield was a majority MDC area, COM said that it was mixed; he would estimate 50:50. It was put to him that in his statement he had said that Highfield was MDC dominated. COM agreed that this was the case. He would, nevertheless, attract attention if returned because the grassroots of the MDC were more targeted than the upper echelons. His mother-in-law was over 60 and no longer politically active, whilst the children were minors.

8. COM agreed that there were no roadblocks within Harare but said roadblocks had been set up outside in order to stop people from entering rural areas.

Appellant JG

9. JG adopted her written statement dated 29 September 2010. In that statement, JG attempted to clarify the position of Prince Edward School, at which she had taught. Although many of the parents were ZANU-PF, this did not mean, according to JG, that teaching staff were also of that political persuasion. In Zimbabwe, apart from church schools and a small number of private schools, every school was run by ZANU-PF. Prince Edward School was more in the nature of a private school at present. It charged fees in the region of £5,000 per term. JG felt that many of the children at Prince Edward were pompous and spoiled. She did not consider that her connection with the school would help her, if she were to be returned to Zimbabwe. The other school at which she had worked, Domboramwari High School in Epworth, was one of the poorest schools in the region. The people there were

very much ZANU-PF supporters. However, that did not mean that by having worked there, JG would be "okay". If challenged about her political views, it would be hard for her to persuade anyone that she did support ZANU-PF. Her family came from an MDC supporting area in Manicaland and JG had a Manicaland accent, when speaking Shona. This was so even though she had grown up in Harare. It would be obvious to anyone that JG's children had not grown up in Zimbabwe, on account of their English accents and that they could not speak Shona.

10. Although JG did not believe what ZANU-PF stands for, if she were in a "tight corner I would have to try to say I supported them, but I would feel very uncomfortable about that". She would feel like she was a coward and was letting down her friends and family. Pretending to support ZANU-PF "would be like a mockery of my friends and relatives in light of all they went through. In any event I don't think that I would be believed if I tried to pretend I was a ZANU-PF supporter – I don't think I would be able to deceive them in my circumstances" (paragraph 13).

11. JG said that her sister, T, was in the final stages of applying for a visa to join her sister, S, in Canada. T was also applying for JG's mother to accompany T to Canada "which will leave me without anyone in Zimbabwe that I can turn to if I am returned". There was also the risk that, once the mother had left, certain male relatives would take over the family home for themselves. These were the paternal uncles of JG. In a paternalistic society, such as Zimbabwe, the likelihood was that the house would be taken over by these individuals.

12. JG said that her home area of Queensdale in Harare was "kind of medium density and of moderate affluence – I would describe it as being 'in the middle'". However, although not high density, Queensdale was unfortunately situated not far from Epworth "where many rowdy gangs, radicalised into politics, come from where there is trouble. It is therefore a vulnerable location despite its reasonably affluent character." In Epworth, the law did not exist and there was a gang culture, which was why there were youth or military bases in Epworth, run by ZANU-PF.

13. So far as the house in Queensdale was concerned, this had been partially destroyed during Operation Murambatsvina. JG's family had subsequently tried to rebuild the damaged part of the home but had not had the equipment necessary to complete the job.

14. If returned, JG did not consider that she would be able to secure a place at a good school, because such places came up very rarely and would be sought by people who already had contacts in Zimbabwe. She would be more likely to end up in a school such as the one in Epworth "because no-one else wants to work in an area like that" (paragraph 24). JG supposed that her sister in Canada could send her remittances occasionally, but these would not be enough on which to live.

15. If JG tried to live elsewhere in Zimbabwe, she would face the difficulty that no-one, not just ZANU-PF diehards, wanted to be associated with an outsider, in case that person turned out to be the bringer of trouble. JG could not go to her rural homeland in Zimbabwe, a place where she had hardly ever ventured, because it was one run by chiefs who were effectively employed by the ZANU-PF government. This ancestral area was near Marange in Manicaland, described as a band of land around Inyanga/Makoni. JG had been there no more than five times in her life, for major funerals when she was a child and so on. She had uncles and half-uncles in this area, but they were virtual strangers to JG and were not kin to whom she could turn. Furthermore, Marange was one of two places in Zimbabwe that ZANU-PF "really disliked, largely for reasons of tribalism"; the other one being Bulawayo (paragraph 3). As a result, Marange received little government assistance and its infrastructure was very poor. Its people never felt that ZANU-PF represented their interests, but the chiefs were still on the ZANU-PF payroll.

16. JG said that her lung condition also limited the kind of employment she could realistically take on. She had a fungal growth in her lung, which could not be operated upon owing to the risk of death. JG felt that she could nevertheless work part-time, perhaps as much as six hours on a good day. She thought that she could return to teaching as this was "one of the few jobs I could do that is not so physical, and where I can sit down if I feel weak" (paragraph 40).

17. JG's ex-husband had indefinite leave to remain in the United Kingdom. He was also from Zimbabwe. JG feared that, according to Zimbabwean customary law, the ex-husband could seek to take JG's children off her, were she to return to Zimbabwe. JG's eldest son, aged 12, hardly remembered anything about Zimbabwe and her other two children have been born and brought up in the United Kingdom. Her youngest child was in Year 1 and her middle one in Year 4. Both were getting on well at school and would, in JG's view, find it difficult to adapt to life in Zimbabwe. JG had tried to teach them Shona, but abandoned this project.

18. Cross-examined, JG said that her father was professional and her mother was a matron of a home. Her sister, S, in Canada was an accountant and had sent JG financial support. JG also had a sister, J, living in the United Kingdom. The plan was for JG's mother to visit Canada only for a short period, following which she would return to Zimbabwe. JG's mother had been beaten in April 2010 as she had been walking home from a church meeting. JG's mother had not lived in the house subsequently. JG was asked about the fact that in her statement she referred to her paternal uncles wanting the house, whereas the social worker's report referred to JG's half-brothers wanting it. JG said her uncles were in the forefront of the project to recover the house. It was possible that they were doing it on behalf of the half-brothers.

19. JG confirmed that her ex-husband did not at present have contact with her children. However, he might want to take the children away from JG if she were in Zimbabwe. JG denied that she had been married in the United Kingdom (cf question 65 of the interview record), asserting that she had been married in a customary manner in Zimbabwe, albeit that JG had been in the United Kingdom when this occurred. JG was asked about the social worker's report in which JG was described as having a fear of her husband obtaining control of the children whilst in the United Kingdom. JG denied knowledge of this. It was put to JG that it was improbable that her ex-husband would launch proceedings in Zimbabwe to secure control of the children. JG said that in Zimbabwe the law placed men in a higher position, vis-à-vis women. Her uncle had said that this is what the ex-husband would do.

20. JG was asked about inconsistencies in her evidence in relation to whether she had met the Queen whilst teaching at Prince Edward School. JG said that she had met the Queen but had not gone to the social function connected with it. JG had come to the United Kingdom in 1999 in order to study as a nurse, benefiting from a United Kingdom bursary.

21. JG said that, after all, she did not know if she was well enough to return to teaching. She was referred to the letter from Dr Russell of 8 October 2010 in which he said that JG "would generally cope with life" and that her condition did not really limit her function too much. Asked if she accepted this, JG said that she had been having a lot of bleeds and there were "good days and bad days". JG accepted that the doctor's letter had been written in the context of her possible return to Zimbabwe. JG then said that she considered that teaching was a job with which she would be able to cope. However, job sharing did not exist in Zimbabwe. JG accepted that there was a chronic shortage of qualified teachers in Zimbabwe, particularly in the rural areas. She was asked whether private schools were re-establishing themselves in Harare, to which JG replied that she did not know. JG accepted that she had taught in a "posh school" without difficulty in Zimbabwe. JG had had no involvement with the MDC whilst in the United Kingdom. She did, however, support the MDC "in my mind". If returned, JG would not want to be politically involved.

22. In answer to a question from the Tribunal, JG said that her eldest child was being assessed for Asperger's Syndrome and that he had behavioural difficulties. JG, if returned, would not go to Queensdale but would have to go to a high density area or to her ancestral area.

Sarah Harland (Zimbabwe Association)

23. Sarah Harland, Coordinator of the Zimbabwe Association, confirmed her written statement of 12 October 2010. The Zimbabwe Association is a community organisation supporting the Zimbabwean Diaspora in the United Kingdom, largely concerned with asylum issues. It has approximately 1,000 members, is run mainly by volunteers and its membership is almost entirely comprised of asylum seekers and refugees. The Association took a close interest in the work of the Institute of Migration. The Association's concern was not to discourage voluntary return of those who genuinely wished to go, but to ensure that asylum seekers made informed choices. Her statement went on to say that she believed IOM was in danger of losing its UKBA funding and that this was relevant, in considering the voluntary return programme run by IOM, and whether this could be regarded as a success. She had attended an IOM event on 22 September 2010, involving a live video conference with returnees in Zimbabwe. The IOM provided £500 assistance to a returnee at the airport, upon departure; whilst further support worth up to £1,000 may be provided to support the launch of a business, based on an acceptable business plan, or an acceptable plan for vocational training or job placement. All assistance had to be spent within six months. Family groups received a grant for each family member, which could be spent on education and accommodation but, again, a family could not have funding for more than six months of accommodation.

24. At the recent event, returnees had expressed great appreciation for the IOM and said their returns had gone well with the IOM's help. One returnee had used IOM funds to restart her father's business; a second had a cousin in the United States of America who had given the returnee a farm to run in Zimbabwe; a third had started a poultry business. Ms Harland said that the three returnees did not appear to be at all typical of ordinary Zimbabwean asylum seekers.

25. Ms Harland stated that there were significant class and social divisions in the Zimbabwean Diaspora and that, apart from those with links to the regime, there were those from families who had been well off and of high social class, whose families supported them as students in the United Kingdom for many years. Some of these students had claimed asylum only when the family could no longer support them because of the state of the Zimbabwean economy.

26. Ms Harland said that since the end of 2008 she had come across only two Zimbabweans who had taken voluntary return. From figures provided by Mr Walker of UKBA, it appeared that at most 215 asylum seekers had returned voluntarily in any given year. Ms Harland accepted that the Association saw only a disproportionately small number of those asylum seekers who returned voluntarily.

27. Ms Harland referred to the fact-finding mission report. In this, eight returnees had agreed to be interviewed although one later withdrew. The eight "tended to be more from the more recent returnees". The IOM speculated that this could be because those who returned earlier had already received the entirety of their reintegration assistance and had less need for continued liaison with IOM. She inferred from this that the returnees who had agreed to be interviewed had the expectation of receiving funds from IOM. At the event, it was evident to Ms Harland that the IOM was seeking to encourage voluntary returns by presenting accounts from returnees who said that all had gone well.

28. Ms Harland considered the Zimbabwean community to be distrustful of the IOM, regarding the organisation as closely linked to the Home Office, not least because refusal letters advised recipients to approach the IOM for assistance for returning home. Ms Harland regarded it as unrealistic to expect returnees to complain to the IOM in Zimbabwe about adverse treatment by local state or ZANU-PF forces. In 2007, the IOM had provided similar "rosy comments from returnees", which upon inspection appeared to be similar and positive "notwithstanding deteriorating country conditions" (paragraph 16).

29. Ms Harland's statement then turned to the reference to the Zimbabwe Association in the FFM report. The Association was quoted in that report as saying:

> "The forum has not come across any cases of returnees from the UK being mistreated and would expect to know of any such cases because its member organisations are represented across the country. It works closely with the Zimbabwe Association in London and is alerted where there are concerns a returnee might be at risk but has not come across any cases where this has happened. They are unable to say that there have been no such cases but if there had been they would have been isolated examples."

30. Ms Harland regarded this as misleading in that the author, W80, had told her that he had actually been asked whether he would be aware of "systematic ill-treatment" of returnees since the Government of National Unity was established.

31. Ms Harland regarded this inaccuracy in the FFM as unsurprising, since other fact-finding reports had been regularly found not to have explained fully the context of questions; and the interviewee had not been told that he or she was to be represented as stating the views of an organisation, as opposed to their own views.

32. Ms Harland considered people working for NGOs in Zimbabwe as "very busy, harassed and pressurised people, and I was not surprised that they had appeared in previous country guidance hearings to have approved Home Office notes without thinking about how the wording might be misunderstood". She recalled an instance from the AA(2) case where a representative had initially made a statement saying he had no recollection of approving a misleading note made by the Home Office but had been reminded by the Embassy that he had, following which he explained that he had been asked to approve it at choir practice and had "completely forgotten about it but confirmed that he should not have approved it as written".

33. Ms Harland said that there was a "general paranoia" amongst the Zimbabwean Diaspora that information disclosed here, such as to the Zimbabwe Association, would get back to Zimbabwe. It was also generally assumed by informed Zimbabwean opinion that ZANU-PF, the CIO and other security agencies were very effective at achieving infiltration of the Diaspora and put great effort into it.

34. The statement ended by recounting the experience of a UN Special Rapporteur who had travelled to Zimbabwe in 2009 and, despite his UN status, had been lied to by officials, told he would not be let into Zimbabwe and "kept in a small office that looked more like an interrogation room".

35. Ms Harland was asked about paragraph 12 of Mr Walker's supplementary statement. Mr Walker said that the IOM was asked to identify a representative selection of returnees to whom the FFM team could speak. Mr Walker could not assert positively that those to whom they spoke were a fully representative sample of all failed asylum seekers in the United Kingdom. He did, however, believe that their circumstances were not particularly unusual. In this regard, he referred to a 2009 report of The Solidarity and Peace Trust, which stated that "It is only Zimbabwe's elite who make it to the UK".

36. Ms Harland said that this was a common misconception in her experience. A significant number of those who had arrived in the United Kingdom did not fall into this category. For example, some victims of violence had been helped to leave by their employers or churches, or had found an exit via South Africa. Many Zimbabweans worked illegally in South Africa. From time to time there were difficulties in that country for Zimbabweans, such as the outbreaks of xenophobic violence in 2008, which caused people to leave. There was a class divide within the UK Zimbabwean Diaspora. The more articulate members of that group might not need the help of the Zimbabwe Association. The Association assisted destitute people, including those who were no longer eligible for Home Office support. Ms Harland did not know what the total number of Zimbabweans in the United Kingdom was but she felt that the Association came into contact only with a certain proportion of asylum seekers.

37. Ms Harland was asked about paragraph 13 of Mr Walker's supplementary statement. This referred to a survey conducted by UKBA, in which of the 1,058 applications for asylum received during the year, nearly two thirds (627) originated in the large urban areas of Harare, Bulawayo, Mutare, Gweru, Chegutu and Masvingo. The remainder came from smaller towns or rural areas across Zimbabwe. Mr Walker considered it significant that, despite extensive contacts in the Diaspora and Zimbabwe itself, the appellants had not provided evidence of those who had experienced ill-treatment on return or would have encountered conditions that breached Article 3. Ms Harland said that the figures for Harare were not broken down into high density and other areas. Most who lived in high density areas would also have a rural home area, unless they had originated in Malawi. She said it was difficult to say whether those whom the Association helped in the United Kingdom had access to funds in Zimbabwe but the majority that were helped had been driven out and she did not consider that they had significant resources. So far as people without qualifications were concerned, she saw a wide range of skills. Many were vendors, whom she described as extremely ingenious but lacking in qualifications. The most useful thing the United Kingdom could do would be to permit Zimbabweans to become useful, by letting them work.

38. She was asked about paragraph 12 of her statement, where she said that since the end of 2008 she had come across only two Zimbabwean asylum seekers who had taken voluntary return. She acknowledged that there were possibly others with whom the Association had been involved who did not tell her that they were returning. Most effected what she described as a "quiet return". This had to do with the huge fear of infiltration by ZANU-PF and CIO elements. One of the two voluntary returnees was later murdered. He had, however, returned to Zimbabwe from South Africa, rather than the United Kingdom. This fear extended to the British Embassy in Zimbabwe. There was a reluctance to go to the Embassy in Harare because one might be seen by people watching the premises; or local staff might be ZANU-PF informants. The same fear applied to the Home Office and Zimbabwean interpreters operating in the United Kingdom.

39. So far as the IOM's fear of not having its contract renewed was concerned, Ms Harland said that she had spoken to two sources about this. One of them stood by what had been said to her; the other, however, had reverted to the content of the official minutes, which said that the matter was merely whether the IOM should be invited to quarterly meetings of a Diaspora focus group, until it was clear what the future of the IOM might be. A senior IOM source, however, had confirmed that there was a fear regarding funding in the general context.

40. Ms Harland did not know what proportion of the Zimbabwean Diaspora supported the MDC.

41. Cross-examined, Ms Harland said that she saw the more disadvantaged members of the Diaspora but she did help small numbers of higher level people. So far as IOM funding was concerned, she was reliant on her two sources. She had also seen the minutes of the meeting, which made no reference to any disappointment being expressed regarding IOM, on the part of UKBA. The returnee who was murdered had not ever been in the United Kingdom, so far as Ms Harland was aware. She understood that he had been an activist. Ms Harland had not had any dealings with the seven returnees who were interviewed in the FFM report. She noted, however, with interest that none of these had told anyone in Zimbabwe that they had claimed asylum in the United Kingdom. Ms Harland was asked whether, although the IOM did not have a protection mandate, it was reasonable to assume that if returnees receiving IOM assistance had encountered difficulties in re-establishing in Zimbabwe during the timescale with which IOM was concerned, this would have come to the attention of IOM. Ms Harland said she was unsure of this. She could not speculate.

W66

42. A country expert gave evidence. He was identified as W66 in RN and we shall refer to him by that description. He adopted his statement (in the form of a report) at AB"A" tab 2, page 20. He said that his expertise and experience were summarised at annex A of the report. He was still a director of the office of the named NGO in Zimbabwe.

43. In his report, W66 indicated that his understanding was that the respondent considered the test set out in RN, whereby it would be unsafe to return those who could not demonstrate loyalty to the regime, as being too low and that it would be safe to return anyone who did not have some kind of clear anti-ZANU-PF profile. W66 agreed that there had been developments in Zimbabwe since around two years ago, as a consequence of the General Political Agreement. He did not, however, believe that these developments had reduced the risk facing returnees to the extent that justified a change to the current approach. In this regard he agreed with the reports of W77, W78, Professor Ranger and Mr Reeler.

44. The Catholic Commission for Justice and Peace (CCJP) and Mr Reeler of the Research and Advocacy Unit (RAU) saw an increase in serious violence as being an almost inevitable consequence of Zimbabwe's moving towards an election in 2011. W66 agreed. ZANU-PF had no intention of losing power and would do everything, including using extreme violence where necessary, to "win elections". An election in 2011 accordingly promised to be as violent as that in 2008. The GPA had not significantly altered things to the extent that Zimbabwe could be said to have turned the corner. ZANU-PF still held all the effective cards and was bent on using violence to keep it that way.

45. W66 turned to the respondent's FFM report. It seemed to the witness that the executive summary had attempted to put a positive "spin" on matters. W66 considered a more accurate summary of the political environment would be along the following lines:-

> "Although there has been some opening-up of the political space since the GPA (or formation of the GNU) this has been spasmodic and is of quite limited significance given the continued serious intimidation and violence perpetrated by the ruling party; the current government coalition has to a great extent been a failure (apart from the dollarization of the economy which in turn has given rise to other problems for the vast majority); there are grave fears that the violence will quite rapidly escalate and intensify as the expected 2011 election approaches – indeed, it has already begun to do so and key commentators see much more violence as almost inevitable given ZANU-PF's track record and determination to stay in power at any cost."

46. As for the argument that the executive summary was irrelevant and what was important was what the NGOs had said to the FFM team, W66 had difficulties with this also. The effect of the FFM report in his view was to water down the most worrying aspects of the current position and the expected widespread and serious violence which was likely to come, by "submerging" the views of the most credible human rights voices within a broader range of NGOs, not all of which should be on a par with one another. In this regard, W66 considered the analyses of CCJP and RAU to be worthy of careful consideration. He questioned, however, whether the same could be said of the anonymous organisations and also the Bulawayo Progressive Residents Association and Radio Dialogue, which he did not consider should be given equal weight with that of CCJP and the RAU. First, the key human rights organisations that the United Kingdom courts had looked to in the past continued to be the most valuable source of credible information and their views should be carefully considered. Their views, together with those of Professor Ranger and W77, painted a bleaker picture than that projected by the respondent.

47. Turning to the respondent's OGN, W66 noted this referred to selective aspects of the FFM report and he was therefore also sceptical as to how useful the OGN was. W66 had been asked in particular to comment on the broad suggestion of the respondent, that whilst the political climate in rural areas would be clearly dangerous for those perceived to be non ZANU-PF supporters, this did not apply to the same extent to the main urban centres. W66 regarded the OGN as fundamentally flawed in this view, in that it painted an altogether unrealistic picture of the reality of life in Zimbabwe. To begin with, the vast majority of Zimbabweans had strong rural links and indeed referred to their rural homes as "home" which is where in the normal course of events they would seek to return if, as likely, they were returning to the country without realistic prospects of employment or a place to live. The rural areas would be where one had family and some prospects of support; however, as it was accepted that this would be dangerous for them to do, the alternative suggestion was that they should go to the cities where the political climate was "safer". This, however, ignored the obvious issues that would follow; namely, how would the person concerned survive?

48. Inflation had stabilised since dollarisation and more food and other essentials were available in urban shops. The unemployment position, however, had not improved at all. A returnee would need to be housed, fed and supported by friends and relatives who themselves would be living a subsistence existence. For the majority, the availability of goods in supermarkets did not mean availability for them. Survival in urban centres for returnees

was, accordingly, very problematic, irrespective of the political climate. Shona speakers would also find it hard to relocate to Bulawayo, for language reasons.

49. In any event, W66 regarded the political climate in the urban areas as being far from stable. Mbare in Harare and Chitungwiza, nearby, had seen and were likely to see more violence as the election approached. The same could be said for Bulawayo and other urban centres. Whether the violence would not be as bad as was likely to occur in rural areas was not the essential point. More recently than the FFM report's findings, reports in the press had indicated that the human rights situation was deteriorating.

50. W66 said that he was aware that the Secretary of State had announced the previous week the end of the suspension of enforced returns to Zimbabwe. A mention was made by the Secretary of State of positive statements by Morgan Tsvangirai and to improvements in circumstances in Zimbabwe. Mr Henderson asked whether W66 was aware that Mr Tsvangirai continued to make positive public statements about the improving situation. He replied that he was not. He was aware of positive comments made last year but not that Mr Tsvangirai had repeated them. In the previous week, Mr Tsvangirai had made a strong statement regarding problems with the present arrangements in Zimbabwe and appeared almost to have given an ultimatum that things had gone too far.

51. At AB"C" page 8 was a statement dated 7th October 2010. Mr Tsvangirai had called on the EU to refuse to accept some recent moves by President Mugabe. Judges and ambassadors had been appointed in breach of the power sharing agreement. W66 said that Mr Tsvangirai seemed to be saying that things were bad. This was the latest reflection of the MDC leader's view of the current impasse. W66 had referred to it at the end of his statement at paragraph 20, where he had said that the statement by Mr Tsvangirai seemed likely to significantly increase political tension in Zimbabwe. So far as a statement from the Foreign & Commonwealth Office ("FCO") was concerned, he was not aware that enforced returns of failed asylum seekers might destabilise the government in Zimbabwe. W66 said that he could not see how a decision on returns would destabilise the position. Things seemed to be hotting up day-by-day. W66 had seen a Reuters report dated 15th October 2010 in which President Mugabe seemed to be putting pressure on the Constitutional Outreach Programme and to be preparing for elections next year. The Reuters report appeared at RB"C" at page 282. W66 said that the timing was significant. President Mugabe's reaction came about a week after the Prime Minister's statement. He understood this to be Mr Mugabe's response. The President had said that he could not see why the power sharing agreement should last more than four months. There should then be a referendum on the constitution with elections to follow.

52. In his report, W66 had said that the elections would be likely in 2011. Mr Henderson asked why he had formed that view. He replied that unless he had misread what organisations in Zimbabwe were saying, there was a feeling that elections would be sooner rather than later. He had no "inside track" knowledge. Another indication was the resurgence of violence recently, interpreted internally as reflecting the likelihood of an early election. There had been a lull after the violence in 2008 and in early 2009 but things now seemed to be degenerating again. There was an indication that ZANU-PF were girding their loins for an election. W66 said that he believed that all this was linked to the constitutional process. This in turn could not be separated from the electoral process.

53. W66 said that it was difficult to say when precisely things began to degenerate. In his report he relied upon W77's and Professor Ranger's analysis. The power sharing agreement was signed in September 2008. It was a terrible year. The new government took power in February 2009 and there was a sense of hope and relief which lasted for several months. It was probably from the middle or the end of 2009 that things began to emerge showing that the hope that the MDC could effectively wield power and wrest significant control from ZANU-PF was not well-founded. The trial of Roy Bennett showed that the MDC did not have control of the process. The impression W66 had this year was that there were serious indications of violence around the constitutional process. A statement by a human rights lawyer (Tetito) referred to things never being as bad as they were now. W66 said that he was speaking about the general human rights position. The rule of law, freedom of expression and the chance of the police prosecuting law breakers were all in issue. It was not only about people being physically assaulted. He would not like to give the impression that people were being battered to the same extent as in 2008. The "A Place in the Sun" report included a conclusion that things were as bad as they had ever been.

54. W66 said that the constitutional process and outreach programme had begun. He was really talking about the current year in terms of a deterioration. He had not been back to Zimbabwe since mid 2009. Representatives from civil society had reported an increase in political violence. W80 had made a report on 18th October 2010. His statement appeared in AB"A". W66 said that in the two months since the Fact-Finding Mission Report had been published there had been more reports of violence in Zimbabwe.

55. Mr Henderson asked whether W66 agreed that there were countervailing pressures that would restrain violence once an election was called, as the Secretary of State contended. He replied that ZANU-PF had not changed.

Neither had President Mugabe. The balance of forces in the country was not dissimilar to that in 2008. Police, military and intelligence services were still controlled by ZANU-PF. Things were not exactly the same as in 2008 and one could not predict whether they would be as bad in the future. His opinion was that ZANU-PF would not hesitate for a second in unleashing whatever they felt was required to stay in power. They did not care about SADC, the UN or the EU. If there was a chance that ZANU-PF would be voted out democratically, they would fight tooth and nail to retain power.

56. W66 said that the March 2008 elections had actually been quite peaceful. There was a backlash when ZANU-PF lost. They were now preparing their forces, the youth militia and the military to win the forthcoming elections in spite of having no great popularity. The electoral process should be viewed as combined or consolidated, consisting of parliamentary and presidential elections.

57. Mr Henderson asked about the part of the Fact-Finding Mission Report dealing with the views of organisations in Zimbabwe. The Bulawayo agenda and the Bulawayo Progressive Residents Association responses appeared at pages 92 and 94 of the report. How would W66 compare these organisations and their views to those of others, including Mr Reeler? W66 replied that he would not change what he put in his report. He had read the Fact-Finding Mission report before making his own. He had drawn attention to ethnic tensions should Shona move to Bulawayo and to difficulties arising because of differences in language. He said that he did not know the two organisations particularly well. He had seen reports from them from time-to-time. He would himself tend to look at more established human rights organisations for a helpful analysis of the position in Bulawayo. It was not just that the two organisations were relatively new; he was not aware that they had the same research capacity as others. So far as the reference to an influx of Shona was concerned, W66 said that he was not sure what the author of the report was saying. If he was saying that the traditional ethnic mix had been diluted over the years, he was sure that this was true. It was difficult to know the period of time being considered. Although there was no legal barrier to relocation by Shona to Bulawayo, it would be difficult for a person if, as a Shona, he or she could not pass himself or herself off as Ndebele. The obvious port of call for a Shona person was Harare and not Bulawayo. The first port for an Ndebele person was Bulawayo. If a Shona went to that city, he or she would be in a weaker position than a native of the city.

58. Mr Henderson asked whether W66 was aware that there had been an influx of Shona people to Bulawayo. He replied that he had no knowledge of that. If someone had said that such an influx had occurred, he would not wish to dispute the claim but he would be surprised to hear it.

59. So far as the statement of W80 was concerned, at AB"A", tab 2, page 30, he would agree with what appeared in the statement, particularly at paragraph 8. Here, W80, whilst accepting that Matabeleland had experienced comparatively less violence than other areas, added "No area can be regarded as safe in the run-up to the election. A Shona person, without family support in Matabeleland, would face very serious problems in terms of ethnic differences and language and being accepted."

60. We asked W66 to comment on the claim made by W80 that a person would face very serious problems in Bulawayo in terms of ethnic differences. W66 replied that it depended to some extent on a person's class. A poor Shona person finding himself in a high density suburb of Bulawayo would find it difficult to survive. It would be very hard to find somewhere to live or to purchase essential goods. Even if a person were not targeted by reason of his or her ethnicity, he would be very isolated. It would be almost like arriving in a foreign country without support. Services had collapsed.

61. In cross-examination, Ms Grey asked W66 to comment on the authoritativeness of the organisations consulted in the Fact-Finding Mission. W66 said that Zimbabwe Rights was a good source of evidence. It had been in existence since the 1980s and a was a member of the Forum. It was a credible organisation. Organisation A, one of the anonymous sources, was known to him and he would describe it as a very credible source. The Research and Advocacy Unit was also a credible source. Mr Reeler was involved with it. GALZ was also a member of the Forum and a credible source. A key activist had passed away in the last year and he was not aware of the current dynamics. The Zimbabwe Association of Doctors for Human Rights was an organisation set up after W66 left the country in 2002. It too was a member of the Forum and he knew some of the members. He believed that it was a credible source. They made an attempt to capture the views of health workers in Zimbabwe.

62. So far as Zimbabwe Lawyers for Human Rights was concerned, W66 described it as a very serious organisation. Those involved tried to build a culture of respect for human rights and to respond to abuses. They focused on the most arduous breaches of human rights and tried to defend people brought before the courts. So far as the Counselling Services Unit was concerned, he had great respect for the organisation in what they were trying to do. They provided help and counselling to those who were tortured or physically assaulted. He knew a leading doctor involved. He believed that she was not so astute at political analysis. They had frontline knowledge

concerning the victims of abuse but analysing or drawing conclusions was something he would be less confident that they could do. The organisation was not a member of the Forum. He did not know the extent of the presence the organisation had outside Harare. Organisation B (at page 81) was an international organisation. W66 said that he did not know much about their involvement but would describe the source as credible. Their focus was a humanitarian one. The Forum appeared at page 88 of the bundle (at page 87 of the Fact-Finding Mission Report). W66 said that the Forum was a coalition but had its own secretariat, lawyers and employees. He agreed with W80's analysis. The CCJPZ was an organisation he had huge respect for. The leadership had changed from time-to-time. The CCJPZ was a member of the Forum.

63. The next two, Bulawayo Agenda and the Bulawayo Progressive Residents Association were organisations he knew little of but his impression was that they came into being recently. The Commercial Farmers Union, at page 99 of the Fact-Finding Mission Report, was not a human rights body. They used to be concerned with white commercial farmers. The membership was now probably 10% of what it was. The farmers had been driven out. He did not know what their current role was. So far as Radio Dialogue was concerned, he did not know much about them but had probably read some of their reports.

64. Ms Grey asked whether the list of bodies represented a serious effort to engage the views of NGOs and independent voices. W66 said that he would agree but others might also have been approached. Ms Grey asked whether other major human rights organisations had been missed out and he replied that he did not think so. It might have been interesting to get the views of trade unions or farm workers.

65. W66's evidence in RN, including evidence on the scale of violence in Zimbabwe, appeared at page 16 of the determination in that case (which appeared in the authorities bundle 1, tab 1 at page 16). Ms Grey asked how W66 would say that the picture on the ground had changed since then. He replied that although an election appeared to be on the horizon, it had not been officially set. The facts were very different, compared with 2008. In his report, he had described the gist of things. There were numerous indications that an election was coming. Zimbabwe's history indicated that this would be a violent event. On the ground now, it would be wrong to suggest that things were as bad as they were in 2008. Ms Grey asked whether he would agree that if there was violence, it was smaller in scale. W66 said that this was so. People would say that things might come back or even get worse. Between the two elections in 2008, there was an attack on the population and an orgy of violence, as he had described in his statement. Zimbabwe was not currently in the same position, yet. He did not want to suggest that he had more knowledge than organisations on the ground but his impression was that some on the ground were concerned at what was coming. There were worrying developments. However, the numbers attacked were not the same.

66. Ms Grey asked whether W66 would agree that there were differences between the regions. He replied that he would not disagree. The rural areas were more dangerous. He also agreed (in answer to questions from the Tribunal) that some rural areas were more dangerous than other rural areas. He said that he had no reason to dispute that in Matabeleland, in the western part, there was not the same level of threat. This territory was lost to ZANU-PF. He said that there might be other reasons for political violence there. ZAPU was resurgent and there were the MDC factions. People might be targeted as those perceived not to support ZANU-PF. The risks still existed and would increase as the country moved towards elections. A person would be at less risk if not politically active.

67. Ms Grey asked whether there might be a distinction, in relation to a person moving to a city in Zimbabwe, between those going home to urban areas where they might have family and other links and those who might relocate to Harare from rural areas. W66 replied that this was simplistic in the Zimbabwean context. Even most urbanised black Zimbabweans had links to rural areas. If someone lived in a high density suburb of Harare such as Mbare, having left the United Kingdom and returned, he or she might choose Mbare if back-up was available there. If there was none, such a person would head for his rural home. He might face danger there, having been absent for a substantial time. A person with support would be in a different position from someone without.

68. W66 said that it was reasonable to suggest that there would need to be an individual assessment of a returnee and consideration of the sources of help available in the area he would return to. Ms Grey asked abut the difficulties that might be faced by a returnee to Harare with a professional background but no family back-up there. W66 said in reply that people of whatever class who found themselves in a high density suburb would find it very difficult without support and things would be worse as the election approached. If people could live in a low density suburb, they would have less of a problem.

69. In paragraph 16 of his report, W66 focused on economic barriers to return. He was trying to deal with the position before 2009 when there was hyperinflation. Things had changed with dollarisation of the economy. Some might say that things had become better but for the vast majority in the country, this was not so. He agreed

that the informal economic sector was expanding and it might be possible for someone to establish themselves there. He had read a synopsis of the report on this sector which appeared at RB C, tab 7, page 158. That report did not lead W66 to modify his view that returnees would be able to survive economically in urban areas. Some might fall within the sector. If a person were young and dynamic this would be possible. It depended on the circumstances of the individual. A returnee trained as a teacher, in circumstances where there was a shortage of teachers, might get employment and be paid in dollars, so as to secure accommodation. A person with no skills and no family back-up or housing might find it difficult to break into economic self-activity to survive, without support from someone outside Zimbabwe. In paragraphs 16 and 17 of his report, he had focused on people without support. Those at the higher end of risk were literally living hand to mouth, day by day. Ms Grey asked how that would put them at risk from political violence. W66 replied that in high density suburbs, the indications were that political violence was increasing. People might be caught up in it as the elections approached. The MDC remained dominant in the high density suburbs in Harare but ZANU-PF had not abandoned those suburbs. They might be active there if only to try to stop people from voting, to secure a low turnout in the polls. A returnee vulnerable for economic reasons would be at risk at the best of times. He would have fewer means to avoid trouble when it came. By and large, recent violence was focused on the Constitutional Outreach Programme. W66 would not, however, want to suggest that there was no other violence but this was a focus.

70. So far as a distinction between Bulawayo and Harare was concerned, W66 had no reason to doubt the account at page 7 of tab 1 of RB "C", regarding Chitwungwiza. W66 said that this reflected paragraph 17 of his report. He had not looked at the detailed reports of political violence and was not aware directly of such violence in Bulawayo.

71. The Outreach events which formed part of the COPAC process were the flashpoints where people were attacked. Those events could not be separated out. The violence was interconnected. W66 said that he was sure that it was right that those who attended the events and had a political profile were at a higher risk than those whose profile was low. Those closer to the frontline of politics were more at risk. Those who avoided the events were not free from risk. They might just be in the wrong place at the wrong time.

72. Ms Grey asked whether W66 would agree that circumstances now were not the equivalent of those in RN, where anyone might be caught up at roadblocks and required to demonstrate loyalty to ZANU-PF. W66 said that things were not as bad now. The position was different. He would defer to others in relation to flashpoints where an ordinary, uncommitted individual might be caught up in a need to show support.

73. Ms Grey asked about paragraph 19 of W66's report, where he considered an article regarding the CIO training ZEC officials. This concerned a training course. The article was dated 7th October 2010. Some of those participating were told to switch off their mobile telephones. Ms Grey suggested that this was not a sinister requirement. W66 said in response that in paragraph 19 he was trying to give a snapshot of events over the last few days. He was trying to put a question mark over the electoral process. W77 might refer to the event in more detail. He said that it was correct that the new head of the ZEC was a judge from the Supreme Court in Namibia and a respected person. He agreed that this was one difference between circumstances now and those in 2008. The article was published in the Zimbabwean which was a newspaper widely circulated in the country now.

74. So far as the elections were concerned, there was much speculation regarding their timing. This appeared to be based on cumulative indications that they would be held sooner rather than later. Mugabe had made a recent statement that they would occur after February next year. W66 did not know whether this was simply posturing on his part. The NGOs appeared to be expecting elections next year. Ms Grey asked whether this might be set against concerns expressed by the head of the ZEC regarding work required to be done before the elections, in relation to finances and the electoral role. W66 responded that this would be to look at it in a rational way. Things were not rational in Zimbabwe. The ZANU-PF felt that they had their best chance next year, they would call the elections. The ZEC did not matter. People were expecting an election. His view was that SADC and others would have no real influence in securing a fair outcome. He accepted that this was a matter of speculation on his part but it was based on the history of Zimbabwe over the last ten years. There appeared to be no principled or pragmatic policy from South Africa. When President Zuma came to power, there was a feeling that he would encourage a more democratic approach in Zimbabwe. Morgan Tsvangirai called repeatedly on President Zuma to help get Mugabe to abide by the agreement they had but without success. W66 said that he did not see things changing in the future in this regard. He did not recall the Prime Minister saying that he would not participate in elections if this would risk violence as in 2008 (as appeared at AB "C", tab 1, page 8). If the MDC took a decision to pull out of elections, this would lead to more complications. On the other hand, the presidential election run-off had gone ahead in 2008, without participation by Morgan Tsvangirai. If the Prime Minister could achieve free and fair elections, no doubt he would but the reality was that the MDC was very

weak and had little room to dictate developments. The Prime Minister had popular support but did not control the state machinery. W66 doubted that he could give effect to his pledges.

75. In re-examination, W66 said that he agreed with the analysis made by W80 in paragraph 4 of the statement he had made, at page 30 of tab 2 of AB "A". He also agreed with the analysis made by Mr Machiso from the Zimbabwe Rights Organisation on page 11, at paragraph 11 of his statement. W66 agreed that Mr Mavlinga from the Crisis in Zimbabwe coalition was a credible source. He also agreed with Mr Reeler's second statement at paragraph 11, page 16 of the same tab. He also agreed that the RAU was better able to provide a political analysis than the CSU. He had no reason to disbelieve what appeared in Mr Reeler's statement although he could not comment directly on the contents.

W77

76. The expert witness referred to here as W77 has worked on Zimbabwean issues since 1990. He adopted the witness statement which appeared at AB "A", tab 1 page 26 and the note he had prepared at tab 2 of the same bundle, page 28.

77. W77's report relied upon published reports of a number of organisations, together with his own contacts, both in the United Kingdom and in Zimbabwe. W77's most recent visit to Zimbabwe was in October and November of 2009. He considered that there had been a "silent military coup" under the control of the Joint Operations Command (JOC), following the signing of the Global Political Agreement (GPA). The political environment was "rocky" and the economy had only partially restabilised. The humanitarian situation was "precarious". The GPA had provided an opportunity for ZANU-PF to maintain its repressive, kleptocratic and economically bankrupt rule (paragraph 8). The Southern Africa Development Community (SADC), as guarantor of the GPA, had made efforts to improve the position. However, despite 16 of the GPA outstanding 27 issues having been agreed, none of these was at the core of the power sharing dispute. Although the MDC controlled finance and spending ministries, it could not win control of the police. Tsvangirai was scheduled to be a member of the Mugabe-chaired National Security Council, which was supposed to replace the JOC, but the Security Council looked likely still to be composed of senior army and police officers, who had sworn that they would not recognise a Tsvangirai-led government. The Council had in any event only met once or twice. There continued to be violence, farm invasions and human rights abuses, including in the Marange/Chiadzwa diamond fields (paragraph 14). The MDC, under pressure from ZANU-PF and its own desire to turn around Zimbabwe, had moved from being prepared to compromise on most issues to keep the IG afloat to a more critical stance, but without being able to inform its base or society on its basic thinking. Without movement on security sector reform, the ZANU-PF grip was unlikely to slacken. Although ZANU-PF had lost some of its power, it now, through the use of diamonds, had an increased ability to pay and feed its client network.

78. However, so far as political support was concerned, according to a CIO contact of a human rights activist, ZANU-PF was down to its "bare bones", a matter to some extent corroborated by polling organisations. The majority of the population appeared to credit MDC with turning round the economy and saw that the former sole ruling party had little to offer (paragraph 21). ZANU-PF would need a high level of violence to win an election; but such high levels of violence could lead to either/or SADC rejecting it and MDC refusing to participate. "ZANU may be more in turmoil than MDC, for some not so much over political differences but more between those more disposed towards political violence to solve problems and those who see the dangers. We could yet see, according to another church activist, the factions becoming kind of 'pre-warlordism' – i.e. a situation beginning to develop into the chaos of Somalia" (paragraph 21).

79. Life expectancy in Zimbabwe had dropped from 61 years in 1990 to 34 for women and 37 for men in 2006 and may now be even lower. 85% unemployment in the formal sector had driven tens of thousands of professionals to leave the country to find work abroad, millions of less-skilled others into the southern African region and Europe (paragraph 22). Before dollarisation, hyperinflation had reached over 231 million% or, according to another estimate, 89.7 sextillion% (paragraph 23). The MDC-T's Minister of Finance had dollarised (or in the Bulawayo area "randised") the economy and there were now goods in the shops although these were 100% imported from South Africa and very overpriced. Employment was "creeping up". Certain factories are either opening up or if they survived through the crisis were scaling up. This improvement in livelihoods in the urban areas was, however, very partial and largely restricted to those with access to dollars or rands (paragraph 24). Those who had previously worked in the informal sector had seen their situation worsen and a small rise in employment would certainly not capture their labour power and is not necessarily going to last. Things were worse in the rural areas, where those without access to dollars were worse off. The rural poor were more or less out of the mainstream economy, being dependent on harvesting, trading and survival. After a better harvest last year, there would be a decline in 2010, leading to estimates that around 1.7 million people would be in need of food aid.

80. Western diplomats in Harare had pointed out that development aid hinged on economic and political reform but donors were too familiar with the long history of Mugabe reneging on agreements. Major funding would not occur until there was a political will and an ability to break decisively from disastrous previous policies. The United States and Britain, Zimbabwe's biggest aid donors, were reported to be unhappy that Mugabe had reappointed Gideon Gono as Head of the Central Bank. Apart from the Chinese, the international community was not going to provide significant aid and support until there was a demonstrated return to the rule of law (paragraph 29).

81. Given the problems ZANU-PF was facing, it was not surprising, in W77's view, that its response was militaristic. Despite its supposed disbandment, there was no evidence that the JOC had any intention of abandoning its strategies of maintaining its power. Its main focus would be on winning elections with the youth militia ("green bombers") being mobilised under the control of the senior military as the shock troops for a ZANU-PF victory. Given that ZANU-PF had more or less destroyed the education system, it now had available a pliable youth (paragraph 33).

82. Zimbabwe had a high level of violence and patriarchal attitudes were extremely harsh on women. 40,000 girls were raped annually before they turned 17, according to the Girl Child Network. Rape was also reported to be used as a political weapon. It was abundantly clear that there would continue to be great difficulties for the MDC-T in ensuring that the Ministry of Home Affairs, the police, army and CIO could be brought under the effective control of all parties (paragraph 35).

83. Although there had been a period of quiet immediately after the GPA and a swearing into office of the IG, ZANU-PF now felt more in charge and violence and violent rhetoric were on the increase. Mugabe retained control of the military and intelligence forces and the whole system of governance ("organised chaos"). Faced with the refusal of the west to remove sanctions, Mugabe and his followers had throughout 2010 upped the "anti-imperialist" rhetoric (paragraph 36).

84. W77 considered that the problems he had described meant that it was very early days to be reassessing the likely impact for returning failed asylum seekers (paragraph 45). Nothing suggested that the bureaucracy, military police and militia would quickly change their trademark modus operandi (paragraph 45).

85. Zimbabwe's police state was vindictive and vicious; but it was also inefficient, porous, distorted by personal loyalties and corruption, with divided loyalties (paragraph 46). Accordingly, its efficiency was limited. It was estimated that more than 20,000 former police and army staff, from rank and file to very senior levels, had left Zimbabwe since 2000.

86. Anyone who had been in the United Kingdom for a number of years would be viewed with some suspicion by nationalist elements. These would essentially see any opposition to the regime as part of the "regime change" agenda of the British and USA governments. Little protection could accordingly be expected from the authorities. Militias and soldiers continued to be deployed against the population and there was nothing to indicate that forthcoming election would be any different from that in 2008. Although Mugabe had to take a view at some point as to how much he would have to listen to SADC concerns, the fact that SADC or AU peacekeeping forces have already been ruled out, despite demands for them from elements in MDC and civil society, it meant Mugabe was likely to believe he would not face ultimate changes (paragraph 48). Violence against actual and presumed opposition supporters continued. Such violence was perpetrated by informal state structures and youth militias. This was attested in many reports available from the London/International Office of the Zimbabwe Human Rights Forum. ZANU-PF youth militia were under the control of the security forces and were used by them to infiltrate the MDC and other opposition elements (paragraph 53). Although the state had been in severe economic decline for years, it had always found resources to fund its system of repression and rewarding its supporters, often by printing money and now through the use of diamonds. Brief and very localised incidents of reconciliation appeared to have ceased as ZANU-PF had attempted to reassert its hegemony over previously loyal areas. There might be greater intimidation and ill-treatment in rural areas but the nature of ZANU-PF violence, either random or selective, was such that few areas were "completely safe" (paragraph 54). In rural areas the authorities/local chief structures were keen to know who was in their areas. Local government structures had either been bent to ruling party purposes or under their control to begin with. This included chiefs who were paid members of the party/state apparatus and who reported any suspicions they had on local residents and newly arrived people to the authorities, including the CIO (paragraph 56). Returnees to urban areas, especially if there was no family or other support, would find it next to impossible to sustain themselves. Risks of relocating were likely to increase as the election approached (paragraph 55). "All of the above meant that there would be a risk of ill-treatment for returnees for not supporting ZANU-PF, for having been out of the

country for some time and for those having been associated with the opposition and/or an NGO. If taken together, these seem to indicate a cumulative risk." (sic)

87. A Harare based activist considered that teaching was still a very high tension and risk sector "especially in the times of the constitution outreach and debate process – and the prospective outreach about healing and justice – where teachers, potentially literate community advisers and leaders, are being seen as a threat, again" (paragraph 61).

88. 2011 was likely to be an election year, with even the Zimbabwe Electoral Commission believing it was not possible to provide the necessary structures for a free and fair poll. There were reports of ZANU-PF gearing up for intimidation in both constitutional and electoral terms, with the expectation that violence would be particularly directed at areas that abandoned ZANU-PF in 2008. ZANU-PF's capacity and willingness to use violence did not appear to have abated "although intimidation and some violence rather than systemic violence were the current characteristics" (paragraph 62).

89. At paragraph 63, W77 provided a "balance sheet". Amongst the factors noted were the stabilisation of the economy, a constitutional reform process having begun with meetings around the country (but with reports of the youth militia being used to control/divert the process); the return of the BBC to Zimbabwe, but with no indication from ZANU-PF that they had any real intention of changing behaviour or policy and increasing hate speech in the state controlled media; ambiguous acknowledgements that torture and abduction may have taken place, whilst defending this on the grounds of it being a battle against "neo-colonialism"; reports of continued repression, abductions and refusals to free political detainees; high food insecurity; continuing farm invasions; continuing use of the youth militia to attack suspected opposition figures and supporters, those speaking out at constitutional outreach meetings (or even attending them); every indication that violence such as that seen in 2008's election periods would recur; … for regional or continental pressure to ensure that GPA commitments were honoured; and police still arresting and beating up demonstrators and opponents of ZANU-PF.

90. In W77's short further report of 11 October 2010, he gave a brief description of Zimbabwean civil society. There was a wide range of groups within Zimbabwe that fell within civil society, with different interests and variations in expertise and methodology. Comments from civil society could be misinterpreted as often contrary to western notions. There was a degree of acceptance of violence, intimidation and political interference, as being normal. Also, W77 said that a phrase that seemed expressed with caution could be hiding a good deal more. It was debatable whether this stemmed from Shona culture, often deemed to be somewhat passive, or from the experience of self-censoring after a decade of violence. W77 identified the Research and Advocacy Unit as authoritative in terms of human rights monitoring and analysis. It was the successor to the Amani Trust, which came under regime scrutiny in the early 21st century, with the result that Tony Reeler was forced to flee the country. The Amani Trust separated into an organisation treating victims and counselling them, as a Counselling Services Unit and a Research and Advocacy Unit. The Counselling Services Unit was not geared to information collecting and analysis. W77 also considered the CCJPZ as having recovered its purpose and being instrumental in providing information from areas to which other organisations were unable to gain access, given that their structures went down to parish level throughout the country.

91. He said that he had read the reports prepared by Professor Ranger and W66, and had heard W66's oral evidence. He did not take issue with anything he had heard or read regarding the current position in Zimbabwe. W77 said that he is the chair of Zimbabwe EU Network. This network is both church based and secular and lobbies on behalf of the Zimbabwean civil society, particularly in the European Community. Irish and British organisations are part of it, as are French and Belgian NGOs. It spreads across the European Union. The National Reference Group mentioned at paragraph 5 of his statement is the counterpart in Zimbabwe. Members of this group include Crisis Coalition Zimbabwe, the Zimbabwe Lawyers for Human Rights Group and trade unions in Zimbabwe. A contact in the FCO, a desk officer, was in broad agreement with the views W77 expressed in his statement. President Mugabe had ordered Tendai Biti to set aside money for an election and a referendum next year. W77 doubted that the funds were available but did not think that this would be an obstacle to calling the election. If Mugabe wanted this to happen, it probably would. He had available an alternative source of revenue in the form of diamonds. W77 said that he had seen the statement made by Dewa Mavhinga and agreed with what was in it. He was surprised that the Crisis Office had not been approached by the respondent for its view. He had also read Mr Reeler's two statements and strongly agreed with what was in them. He and his unit were an authoritative source. He also agreed with what Mr Reeler had said in his second statement about the CSU. This did not exist to do the same job as the RAU. That was why the Amani Trust had split. He did not disagree with anything Mr Reeler had said.

92. W77 said, in relation to the statements from the CCJPZ, that W78 had been optimistic in his first statement. So far as the Fact-Finding Mission report was concerned, W77 was aware of the sources and organisations consulted.

Radio Dialogue had been set up a few years ago by Father Nigel Johnson. They worked with young people and were involved with community outreach. They were unable to get a broadcasting licence and were on air for perhaps a couple of hours a day. Bulawayo Agenda was a local organisation that promoted dialogue. It played a role in a southern consortium of NGOs. The organisation was thought to have an authoritarian style of leadership. The Bulawayo Progressive Residents Association was new. It took part in demonstrations when allowed to. It was a citizens group, not a monitoring group. Members were young activists concerned with community issues. Neither was seen as research oriented. The people involved would tend to be youngish, well educated and middle class with some university education.

93. Mr Henderson asked about the mention made by the interviewee from the Bulawayo Progressive Residents Association regarding an influx of Shona to Bulawayo. W77 said that people moved around. Perhaps Shona people moved to Bulawayo on occasion but nothing in particular on this had passed his desk. Those who were educated and literate and able to move and had no problems speaking or communicating with fellow Zimbabweans might move there. They might be English speaking and liberal or progressive types. Shona and Ndebele were very different languages. The two ethnic groups had an antagonism historically and little in common in terms of language or culture.

94. In cross-examination by Ms Grey, W77 said that he largely agreed with W66 in relation to the reliability of the contributors to the Fact-Finding Mission. He was aware that Bulawayo Agenda had calved off other organisations. They had a broader reach than Bulawayo itself. He agreed that it was not unreasonable to make contact with the two Bulawayo groups. They might provide raw information or anecdotal evidence. Ms Grey asked whether the view expressed in paragraph 5 of W77's first statement, regarding the shutting down of political space, was an over-generalisation of what had happened, including in relation to political space at a local level. He replied that attempts to open up space had been largely stymied by ZANU-PF structures. These included the local chiefs and the youth militia, and it did not strike him that the space had ever been that large. There was intimidation, the establishment of militia bases and control at the top. There had been attempts by churches and NGOs to engage with the COPAC process. Participants were viewed with suspicion in some areas controlled by ZANU-PF. So far as Matabeleland was concerned, ZANU-PF might increase tension to remind the Ndebele people on occasions that they still had a presence. So far as a distinction between Matabeleland and Manicaland was concerned, he would seek to balance this with his second statement. In Harare, there might be some space amongst the NGO community to organise and attend meetings. Bulawayo had a more tolerant feel to it but there might still be threats from the police, implementing the POSA.

95. Ms Grey asked about the Outreach Report in RB "C" and the contrast which appeared between Harare and Bulawayo, at pages 6 and 10, for example. W77 agreed that this showed that meetings went better in Bulawayo. He accepted that there were differences between areas and a distinction between rural and urban areas, where chiefs and headmen had a particular role in the former. In urban areas, there were local government structures and the police force. W77 said that the MDC controlled local structures in Harare, although they had not been in power in the past. When the MDC moved into local councils, ZANU-PF responded by abolishing those councils and seeking to establish commissions. The MDC tried to take power back but had no source of revenue. In rural areas, the headman or the chief would have influence. The picture was mixed. ZANU-PF also had structures in place. There was a coalition in name between the MDC and ZANU-PF. People would be loyal in terms of ideology or to those who paid them.

96. Ms Grey asked how this might affect an individual returning to an urban area, perhaps to Harare, with no political profile or interest. W77 said that a person's class, identity, and where they came from would all be important. ZANU-PF violence might be random or directed. In high density urban areas, curiosity about who was returning might be present, as it would in rural or quasi-rural areas.

97. So far as W78's first statement was concerned, at paragraph 13, W77 agreed that a person might be able to stay in an urban area. If a person had dollars or rand he could buy stuff in the supermarkets. This would not apply to many people. It was possible to stay in an urban area without facing political violence. If a person had money, he might move to a low density suburb. The location was important. In W77's view, having dollars enabled a person to survive and live where there might be no random violence, police or spy networks, as there would be in high density areas. All economic transactions in Zimbabwe took place in dollars, rand or the Botswana pula.

98. Ms Grey asked W77 whether he would accept that Zimbabwe was no longer in a period of widespread and indiscriminate violence, as had been the case after the elections in 2008. He replied that the violence was taking a different form. It was particularly bad in 2008. Violence began to increase from 2009, in about mid-July, when the first Constitutional Outreach meetings were held. The farm invasions which began in about 2000 had never really finished. There was also intra ZANU-PF fighting. The COPAC process kick-started the increased violence. Ms Grey asked whether it was the case that the violence centred on the Outreach meetings and those not

interested in attending would not be at risk. W77 said that he had two comments in response. ZANU-PF might force villagers to attend meetings. The violence was more to do with the elections rather than the constitutional process, which did not mean that much to ZANU-PF.

99. The Constitutional Outreach process was rolling. Ms Grey asked how the risk of violence would continue in a high density poor area, such as Epworth in Harare, once the process had passed on to another area. W77 replied that in some places ZANU-PF would attack the MDC. The militia might be bussed in or moved around. They might have bases near areas which had voted ZANU-PF in the past. Although there would not be violence in all places, there was some evidence of intimidation after the process had been completed in an area. There was a sliding scale of risk. MDC activists would be more at risk but ZANU-PF might punish communities as well as individuals. The threat to those at the bottom in terms of risk, in high density areas, would involve a random element. A person might be asked for a ZANU-PF card by the police or the militia. A person might even be confronted by MDC youth although this was not common.

100. So far as road blocks were concerned, 2008 was an exceptional year. They were more random or sporadic now. Intimidation tended to be used but violence and the structures used in the past were ready to be used again. Some areas were safe, including the northern suburbs of Harare such as Borrowdale. The high density urban areas were less safe. This appeared in paragraph 54 of his report. Some areas fell in between and were neither completely safe nor completely unsafe. The low density parts of the major cities including Harare and Bulawayo fell into this category, as did parts of Matabeleland. There were some medium density suburbs that were not completely safe. There might be a risk of incursion by ZANU-PF.

101. Ms Grey asked about the contact TS referred to in W77's statement (at paragraph 60). Should the Tribunal rely on W77's evaluation of him as a credible source? W77 replied that this was so. The source was anonymous. However, he had the source's permission to reveal his identity to the Tribunal. TS's organisation was Source P. He appeared in RN as source TS. W77 said that the risk of harm would be greater for those perceived to be supporters of the MDC. The risk of being stopped and questioned was still there. W77 said that the risk was there for people in general although it was higher for those associated with the MDC. At the moment, the violence was focused on the COPAC process but there were still farm invasions and intra ZANU-PF violence. The risk would be great for those going to rural areas as enquiries would be made of returnees. In high density urban areas, the risk might be the same. The economic and political circumstances would be significant to the fate of returnees. People would still face questions about why they had left Zimbabwe. Ms Grey asked how W77 would distinguish between the risk faced by families known to be politically active and those who would return to families with no known profile. W77 replied that the latter would face less of a threat but there might still be questions. If a person were stopped and challenged and not believed, ZANU-PF might fabricate evidence against you. A person might be subjected to theft if he returned with money. It might be possible to dispel suspicion but the questioner might not find a person credible. The family might be disliked.

102. Ms Grey asked whether W77 was offering his opinion or was aware of particular incidents. He replied that he was basing his comments in part on Mr Reeler's evidence in his statements. He did not know much about returnees from South Africa. He had no useful comparison to make between returnees from South Africa and those from the United Kingdom. South Africa and Botswana might push people across the border, although there might still be a confrontation with immigration officers in Zimbabwe. He did not know if returnees in this category were tracked to their home areas. So far as the timing of elections was concerned, W77 would bow to Professor Ranger's expertise.

103. In re-examination, W77 said that he had known source TS for twenty years. This man fled into exile from Zimbabwe. Some of those who fled to South Africa would be viewed as traitors as they were former members of the militia. There was tension in the relationship between Zimbabwe and South Africa. However, the mention made by the Forum of hate speech against the United Kingdom would not apply to South Africa. W77 said that he agreed with what appeared in Mr Reeler's first statement regarding the need to show loyalty and the spectrum of risk. If a person moved to an urban area in a non-election period, the risk might not be particularly acute but the key word there was "particularly". The picture was mixed in urban areas. In the second half of 2009, the risk in urban areas increased.

Professor Ranger

104. Professor Ranger is an acknowledged expert on Zimbabwe. He adopted his witness statement at AB "A" tab 1 and his note at tab 2 in the same bundle at page 26.

105. In that report, Professor Ranger said that the economic situation, following the Government of National Unity, had improved for those who had access to dollars or rands and that there was "certainly less violence now than

there was during the election period in 2008". A process had been established to facilitate "national healing", albeit that that was proving difficult. The Zimbabwe Human Rights NGO Forum had sent facilitators out into the countryside to brief people about transitional justice and to ask their views about how it might be achieved. Those reports, however, made "sobering reading". 51 parliamentary constituencies were chosen, on the grounds that they had the most continuous record of violence since 1980. In most of these, there were reports of harassment and intimidation, either during or immediately after the consultation. Having said this, there were nevertheless "many relatively open discussions". It was widely said there was relatively little violence currently in Matabeleland but it was undoubtedly there that "the coiled spring of trauma and memory is tightest".

106. Professor Ranger noted that in June 2010 the Bar Human Rights Committee of England and Wales, the General Council of the Bar and others had published a report examining the state of the rule of law after the GPA of September 2008. The report found that rule of law issues had not improved since the signing of the GPA and many interviews expressed the view that the position was even worse.

107. Professor Ranger's report discussed the constitutional outreach programme. This had been designed to solicit opinions on a new constitution for Zimbabwe. It was said that 560,000 people had attended meetings. However, civil society organisations had denounced the process as being dominated by politicians and had called for boycotts. The independent press had been full of reports of violence and threats of violence. At some meetings war veterans had demanded support for the so-called "Kariba draft" of the constitution, which favoured presidential power. In other meetings, people have been assaulted for expressing their views. In some places chiefs and headmen had excluded strangers and MDC supporters. Professor Ranger considered that there was an unresolved legacy of violence from the past and that human rights abuses continued in the present. However, the most pervading emotion in the countryside and townships was a "fear of renewed violence". That included violence that a referendum on a new constitution; but the two scenarios that made people fear the most were the general election which both Mugabe and Tsvangirai would "call in 2011" and the "in-fighting within ZANU-PF when Mugabe eventually goes". Although polls put ZANU-PF support only around 20%, few would, according to Professor Ranger, welcome elections as things were. Judge Mtambanengwe, a former student of Professor Ranger, had the unenviable task of being Chairman of the Electoral Commission. He was an admirable man with an excellent record as a judge in Namibia. Judge Mtambanengwe's view, however, was that an election was impossible in 2011 because the voters roll needed to be totally reconstructed.

108. Professor Ranger considered that people feared the election even more than they hoped for it, because they expected a repeat of the violence of 2008. There were reports in the press that rural bases from which ZANU-PF operated its violent interventions in that year still existed or were being revived.

109. Professor Ranger considered that it was likely there would be elections in 2011, despite Judge Mtambanengwe's objections and the fears of many people. A report of 10 September 2010 in the Zimbabwe Independent stated that Mugabe had ordered his Finance Minister to set aside US$200 million in the budget to be delivered in November for fresh elections the following year. A plebiscite on the draft constitution was likely to be held early to mid 2011 while "no-one knows when new elections would be staged… Mugabe's direction reflects his unflinching determination to have fresh polls next year, whatever the electoral environment". A report in the Standard of 12 September suggested that Tsvangirai and Mugabe had struck a deal on the polls, and an election was the only way to close this particular chapter.

110. The Daily News reported on 19 September that there had been violence during COPAC meetings in Mbare. ZANU-PF supporters had realised they were outnumbered and resorted to intimidation and later violence. However, police arrested only MDC supporters. In the light of this, COPAC announced that further meetings in Harare had been "indefinitely suspended". Tsvangirai said that he would not countenance any election if it was a declaration of war.

111. The report ended by noting the Zimbabwe Inclusive Government Watch issue published on 17 September, covering the month of August, which did not deny that human rights abuses and incidents of violence "are currently less frequent than they were in the horrific election period during 2008". Nevertheless, in terms of impunity and the potential for violence, little had changed.

112. In his document of October 7 2010 entitled "Comments on the Home Office submission and executive summary", Professor Ranger did not consider that the basis for the executive summary was sound. Professor Ranger had noted in particular the comment "While some organisations noted that influential MDC supporters could be at risk, ordinary opposition and MDC supporters were not thought to be at any particular risk". However, the Research and Advocacy Unit were the one asked about "profiles of victims of violence – why are these people targeted?" to which their response was:-

"In terms of profiles, the risk would be as follows:

1. Office bearer in MDC/polling agent during elections.

2. Members of MDC (known or discovered).

3. Suspected MDC members (and possible to discover membership).

4. Those linked with NGOs, Zimbabwe Electoral Support Network.

To this list should also be added persons that do not demonstrate 'positive affiliation' to ZANU-PF: this is especially important in the rural areas and during elections."

113. Professor Ranger noted a comment of the Zimbabwe Human Rights Association that "People who work in the human rights areas or who push HR issues are seen as enemies or opposition in political terms. Therefore anyone who interacts with these people is also a target… Also, resistance to participate in ZANU-PF activities is a key factor in violence – anyone who resists in this respect is also a target." Professor Ranger went on to set out quotations from the transcripts of the FFM report in respect of a number of other organisations. He concluded that "A very different and more alarming set of conclusions could be reached on the basis of the comments presented in the Home Office report", compared with what was said in the executive summary.

114. He had read the witness statements made by others which appeared in AB "A". There was nothing with which he would disagree in those statements. Mr Henderson asked Professor Ranger whether he thought that enforced returns, which were suspended until the week before the hearing, might destabilise the Zimbabwean government, as the Secretary of State appeared to believe. He replied that this was hard to answer. It would depend on the size of returns and the period of time concerned. Before the announcement made by the government, it had not occurred to Professor Ranger that this issue was at stake.

115. So far as the Fact-Finding Mission was concerned, the Secretary of State had approached two organisations in Matabeleland. Professor Ranger said that he was aware of Bulawayo Agenda and had attended meetings called by the organisation. They were involved in seeking to ensure that issues of public concern were debated. Meetings had been held in Matabeleland north but mainly in Bulawayo itself. He did not think that the organisation had a research or reporting capacity in relation to human rights issues. Professor Ranger said that he knew the Bulawayo Progressive Residents Association existed but was not aware of them as a significant organisation. In Harare, there was a residents association with representation in the townships. Bulawayo had nothing like that. He had read the report from the organisation. It appeared to be concerned with domestic issues. Mr Henderson asked about the mention made of an influx of Shona people to Bulawayo. Was Professor Ranger aware of this happening in recent years? Professor Ranger said that it depended on the period of time they were talking about. The last sentence in the material at page 94 might refer to decades. The police and civil servants in Matabeleland tended to be Shona. This was resented but had been the position since the 1980s at least.

116. Shona people from Harare returning or moving to Bulawayo might find profound difficulties in relation to accommodation. Bulawayo had much low density housing. Up to ten percent of the stock had been lost without replacement. There was intense competition for housing in the city. The practical business of moving to Bulawayo would be very difficult, even if a person did not face violence. Mr Henderson asked whether the absence of family ties or language might affect a person's ability to survive economically. Professor Ranger said that language would not be a problem. The influx of Shona over the decades had meant that Shona was used, with Ndebele, in Bulawayo. Long term residents might speak some Shona. The informal economy was not thriving in Bulawayo, partly because of the impact of Operation Murambatsvina. Many of those who left Bulawayo after the destruction of their housing were in the informal economy and they had not returned. There was some fear of martial law in Bulawayo, largely from clashes between the police and informal vendors. Bulawayo Agenda had discussed this, in relation to a disproportionate lack of investment in industry and economy. The first Shona influx occurred when Bulawayo was a major industrial city in the 1940s and 1950s. It was no longer a major centre as most industry had ceased to operate. Difficulties might well result from the lack of jobs and housing.

117. Professor Ranger said that the COPAC teams held meetings in high density areas in Bulawayo. A friend, formerly of the Amani Trust, had worked as a COPAC facilitator. A report had been prepared after two or three days of meetings. The Bulawayo event was overshadowed by the COPAC meetings in Harare which led to violence. This was less so in Bulawayo. Many of the same patterns emerged. Meetings would be announced and then not held. There would be no real discussion. The COPAC meetings in Bulawayo were violently noisy, if not subject to violence by means of sticks and stones. The police had tightened up in Bulawayo. The art gallery had

closed. It had held events since the 1980s. An artist there had been arrested and faced a serious charge. The director of the gallery had also been charged. The impression that Bulawayo was more tolerant and that there was less interference in things was shaken up by that episode.

118. Professor Ranger said that the government had thought that a statue of Joshua Nkomo would please the people in Bulawayo. However, the best tender came from the North Koreans, who were very unpopular in Matabeleland as they had trained the notorious Fifth Brigade. The statue had arrived covered in a black cloak. Stones were thrown. Joshua Nkomo's own family requested that it be removed and it was now placed next to a statue of Cecil Rhodes, behind the museum.

119. Mr Henderson asked about JG's case and the schools she had taught at. Was Professor Ranger aware of the Prince Edward School? He replied that he had attended debates and Latin competitions there. The school motto included the last words of Cecil Rhodes. It was not a ZANU school. Mr Henderson asked whether the fact that JG taught as a trainee teacher there in 1992 and 1993 would mean that she would be seen as associated with ZANU-PF. Professor Ranger replied that this was not at all the case. Nor would JG necessarily be seen as supporting the opposition. She had taught at evening classes and said many who came were ZANU-PF officers. However, pupils came from the wealthiest families in Harare. The school was able to defy the Ministry of Education effectively. So far as the second school JG taught at was concerned, the "Rock of God", Professor Ranger had not visited it. He doubted whether a teacher there would be associated with ZANU-PF. The school was supported by a Canadian NGO. When JG taught there, ZANU-PF was the sole party in power and responsible for the education system. Teachers had a professional independence from the party until the 2000s.

120. Mr Henderson asked about Professor Ranger's view on the future elections, and his comment that they were expected in 2011 and likely to be violent. The Secretary of State would say that they were likely to be held later and that some safeguards would be in place to protect people, including the appointment of a Namibian Supreme Court judge in charge of the electoral commission. Professor Ranger replied that he had known this judge since he was a student. He was a splendid man who had fallen out with the military side of ZANU. He had worked for the past decade in Namibia and had a successful judicial career. He continued to live in that country. He had an impossible task in the elections as the voters roll was in chaos but there had been chaos in all previous elections and this would not stop them from taking place. There were some measures intended to protect people in place in 2008 and that was why the March elections in that year were relatively successful. Publicising the results and the votes cast made it difficult for ZANU-PF to carry out too much rigging. The party had agreed to the safeguards without understanding fully their implications. There was then violence in the June elections. There had been further reforms to the process recently. It had been announced that results would be posted publicly and the overall outcome would be published within a week. It had been said that there should be a police presence in each polling station. Human rights organisations in Zimbabwe had commended some suggestions and criticised others. If the elections were held later, perhaps these measures would be implemented. Even though the Namibian judge had said that the roll was chaotic, nothing was being done to resolve it. The fact that he might say that the elections could not happen yet did not mean that they would not be held. Mugabe had insisted twice in the past week that there would be elections as the present power sharing arrangement was unworkable.

121. Mr Henderson asked whether Professor Ranger was of the view that ordinary people would receive more protection from ZANU-PF violence than in 2008. Professor Ranger replied that after the votes had been cast, they might be counted more accurately. The key question was how to get people to vote. There were increasing reports that people in rural areas were told that when they voted MDC last time they lost their cattle, whereas if they voted MDC this time, they would lose their lives. Rigging the election did not just mean manipulating the vote. What was needed was a significant monitoring force. Neither Mugabe nor Morgan Tsvangirai had asked for such a force and the SADC had not said that they would provide it. Without such a force, the opportunities for violence would be there.

122. Ms Grey asked questions by way of cross-examination. So far as the Forum report was concerned, the evidence at AB "A" Tab 2, page 11 showed cases where meetings arranged as part of the constitutional renewal process led to violence or could not be held. There was a report on the position in June 2009, showing no reports of violence. The second report (page 16) showed the position in June 2010. The summary contained no reports of violent reprisals. The closest to a report on such an incident appeared at page 50 but this concerned another process. Professor Ranger said that he agreed that he read this evidence in that way. In his own report, he had tried to include some instances where there was an atmosphere of violence, including the harassment of churches. There was a relevant quote in his report on page 4. At page 50 was material on Bindura. Ms Grey asked about other quotes, including at page 3 of Professor Ranger's report. He had highlighted difficulties in the transitional justice process before going on to comment on the following page that nevertheless, there were many relatively open discussions as part of the process. Ms Grey suggested that the 2010 report showed many such instances, as at

page 78 under "Observations" and also at page 70. When the original reports were looked at, there was a rich picture of a debate which was largely open and constructive and the fact that a debate could take place was indicative of the opening up of political space to some extent, since 2008. Professor Ranger replied that he had focused on material which showed what happened to people. Discussions on the ground had been going on even in 2008, in the midst of periods of violence. When Zimbabwe gained independence, there was almost no NGO presence. It was difficult to find out what went on in Matabeleland in the 1980s. From the late 1990s on, there had been a revolution in Zimbabwean civil society, with the establishment of many NGOs. The Peace Project had reported all through even the worst violence. Ms Grey asked whether the relatively open discussion in the constitutional outreach process was indicative of the opening up of political space. Professor Ranger replied that it would be dangerous to take the exercise as proof of improvement. Immediately after the Government of National Unity was established, there was an attempt to destroy the type of organisation having this sort of discussion.

123. Ms Grey asked about the second part of Professor Ranger's report, the assessment of evidence from professionals. This included the report "A Place in the Sun" at AB "B", tab 3, page 112. Ms Grey asked whether the contrast or distinction between threats made in rural areas and in small towns and the position in Harare and Bulawayo was a fair one. Professor Ranger replied that this was so. The magistracy were under greater threat in the smaller towns. Ms Grey asked whether the ordinary citizen harassed by the police would see the magistracy as the first port of call. Professor Ranger agreed. There were spectacular examples of magistrates dismissing charges brought against people. He would not, however, say that the magistrates had become bolder. Some had always been bold. In Harare and Bulawayo, there was a picture of the magistracy retaining independence and resisting intimidation. This was so even in 2008. Professor Ranger accepted that his report at page 5 might be qualified in this respect. So far as the constitutional outreach programme was concerned, Ms Grey drew attention to the report at the RB "C", tab 1 at pages 1 to 10. In the overview, the position of Bulawayo was described as relatively peaceful although there were incidents of coaching and harassment. She asked how that report from the Peace Project matched the account Professor Ranger had given earlier. He replied that they did not match well. What he had tried to reflect was intransigence and the non-meeting of minds. It was possible to see the outreach report as more positive than the source he had relied upon. He agreed that the COPAC process was the focus for the problems of intimidation and violence at present. Ms Grey asked about the report from the Peace Project at AB "B", tab 3, page 84, dealing with the position in August 2010 (at page 241). Most incidents were tied to the ongoing constitutional process. Professor Ranger agreed with that assessment and noted that the report stated that most rural communities had suffered harassment and intimidation. He accepted that there was a contrast or regional pattern, as appeared in the same report, comparing Matabeleland, north and south, for example. He had not seen the tables which appeared in the report on this particular topic. Ms Grey asked about the graph which showed the position from March 2008. There was relative stability from November 2009 to the present. Professor Ranger agreed that this was what appeared from the graph. Ms Grey suggested that there had been no recent deterioration but a continuing pattern from late 2009 onwards. Professor Ranger replied that he thought many were saying that the situation was now worse than it was before. People felt that there was no protection built in and that there would be a repetition of the violence in the past. The tension shown in the COPAC process could easily lead to a resumption of violence.

124. Professor Ranger agreed with Ms Grey's suggestion that a contrast might be drawn between the intensification of fears and the situation on the ground, which might be unchanged. He said that the MDC had provided one of the two chairmen in COPAC. They spoke positively of it initially although there had been later disruption. This might be a reflection of what went wrong in Harare. The province where there was most violence was Manicaland. This had a strong MDC presence. Professor Ranger said that he thought that further COPAC events in Harare were not taking place but he did not know whether this was the result of a problem with funding. At page 7 of his report, he had mentioned under-funding as an issue. COPAC was a preparation for a new constitution and a referendum. In 1999 and 2000, there was violence associated with a referendum even though there was no consultation prior to it. Ms Grey asked how these events would have an impact on an ordinary Zimbabwean citizen with no particular profile who might experience a COPAC event in his or her town, compared with the position once the process had been completed, perhaps a week later. Professor Ranger replied that after COPAC there would be a referendum and then the elections. The ordinary villager would then learn that these things were not done and dusted. The message left behind would be that it was too dangerous to support the MDC.

125. Ms Grey then asked about section 6 of Professor Ranger's report, dealing with elections. She asked whether the appointment of Judge Mtambanengwe was a real change from the position in March 2008. Professor Ranger replied that the electoral commission was not really expected to do its job. Who could know whether the current head would be effective. The commission was also responsible for running the referendum. Ms Grey drew attention to tab 2 of RB "C" at page 72. This showed that deadlines had been missed. Public consultation was intended to end in November 2009, almost a year ago. Did this suggest that the process would require at least

another year? Professor Ranger agreed. Ms Grey asked whether this evidence showed that there was no real "gap" between COPAC and the elections. Instead there would be a series of events likely to show how well the process was going. Professor Ranger agreed that some were saying that there would be no elections until all the steps had been gone through. Others, including President Mugabe, were saying that elections were so important that they should go ahead. There was real uncertainty. If the elections were called, their timing might be opposed by civil society. If President Mugabe was determined to hold the elections, he would ignore the constitutional outreach events. There were several pending by-elections and the balance of seats in Parliament no longer reflected the outcome of the March 2008 elections. One of the factors in the mix might be the unwillingness of some MPs to subject themselves to elections. Ms Grey asked about the suggestion at page 137, paragraph 3, that polls might be at least two years away. Professor Ranger said that he had no knowledge of the "private whisperings" referred to although the newspaper carrying the article was to be trusted. Civil groups were concerned and did not want the elections to be held before the constitutional process had been completed. Although there was uncertainty, this did not necessarily argue in favour of delay. The calling of the elections would be a high stakes decision. President Mugabe was painting it as a key election in the history of the country. It was correct that control of the elections was not exclusively President Mugabe's. An agreement between ZANU-PF and the MDC was required. Morgan Tsvangirai had his own pressures and his time as president of the MDC was also running out, according to the constitution. Morgan Tsvangirai had not taken a strong, consistent position and had said many different things about the timing of the elections and the guarantees required. Nobody could say where safeguards were coming from.

126. Ms Grey then asked about the response of the business community, the evidence at RB C at page 139. Professor Ranger said that the business community was disappointed with the Government of National Unity and had hoped for more investment. The Zimbabwe stock exchange was in difficulty. The timing of future elections was highly uncertain. Professor Ranger agreed that his fear was that if the elections took place, the violent events of 2008 would be repeated. He also agreed that Morgan Tsvangirai had assured his supporters that he would not go into a violent election or take part. It was hard to believe, however, that he would not take part if the elections were called. Ms Grey asked whether the two possibilities in that event were that he would pull out or that the electoral commission would suspend the process. Professor Ranger said that this would be good to see. The MDC continued to learn. They saw that pulling out last time did not do any good. They hoped to get SADC support. The option of withdrawing would put Morgan Tsvangirai in a difficult position, as had happened in the past. He accepted that it might be right that exposure to violence inflicted on his supporters would be a compelling factor. Ms Grey asked whether SADC could play a key role in deploying monitors and perhaps a peacekeeping force. Professor Ranger replied that the possibility of such a force being present was low. Monitors were sent last time. The MDC had in the past convinced African observers and others to be present. There was no reasonable prospect, however, of a peacekeeping force. He agreed that SADC in South Africa were under pressure to see the stabilisation of Zimbabwe. This was one of the assumptions of the Government of National Unity but it had not worked out. The presence of monitors had a stabilising presence but there would have to be more of them, early on. The patterns of the past were not cheering. Since the Government of National Unity, South Africa had not been able to apply adequate pressure. There was a possibility that this would occur. All things were possible but Professor Ranger would have thought that it would be very unlikely.

127. In re-examination, Professor Ranger was asked whether or not the friends he kept in regular contact with in Zimbabwe, as he had not returned to the country since December 2008 in view of his ill-heath, were in a good position to advise him. He replied that it varied. His old friends were becoming decrepit. He returned to Zimbabwe to teach after he retired from Oxford. He had many younger colleagues and many who were involved with COPAC. Many were returning to work as advisors to political parties. He had friends involved in all the processes and he was in regular communication with them. He would return to Bulawayo in a month's time and would see many of those involved. Particularly useful were those in an intermediate position, participating in research or meetings. He was in email contact with them. ZANU-PF saw him as a British historian. He was on good terms with those opposed to ZANU-PF. He agreed that so far as political space was concerned, although it would not have been possible to hold an outreach meeting in, say, June 2008, it would have been possible by October that year. It would also have been possible earlier than June. June 2008 had been a particularly bad month. The incidents of violence and harassment peaked between May and June. The graph Ms Grey had asked about showed a level of violence similar now to the level in about October 2008. The graph would not cause him to change his evidence. He was concerned with potentialities. President Mugabe's record in terms of respecting matters agreed with Morgan Tsvangirai was not good. He was certainly capable of announcing elections without agreeing this with the Prime Minister. President Mugabe was bound to the COPAC timeline to no greater extent than he felt himself bound by any other agreements. After June 2008, his credentials as President were very shaky and there was a period in which he backtracked. In recent months, the trend on the radio was to refer to him with his fullest possible title. His role as President was now emphasised more than in the past.

128. The Tribunal asked whether a person with no visible political background or affiliation would be at risk, if he were returned in, say, January or February 2011. Professor Ranger replied that there was some truth in the assertion that the mere fact that a person had been in the United Kingdom would be a disadvantage but that would not put him in danger. There were large numbers of Zimbabweans in danger through developments that had been discussed in the evidence. Such a person would not be at risk at the airport. So far as roadblocks were concerned, there were some in Manicaland. A person might be stopped when travelling to a rural area, in order to stop access there. Broadly speaking, a person could get to the major towns without being stopped. The high density areas of Harare were more difficult. Some had cholera. There were shortages of water and power. There were three kinds of zone in Harare. There was small scale, low density housing. Those housed there were now the white community, the coloured community and Africans who were not so poor. The low density areas had more Africans than in the past. In areas of intermediate density, social services had collapsed and they were in terrible disrepair. There were problems with dereliction but not with gangs. These areas might be described as "medium density areas". There had been an extension of party politics in these areas. Even low density areas like Mount Pleasant had suffered trouble at the hands of ZANU-PF. The areas one might describe as townships voted heavily in favour of the MDC, as did Chitungwiza. There were problems in the high density areas, although these had some services. There was also a struggle in the informal economy which tended to be about survival. Market stalls were still destroyed in Bulawayo and Harare. Some Zimbabweans present in the United Kingdom did not wish to return because they could not return in splendour. They had no resources and would not be able to buy a house. They might fear losing face. Many Zimbabweans took the view that it would be marvellous to come to Britain. They were not told that it rains here. They feared being found out if they did not succeed.

129. Ms Jegarajah asked whether an active MDC member, known to the CIO, would have problems on return, at the airport. Professor Ranger replied that such a person would face more problems than those without such a profile. Lists were made and MDC members were in more danger. President Mugabe might decide to eliminate activists.

130. Mr Henderson asked whether the medium density areas were occupied by poor white and not so poor black people. Professor Ranger replied that this was so. Such people would not be destitute. There was also a geographical element in Harare. There was proximity between white suburbs and high density areas. There had been violence in Epworth, a squatter settlement. There were areas in a buffer zone between the good areas and the areas of potential violence.

Mark Walker

131. Mr Walker was Assistant Director in the Directorate of Central Operations and Performance in the UKBA and Head of the Country Specific Policy Team. He is now Head of Country Specific Litigation Team in the Appeals and Removals Directorate of UKBA.

132. Mr Walker adopted his statements of 2 September 2010 and 15 October 2010. The first of these exhibited certain records of information that were provided to a joint FCO/UKBA fact-finding team that visited Zimbabwe in August 2010. The team's work led to the FFM report of September 2010. The sources contacted by the team were informed that if they did not respond to the invitation to comment on or approve the records within seven days, it would be assumed that they were content that the records were accurate. COIS, however, will continue to seek positive confirmation. Speaking before the FFM report was published, Mr Walker's first statement opined that the final version of the report will probably present the information thematically, as well as records of what individual sources said, and would include an executive summary. There would, however, be no further analysis and no further information, apart from that in the records attached to the statement, unless the information was proactively provided by the sources in response to a request that they confirm the accuracy of the records.

133. Since 26 September 2006 the Secretary of State had deferred involuntary removals of failed asylum seekers to Zimbabwe. However, she now considered that it would be safe to resume involuntary returns of those who had been found not to have a protection need. The precise timing of the resumption of enforced returns would take full account of the situation inn Zimbabwe, including the political situation, and each removal would be considered carefully on a case by case basis.

134. There were currently three general Assisted Voluntary Return programmes (in addition to the Facilitated Return Scheme for foreign national prisoners):

Voluntary Assisted Return and Reintegration Programme (VARRP), for those who had sought asylum and those with certain forms of related temporary status in the United Kingdom. Returnees received support in acquiring travel documentation, flight to country of origin and onward domestic transport, airport assistance at departure and arrival airports and up to £1,500 worth of reintegration assistance per person including £500

relocation grant on departure for immediate resettlement needs, additional luggage allowance and, once home, a range of reintegration options. The majority of returnees were said to use their reintegration assistance in income generation activities.

Assisted Voluntary Return for Families and Children (AVRFC), was for families comprising a maximum of two adult parents or legal guardians and at least one child under 18, who had either sought asylum or were in the UK illegally and who wished to return home. Such returnees received support in acquiring travel documentation, flight to country of origin and onward domestic transport, airport assistance at departure and arrival airports and up to £2,000 worth of reintegration assistance per person including a £500 relocation grant on departure for immediate resettlement needs, additional luggage allowance and, once home, a range of reintegration options. The scheme was said to offer flexibility of reintegration for the whole family and increased emphasis was placed on the use of reintegration assistance for educational needs, as well as income generation.

Assisted Voluntary Return for Irregular Migrants (AVRIM), was for migrants who had not sought asylum but who were in the United Kingdom illegally and who wished to return home. Such returnees received support in acquiring travel documentation, flights to country of origin and onward domestic transport, and airport assistance at departure and arrival airports. There was generally no reintegration assistance for AVRIM applicants. However, there was discretionary reintegration assistance of up to £1,000, considered on a case by case basis, available for vulnerable applicants.

135. The respondent had since 1 September 2006 enforced the removal of 81 Zimbabweans who were refused leave to enter and who did not claim asylum. Mr Walker was unaware of any reports that any of these returnees had been mistreated. In January 2009 the respondent arranged the escorted voluntary return of a foreign national prisoner to Zimbabwe. The escorts did not accompany the returnee through immigration control at Harare and he passed through these without difficulty. However, the escorts were arrested and detained overnight before being deported the following day.

136. The respondent made enquiries with a number of other governments about their experience of returning immigration offenders to Zimbabwe. This information was set out in the report compiled by the Intergovernmental Consultations on Migration, Asylum and Refugees. Mr Walker had been unable to obtain reliable information about the number of travellers between the United Kingdom and Zimbabwe. The only carrier currently operating direct flights was Air Zimbabwe, which operated two direct flights a week. Other airlines offered indirect scheduled routes from the United Kingdom, mostly via Johannesburg or Nairobi.

137. In his supplementary statement of 15 October, Mr Walker addressed the question posed by those representing the appellants in the present case, regarding access to the persons in Zimbabwe who had been interviewed by the team in respect of the FFM report. Mr Walker said that some sources who had provided guidance for use in previous Zimbabwe country guidance cases had been distressed by the manner in which they had been approached by representatives of appellants in those cases. One source had contacted the British Embassy in tears, seeking to retract his statement after being telephoned at night by an appellant's representative and asked whether he wanted to be responsible for Zimbabweans being returned to Zimbabwe to face torture. Another feared for his job after representatives of an appellant had contacted his boss.

138. Mr Walker's supplementary statement dealt with the witness statement of Anthony Peter Reeler, which stated that Mr Reeler had not been informed in his interview with the FFM team that if he agreed to be identified he might be contacted by the lawyers for the appellants. Nor was he asked whether he was speaking in his personal capacity or on behalf of his organisation. Debbie Goodier, however, had provided a statement regarding her interview with Mr Reeler. Ms Goodier explained the purpose of the meeting to him and discussed the question of attribution. Mr Reeler responded that he was happy for the views he expressed to be publicly attributed to him. She could not recall whether Mr Reeler was also asked whether he would be speaking in his personal or organisational capacity. However that question was asked in the email sent to Mr Reeler on 19 August 2010, seeking confirmation that the note of the meeting accurately reflected what he had said.

139. Mr Walker agreed with the criticism levelled by Mr Reeler at the FFM report, that it failed to indicate whether the sources were speaking in a personal capacity or on behalf of their organisations. However, the sources were asked to confirm this, although not all did so. To date, all but one had so confirmed the position.

140. Mr Walker dealt with the questioning by Mr Reeler of the expertise of some of the organisations that the FFM team had spoken to, noting that Mr Reeler accepted that most of the organisations "do have expertise in the monitoring of political violence". Fact-finding missions aimed to cover as broad a range of views as possible and in the present case the COI Service had sought to interview individuals and organisations likely to have knowledge of the political and humanitarian situation, focusing on those involved in human rights and

humanitarian issues in Zimbabwe, including international and domestic organisations. An initial list of potential sources was sent to the FCO, inviting their suggestions for other sources, based on local knowledge. The aim was to achieve as balanced and representative a sample for interview as possible, though Mr Walker said that the final selection of sources was also influenced by practical factors such as availability, timing and location. Mr Walker was "confident that the sources who were represented in the FFM report provide a comprehensive and accurate picture" (paragraph 7).

141. Although agreeing that it was probably true that a large proportion of civil society in Zimbabwe had been infiltrated by the regime, Mr Walker considered that the organisations that the FFM spoke to were amongst the most vociferous in defence of democracy and human rights in Zimbabwe and that none shied away from reporting negative information. As for the suggestion of Mr Reeler that the sources might have wilfully provided false information because they were concerned to keep relations with donors on a good footing, Mr Walker said in eight years working in Country of Origin Information and Policy, he could not recall a single instance of a human rights or humanitarian organisation seeking to increase the flow of aid by underplaying the seriousness of a problem. On the contrary, the opposite was more likely to be true.

142. Mr Walker regarded as "untrue and offensive" Mr Reeler's suggestion that the United Kingdom government sought to manipulate the evidence it obtained by withholding funding from those who were unhelpful. As for the assertion that the British Embassy had been infiltrated, Mr Walker had not heard of this. So far as the Embassy's interaction with civil society was concerned, Tim Cole, the Deputy Head of Mission, had said that the Embassy had partnerships with a number of groups, including civil society organisations, in Zimbabwe, representing a range of views and opinions. That information was used to inform the Embassy's own analysis. The Embassy did not attempt to exert influence over the nature of the information gathered or the conclusions which organisations drew from that information, by linking these issues with funding decisions. To do so would undermine the objectivity of the Embassy's own analysis.

143. So far as the assertion regarding W80 was concerned, that he was asked if he was aware of systematic ill-treatment of returnees, Mr Walker said that this gentleman was mistaken and that neither he nor any of the other sources had been asked whether they would be aware of treatment of returnees from the UK, systematic or otherwise. W80 had volunteered information about what his organisation would be expected to know, unprompted, in response to a question whether he was aware of any returnees from the UK.

144. Mr Walker did not regard the circumstances of the returnees to whom the FFM team spoke as particularly unusual. He noted a report of the Solidarity and Peace Trust that it was only Zimbabwe's elite who made it to the United Kingdom.

145. A survey conducted by UKBA indicated that two thirds of asylum applicants originated in the large urban areas. The rest came from smaller towns or rural areas across the country.

146. So far as Sarah Harland's assertions regarding the IOM's motivation were concerned, Mr Walker stated that her evidence was based on a misrepresentation of what had been said by Phil Douglas. It was in the context of a discussion about whether IOM should be invited to attend Zimbabwe Diaspora events that Mr Douglas said that although UKBA was currently in a contractual relationship with IOM, there was no certainty that IOM would be the provider when that contract came to an end. That was simply a "statement of fact" and, in fact, UKBA was "very pleased with what IOM has delivered in Zimbabwe" (paragraph 14). Any criticism by Professor Ranger of the executive summary of the FFM report was led by the fact that the respondent did not rely on the executive summary but, rather, on the substance of the report as agreed by the sources.

147. Mr Walker said that it has not been possible to get as much information in the FFM as one might ideally have wanted and this accounted for the absence of a "trade union voice". They chose a combination of organisations that COIS relied on and considered to be reliable, as well as suggestions made by the FCO. Mr Walker selected one organisation. Those selected were ones with whom it would prove possible to hold meetings.

148. Mr Walker was asked about the letter of 18 October from the FCO, regarding the reasons why, hitherto, it had not been considered desirable to enforce returns to Zimbabwe from the United Kingdom. He said that if Morgan Tsvangirai had been perceived by his supporters to be compliant in large-scale forced returns, that might have caused problems for the MDC. It might also have been thought by ZANU-PF that the MDC was seeking to have voters shipped back in order to vote for him.

149. Cross-examined, Mr Walker agreed there had been no forced removals from January 2002 to November 2004. In July 2005 forced removals had been deferred, pending the country guidance in AA no. 1. Removals had occurred for a short period in July 2006 but had been suspended once again in September of that year.

150. Regarding the announcement on 14 October 2010 by the Minister for Immigration that forced removals would recommence, once the Tribunal had delivered its determination in the present case, Mr Walker said that the policy on removals was under continuous consideration by the respondent. Mr Walker was asked how the position had changed since a statement made on 2 September 2010, which indicated that forced removals would not resume. Mr Walker said that the FCO considered that the political situation was right. The reason the policy had not been changed was not about the safety of returnees but because of the FCO's concern to be as helpful as possible to the Government of National Unity. This was not Mr Walker's knowledge of the position but his understanding of the government's concerns. Asked about the press release concerning enforced returns (P128A of Tab 2 of respondent bundle B), Mr Walker said that paragraph 2 of the statement was wrong. This said that returns had been suspended in September 2006 because the safety of returnees could not be guaranteed. The press office had been told about this error. A complaint had been made to them about it.

151. Mr Walker said he was aware of a body of opinion to the effect that elections in Zimbabwe might be likely in 2011 and that this would lead to an increase in violence. Indeed, there was a reference in the FFM report to an election unleashing "unprecedented violence". Asked if it was not therefore a bizarre time to change the policy on returns, Mr Walker disagreed, citing the reasons he had given.

152. The executive summary of the FFM report was written by the Zimbabwe Country Officer in COIS and revised by the line manager. The summary had not been written by Mr Walker or Ms Goodier. She was not a Zimbabwe specialist. Mr Walker said that the reference on page 5 in the executive summary of the FFM report to there being "fears that the current situation may deteriorate ahead of national elections which are likely to take place in the next couple of years" were not words that he would have chosen. He emphasised that these were "fears". He accepted, however, that it was a minority view that the elections might be later than 2011. Mr Walker said it was probably the case that the civil society witnesses who had spoken to the FFM team had indicated that the situation in Zimbabwe had deteriorated since the interviews undertaken in August. Mr Walker did, however, want to consider all the evidence before committing himself on that matter.

153. Mr Walker was asked about the document at Tab 30 of Authorities Volume 3, which was a document prepared by the Home Office in September 2005 detailing Home Office organisational changes in response to recommendations made by the Advisory Panel on Country Information in March 2004. In particular, Mr Walker was referred to the passage wherein the Home Office Minister "accepted the panel's advice that as a matter of good practice, the two functions [country information and policy functions carried out by Country Information and Policy Unit] should be undertaken by different parts of the organisation; and that Home Office country information material would not be perceived as impartial while it was being produced by a unit that was engaged in the development of country specific asylum policy". Mr Walker said that he was unaware of that particular passage but knew about the policy in question. Mr Walker was also asked about the minutes of the Advisory Panel on Country Information meeting on 8 September 2005 (Tab 34):

> "2.1 The chair noted that following the Panel's recommendation, the Home Office had separated the country of origin information (COI) and policy functions, with the COI element being transferred to research development and statistics (RDS). He invited Dr Gary Raw to introduce paper APCI5.1 which outlined the organisational changes that had taken place.
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> 2.2 Dr Raw noted that the separation of COI and policy functions had taken place in two stages. The functions were initially separated within Country Information and Policy Unit (CIPU) in December 2004. In order to minimise disruption, the relocation of the COI function to RDS was carried out after the publication of the April 2005 country reports and took place on 1 June 2005. The move to RDS had the twin objectives of removing COI from the policy area and placing it in an environment where it would benefit from the input of professional research expertise."

154. Mr Walker said that the separation had not been completely achieved and that UKBA were a customer of the COIS. He was aware of the comments made by the Tribunal in the country guidance case of AA no. 1. Before going on the FFM visit to Zimbabwe, Mr Walker had discussed the matter with the head of the COIS service and it had been decided that the best way of obtaining relevant information was for Mr Walker to be involved in the process; but he went as a customer, in order to describe what information was needed.

155. Mr Walker was asked in particular about paragraph 146 of AA no. 1. This passage dealt with criticisms adopted by the Tribunal in that case regarding the information obtained by a delegation consisting of Home Office and FCO officials who had gone to Zimbabwe, prior to the hearing, in order to undertake a fact-finding exercise:-

> "146. First, although no doubt Home Office officials have a very wide competence, it is surprising that the investigation facts and country circumstances was made by policy staff. It was not made by, or analysed by,

members of the Country of Origin Information staff. The way in which the investigation was conducted, and the way in which the results were presented to us, gives rise to the possibility – we say no more than that – that the investigators may have had existing policy in mind rather more than the discovery of new facts. We emphasise that we do not suggest at all that the process of gathering information and reporting it to us was intended to mislead: but we have to recognise that, as Mr Walsh in particular made clear, the results of the investigation were being put to us very clearly in the context of government policy and the government's view."

156. Mr Walker was asked whether, in the context of the current FFM report, he had gone to Zimbabwe with the view that the evidence regarding country conditions no longer supported the position taken by the Tribunal in RN. Mr Walker said that this was the case. He disagreed, however, that his view had an effect on the FFM report. The COIS would not allow their objectivity to be skewed and the Home Office would not have the "slightest interest" in skewing the evidence in order to ensure that a person was returned who would be at real risk. That would be the Home Office's "worst nightmare".

157. Mr Walker denied that the Operational Guidance Notes (OGNs) represented policy and that there had perhaps been a lazy use of that expression. OGNs take the facts and the relevant law and apply them as best can be. It was put to Mr Walker that the FFM report could not be impartial. Mr Walker disagreed and said that its contents had not been affected by Home Office policy. The team had gone to Zimbabwe in order to obtain knowledge from persons to whom they spoke.

158. Mr Walker was asked about paragraphs 6 and 7 of his supplementary statement:

> "6. Mr Reeler questions the expertise of some of the organisations the FFM team spoke to, although he accepts that, of the organisations that agreed to be identified in the fact-finding mission report '…most do have expertise in the monitoring of political violence…'. As with Country of Origin Information Reports that are produced by COI Service, fact-finding missions aim to cover as broad a range of views as possible. COI Service sought to interview individuals and organisations likely to have knowledge of the political and humanitarian situation, focusing on those involved in human rights and humanitarian issues in Zimbabwe, including international and domestic organisations. An initial list of potential sources known to cover issues of interest was sent to the Foreign and Commonwealth Office (FCO), inviting their suggestions for other sources, based on their local knowledge. The aim was to achieve as balanced and representative a sample for interview as possible, though the final selection of sources was also influenced by practical factors such as availability, timing and location. The programme of interviews was then arranged by the British Embassy in Harare.
>
> 7. With finite time and resources, it is not possible to speak to everyone who may have something of value to say, but I am confident that the sources who are represented in the FFM report provide a comprehensive and accurate picture. There is one other source in particular who we would very much have liked to talk to but it was not possible to arrange a meeting. Fortunately, much of that organisation's knowledge is published and is contained in the written evidence. I note also that at least ten of the sources in the FFM report are also represented in the appellants' evidence."

159. Mr Walker was asked about the April 2008 review of COI fact-finding mission reports and guidelines, prepared for the Advisory Panel on Country Information by Dr Alan Ingram of University College London (Authorities, Vol 3, Tab 31). In particular, Mr Henderson referred to paragraph 2.6:-

> "2.6. FFMs to date appear to have conducted of the order of 17-42 meetings/interviews per visit. In some settings this may provide comprehensive and adequate coverage, but in many it may not. With this in mind ideas about sampling, balance and representativeness in the identification of interviewees are crucial and require deeper and more explicit consideration, particularly in view of the complex political contexts where FFMs are likely to be undertaken."

160. Mr Walker said that he had not seen this Review. He had, accordingly, also not read paragraph 2.16, where a concern was expressed that a consultation of UKBA in order to gain a full picture of the range of information that an FFM mission could seek to obtain might infringe the integrity of the COI process; and that it was accordingly recommended that it should be made explicit that the purpose of such consultation was solely to inform and improve the FFM process and not to serve any other policy objectives.

161. Mr Walker was asked about the September 2008 document prepared for the Advisory Panel on Country Information, entitled "Fact-finding missions – methodology and guidance", written by Nick Swift of COI Service. Paragraph 4.1 of this made it clear that FFMs were an extension of the routine desk-based research used to produce COI Reports and that FFMs were not "seeking to find the truth; they are simply looking to obtain a range of views from informed parties on the issues in question". At paragraph 4.2, the relative advantages and disadvantages of giving interviewees advance notice and editorial control were discussed. The main disadvantages of giving prior notice and "sign off" were that opportunities for eliciting fresh spontaneous

material were reduced and the need to obtain consent built a delay into the process. The paper considered that the advantages outweigh the disadvantages. The consent element, in particular, gave the process inherent robustness and transparency "which obviates the need for extensive verification".

162. At paragraph 5.2, there was discussion of feedback to the effect that the term "fact-finding mission" was misleading because the missions actually obtained the views and opinions of sources rather than facts. It was noted that "fact-finding mission" was simply the accepted term used by all countries which carried them out, although a recent COIS FFM in 2007 had been caught "information gathering mission". Consideration could be given to reverting to that term in the future. At paragraph 5.5, referring to the report of Alan Ingram, it was considered not to be feasible to apply social research models of sampling to COIS FFMs "which often have to be arranged at short notice and draw upon a relatively small pool of suitable sources". To some extent the sources used were self-selecting owing to practical considerations of availability, geography and timing. Although seeking to make samples as representative as possible, FFMs made no claims about the validity of the sample and simply stated who was interviewed and what they said. It was left to the user to assess the value of the information provided by each source, as well as the overall balance of the sample. At 5.7 it was stated that the existing process whereby there was internal verification by two team members followed by explicit agreement from the interviewees that the information had been recorded correctly was inherently robust and transparent.

163. Mr Walker said that he was aware of the existence of this document. Asked whether he accepted the statements to which reference had just been made, Mr Walker said he would need to consider that matter. Mr Walker had not been guided by the existence of the document in framing his input to the FFM visit to Zimbabwe. Mr Walker became aware of the document only after the visit had taken place.

164. Mr Walker was asked about the APCI document of April 2008 entitled "Evaluation of the report of the fact-finding mission 11-20 February 2008 Turkey" prepared by Dr Fiona Adamson of SOAS and Dr Başak Çali of UCL. Mr Walker was unaware of this document. Mr Walker, however, agreed with the following passage, as shown to him at the hearing:-

> "We note that statements by interviewees should not necessarily be treated as authoritative but rather in many cases as opinions or impressions. Especially, given the relatively small sample, it is unclear how representative the opinions presented in the report are. When facts or statistics are quoted by interviewees they should be backed up with written sources whenever possible. Also, a statement by an interviewee that no statistics exists in a particular area should not necessarily be taken as authoritative.
>
> HO: agreed. The statements by the interviewees do contain opinions and impressions, as do many COI sources. They will be used in context of other authoritative material."

165. Mr Walker was asked about the minutes of the 7 October 2008 meeting of the Advisory Panel on Country Information (Authorities, Vol 3, Tab 35). At paragraph 3.9 of the minutes, Nick Swift of the Home Office stated that "The FFM report was not designed to be a 'standalone' document, but to supplement the COI Report. Also, the information contained in FFM reports did not claim to be 'objective fact', but the views of the individuals interviewed. Mr Swift said that these points would be made clear in the introductory sections of future reports of FFMs." It was put to Mr Walker that this had not happened in the case of the present FFM report. Asked about paragraph 7 of his supplementary statement, Mr Walker said that he might not have used the word "comprehensive" on reflection, but nevertheless, given the degree of unanimity in the responses, he considered that these fitted with other evidence, outwith the FFM report. Although the team could have interviewed more individuals, he considered the range was sufficiently representative, particularly given COIS and FCO involvement.

166. Mr Walker was asked whether the team had been briefed by the COIS as to the relative weight to give to the views of the persons interviewed as to the research capacity of their organisation. Mr Walker did not know and the team had not looked into the issue of the research capacity of the organisations but that the COI and the FCO had been of the view that they were credible organisations.

167. Mr Walker could offer no comment on whether anyone who was interviewed had not realised what they were doing, when asked to sign a record of the information provided at the meeting. One source who had chosen to remain anonymous was an organisation which had worked worldwide and whose reliability was unquestioned. Two other anonymous sources were amongst the best known international organisations in the world and were also reliable. One was a source that was also one of the witnesses for the appellants. The fact that these assessments had not been reduced to writing did not affect the issue of the weight to be given to the views concerned.

168. Mr Walker described himself as having the function of a tool on the FFM visit. The respondent had declined to adduce the personal notes taken by the members of the team, which were likely to be in the nature of personal jottings. They had relied on the approval process of what had been described as "transcripts", albeit that that expression might be regarded as a misnomer.

169. Mr Walker's understanding was that they would be speaking to individuals as representatives of different organisations for whom those individuals worked. Mr Walker was aware of one person who had not been speaking in that regard, as matters transpired.

170. Mr Walker was asked about one of the anonymous interviewees who (respondent D, divider 1, page 33) but apologised not just for being unable to put the comments on the record but also for not being "more candid". Mr Walker said this had not occurred to him as being a problem but the responsibility for the accuracy of the FFM report had been that of the COIS.

171. Mr Walker was referred to page 6 of bundle D, where the representative of Gays and Lesbians of Zimbabwe (GALZ) was recorded at page 69 of the FFM report as saying that "in high density areas openly gay men may face taunting and harassment". In the email recorded at page 6, however, the interviewee was recorded as saying that openly gay men in high density areas "may face violence, taunting and harassment", with the marginal comment that "although isolated, it's important to highlight its occurrence [i.e. violence]". Thus, in the published FFM report, the reference to violence had been omitted. As to whether this raised concerns about the reliability of the report altogether, Mr Walker accepted that this had been a serious omission.

172. At page 85 of the FFM report, in the record of what was said by a major NGO, which asked to remain anonymous, Mr Walker was referred to pages 27 and 28 of respondent D, divider 1, where the interviewee had asked for amendments to be made to the record; but these had not been taken into the published document. Mr Walker admitted that this was a concern but he nevertheless did not accept that these matters undermined the validity of the report.

173. Mr Walker was also referred to bundle D, pages 68 to 71, concerning the response of Zimbabwean Lawyers for Human Rights. Their record in the FFM report had originally said:-

> "Those who are more politically active are more likely to be attacked, for example MDC councillors or people who have positions in MDC structures, however the nature of violence depends on the area and the perpetrator of the violence.
>
> The violence is mostly in the form of threats claiming that violence in 2008 will be surpassed."

174. The last sentence in the passage just quoted was the subject of an email comment from the interviewee stating:-

> "This is too much of a generalisation and underplays the complexities of political violence in the country. I would suggest it either be taken out or developed further to indicate the many different types of political violence which are experienced. It is definitely not just threats."

175. It could be seen from the FFM report that the passage had, in fact, been taken out. Mr Walker said that that was not necessarily how he would have approached the task.

176. Later in the same response there was this passage:-

> "Relocation to rural areas is very difficult as there is no land available to be allocated to new arrivals without the authority of the chief in that specific area. Movement to urban areas is possible but uncommon as economic reasons prevent people paying for accommodation."

177. Again, there was an email comment as follows:-

> "It is not uncommon as there has been an influx into urban areas but living conditions are terrible because people cannot afford the costs of accommodation and end up sharing small rooms with many other people."

178. It was put to Mr Walker that this comment, which was relevant, had been omitted from the published report. Mr Walker admitted that the matter was unsatisfactory but it did not undermine the general validity of the FFM report.

179. Mr Henderson then asked Mr Walker about the criticisms of the FFM report voiced by W66 and Professor Ranger. Mr Walker said he disputed all their comments (appellant bundle A/Tab 2/pages 20 et seq). So far as the executive summary placing a more positive spin than they would justify was concerned, Mr Walker said that that

was a matter of opinion. Mr Walker had, however, argued strongly against the inclusion in the report of an executive summary; but he had been overruled.

180. Mr Walker recollected that other interviewees had been asked about the profiles of victims of violence, not just the Research and Advocacy Unit (report, page 30); although it was only that organisation which had provided a specific answer on this issue.

181. Mr Walker was asked about paragraph 3.6.10 of the respondent's OGN (RB/1/RB/1) which suggested that the FFM visit had found facts, which was inconsistent with the respondent's evidence to the Advisory Panel as to how FFMs should be used. Mr Walker said he was not sure he agreed with that question, in that the FFM was part of the factual basis on which the respondent made decisions regarding international protection.

182. In the FFM report the Zimbabwe Human Rights NGO Forum is recorded as saying that MDC supporters would be relatively safe if relocating within MDC dominated areas, noting that the MDC is "quite well organised" and can "protect" those at risk of violence (OGN 3.6.17). Mr Walker was referred to the witness statement in appellant A/2/30) of W80 of the Zimbabwe Human Rights Forum, in which he said:-

> "6. The summary refers to there being areas in which the MDC can protect its supporters by the threat of retribution. What I was referring to there was isolated pockets of resistance that have appeared on occasions. I did not mean that there were areas of the country that the MDC controlled or that the MDC could generally protect its supporters. As I said to the Home Office, the infrastructure of violence is still intact and ZANU-PF remains in total control of the coercive arms of the state. There is little therefore that the MDC can do other than rely on popular support in the areas I referred to."

183. Mr Walker said that the source, W80, was a reliable one and that he did not dispute the last sentence of paragraph 6 of W80's statement.

184. Mr Walker disputed, however, paragraph 2 of W80's statement, where the latter asserted that he "was actually asked whether the forum had reports of systematic ill-treatment of returnees since the GNU and it was the systematic ill-treatment of returnees as I said we would expect to hear about if such a thing was occurring". Mr Walker said that the interview with W80 had stood out in his memory because the team had been taken aback that W80 had volunteered what he did. Mr Walker did not accept that W80 had referred to "systematic" ill-treatment. Mr Walker disagreed that W80's recollection was better than his in this regard. Mr Walker was "absolutely clear" that they had not asked W80 merely about whether reports of systematic ill-treatment had reached him.

185. Mr Walker was asked about Mr Reeler's second statement and Mr Reeler's third statement (A1/2/108). This statement took issue with paragraph 8 of the supplementary statement of Mr Walker. Mr Reeler claimed that he had actually said that "It should be noted that it is generally considered in Zimbabwe that a large proportion of Zimbabwean civil society organisations have been infiltrated by the regime although the extent of the infiltration is very difficult to prove. Mr Reeler said that his statement was about the general perception, which was not possible to prove. Mr Reeler did not know to what extent the British Embassy had been infiltrated.

186. Regarding paragraph 10 of Mr Walker's statement, in which he took issue with Mr Reeler as suggesting that HMG "seeks to manipulate the evidence it obtains by withholding funding from those who are 'unhelpful'. This is untrue and offensive." Mr Reeler said his statement had made no such claim, nor would he do so. Mr Reeler denied that he had made a general allegation about what the British Government might do in this regard; and he was not suggesting that Zimbabwean civil society organisations would give evidence that they knew to be false. His point had been that there could be a tendency to exaggerate the expertise and knowledge of the organisation in interviews with important funders or potential funders and to provide answers which it is thought would be helpful. That could lead to information being less valuable "without any deliberate process of manipulation taking place" (paragraph 4).

187. Mr Walker stood by what he had said in his supplementary statement. He was also asked about the comments in the third statement of Mr Reeler regarding the Bulawayo Agenda and the Bulawayo Progressive Residents Association, two organisations interviewed by the FFM team, which according to Mr Reeler did not have the research capacity in relation to human rights violations. Mr Walker accepted that those organisations would not as such have such research facilities. By the same token, the Institute of Migration did not monitor the human rights abuses but had a wider migration role. Mr Walker did not know when the IOM's contract with UKBA was coming up for renewal. He agreed, however, that the IOM had not been invited to certain Diaspora meetings, pending resolution of the contractual position. As for the returnees being quoted as saying very similar things, Mr Walker did not regard that as strange. He said that the returnees actually had said the same things. He did not know whether the returnees he had interviewed in Zimbabwe were the same as those who had taken part in

the video link conference meeting, described by Ms Harland. The returnees who had agreed to talk to the FFM team were inevitably self-selecting. Entitlement to further funding for a returnee was not subject to that person "having to make IOM happy".

188. Mr Walker had not checked in advance about the asylum claims that the returnees had made, whilst in the United Kingdom. The team did, however, have background papers on the returnees; but these had not been published owing to the risk of the returnees being identified. Only one of the seven returnees had approved the transcript of the meeting. Mr Walker was unsure whether good practice considerations indicated that, in the circumstances, the transcripts of the returnees should not be used.

Debbie Goodier

189. Debbie Goodier confirmed her witness statement of 15 October 2010. She is a Senior Country Researcher in the Country of Origin Information Service of the UKBA. She led the joint FCO/UKBA fact-finding team that visited Zimbabwe in August 2010. She was also involved in the process of writing up and finalising the FFM report, which was published on the Home Office website on 21 September 2010.

190. On 17 August 2010 she and Andrew Jones of the FCO interviewed Anthony Reeler of the Research and Advocacy Unit. At the beginning of the meeting Mr Reeler was handed a copy of the fact-finding mission Terms of Reference and Interview Guide (exhibit 1). The purpose of the meeting was explained to Mr Reeler and the question of attribution was discussed with him. Although Ms Goodier could not remember whether she or Andrew Jones led that part of the discussion, she could confirm that Mr Reeler responded that he was happy for the views he expressed to be publicly attributed to him and that he had already spoken to solicitors based in the UK. It was also explained that a note of the meeting would be prepared and sent to him to approve.

191. Ms Goodier could not recall whether she or Andrew Jones also explained that in seeking approval Mr Reeler would be asked whether he was speaking in his personal capacity or on behalf of his organisation; but that question was asked in an email sent to Mr Reeler on 19 August 2010, seeking his confirmation of the note of the meeting. Mr Reeler responded on 19 August 2010. He was sent an email on 3 September 2010 from the FCO seeking his confirmation that the note accurately reflected what he had told the team. Mr Reeler responded on 6 September 2010, stating that he had made some amendments and additions and was now happy with the amended document.

192. Cross-examined, Ms Goodier said that she was aware of recommendations relating to the preparation of fact-finding mission reports, following the FFM report on Turkey. She had not received any guidance in relation to the present exercise regarding what weight was to be given to the various sources. She did not know who had chosen the individuals to be interviewed. Ms Goodier did not have any role in approving the summaries. Her role was limited to being a conduit to the researcher who had written the executive summary.

APPENDIX B

SUMMARY OF EVIDENCE REGARDING TIMING AND CONSEQUENCES OF ELECTIONS

Timing of elections

1. The appellants' witnesses were of the view that it was likely elections would be held in Zimbabwe in 2011. That was the view of W66, although he admitted in cross-examination that he was unsure whether Mugabe's statement that elections would occur after February 2011 might be simply posturing on the part of the President. NGOs were, according to W66, expecting elections in that year. If ZANU-PF felt that that would be their best chance, then elections would be called, regardless of the views of the Zimbabwe Electoral Commission. W77 considered that 2011 was likely to be an election year, notwithstanding the Electoral Commission's belief that it would not be possible to provide the necessary structures for a free and fair poll. Professor Ranger considered the two scenarios people feared most were a general election which Mugabe and Tsvangirai would call in 2011 and the infighting within ZANU-PF when Mugabe were eventually to go. Elections in 2011 were, in the view of Professor Ranger, likely despite the objections of the Chair of the Electoral Commission (Judge Mtambanengwe). Mugabe had ordered his Finance Minister to set aside US$200 million to pay for fresh elections in 2011.

2. A newspaper report of 12 September suggested Tsvangirai and Mugabe had struck a deal regarding elections, as being the only way to achieve resolution of the impasse in which they found themselves. In cross-examination, however, Professor Ranger agreed that the fact the constitutional process was running far behind schedule suggested that elections might have to be held later. There was uncertainty as to whether the COPAC process leading to the adoption of a new constitution would necessarily precede presidential and other elections. If elections were called prematurely, their timing might be opposed by civil society. However, if Mugabe were determined to hold elections, he would ignore the constitutional process. On the other hand, one of the factors in the mix, according to Professor Ranger, might be the unwillingness of some MPs to subject themselves to elections. Asked about an article indicating that the polls might be at least two years away, Professor Ranger said he had no knowledge of the "private whisperings" referred to in it, although the newspaper carrying the article was in his view to be trusted. The present uncertainty, however, did not necessarily argue in favour of delay. It was right that the control of elections was not exclusively within the power of President Mugabe and that agreement between ZANU-PF and the MDC was required. Morgan Tsvangirai had said many different things about the timing of elections. In re-examination, Professor Ranger said that Mugabe was capable of announcing elections without agreeing this with Tsvangirai; and Mugabe found himself bound by the COPAC timetable to no greater extent than he had felt himself bound by other agreements.

3. A report of 14 September from swradioafrica.com described ZANU-PF as having "kicked into election mode". On 28 July, The Zimbabwean had spoken of the "possibility of elections next year", which led the Transitional Justice Project within the Zimbabwe Human Rights NGO Forum to shift focus from trying to make the GNU work to preparing for elections and making sure that they worked. On 15 October, Reuters reported that Mugabe had said that, after a constitutional referendum, elections would be held "by mid next year. I don't see any reason why we shouldn't have elections next year." On 29 October, a British Embassy egram considered that "An election lies ahead, but when is as yet impossible to predict".

4. On 25 November, radiovop.com reported that, although Mugabe was "feverishly pushing for elections by June next year", the President was "facing stiff resistance from his MPs who were opposed to the polls". Prime Minister Tsvangirai, meanwhile, was "cautiously saying he wants elections but under conditions free of political violence and intimidation".

5. In an interview on swradioafrica in June 2010, Anthony Reeler of the RAU had said that "Whether it's in 2011 or 2012 or 2020, the crisis will be resolved by an election and that election has to be genuine, free and fair and able to be accepted by the entire international community". A Reuters article of 27 August quoted the Zimbabwe Electoral Commission as saying that an election in 2011 was not likely and that funding was the biggest challenge to holding an election. In addition, the voters' roll in Zimbabwe was a "shambles". This was the view of the Chair of the Commission, Judge Mutambanengwe. An online report of 20 July had said that, whilst in public ZANU-PF and the MDC were telling their party supporters to stay ready for elections, "privately their officials say the polls are at least two years away". This was the article about which Professor Ranger was asked in cross-examination. Lovemore Madhuku, head of the pressure group called National Constitutional Assembly, said that there was "nothing inevitable about next year". Madhuku did not think that ZANU-PF was sure about the electoral outcome "and I don't see how they can be in any hurry".

6. On 30 September, a report in The Independent of Zimbabwe quoted Morgan Tsvangirai saying that he was no longer certain that elections would be held in 2011. The MDC had to be sure that there would be no violence or repetition of what had happened in 2008. The Financial Gazette, two weeks earlier, had carried a report from its correspondent in Harare, regarding the SADC summit, which concluded that "talk of elections is premature and ill-advised". The correspondent considered that the MDC was in danger of "falling into a ZANU-PF elections trap". On 12 September, however, it had been reported that Tsvangirai and Mugabe had, according to the former, agreed to hold elections in 2011. The Chair of the Electoral Commission said that rushing to hold a new vote before thorough preparations would inevitably result in a disputed outcome. On 5 October, Justice Mutambanengwe was quoted as stating that his organisation did not have the funding to run a full and fair poll, thereby contradicting a statement in October by his deputy, Joyce Kazembe, who had claimed that the Commission was ready to conduct national elections if the leadership and government asked them to do so. According to the report, (in thezimbabwean.co.uk) Mutambanengwe appeared determined to counter her conflicting messages. The allocation of money for a poll would only occur in January 2011. On 16 November, thezimbabwemail.com quoted COPAC's co-Chairman Mwonzora as saying that Mugabe's and Tsvangirai's call for elections in 2011 "could just have been a case of nervous excitement". Mwonzora said that there was "nothing on the table to impel his committee or the Zimbabwe Electoral Commission to hold elections next year". His organisation did not "listen to what leaders say at rallies when they are talking to their voters" and none of the leaders had gone to Parliament to request an election for 2011.

7. On 23 November, thedailynews.co.zw reported that the Executive Secretary of the SADC had said that it was "premature for President Robert Mugabe and Prime Minister Morgan Tsvangirai to talk of holding elections next year when they had not fully implemented the issues agreed in the Global Political Agreement". On the same day the British Ambassador in Harare was reported as saying that the political climate was not conducive to a free and fair general election. On 21 November, The Standard reported that some ZANU-PF MPs had boycotted their party's caucus meeting, which was designed to force them to endorse Mugabe's push for early elections. A source said "It's only Mugabe and a few people who want elections to be held next year". Another source, however, said that if the President says there are to be elections "there will be elections".

8. On 29 November, radiovop.com reported that President Zuma of South Africa had visited Zimbabwe and met Mugabe and Tsvangirai. According to a government source, Zuma "was in a no nonsense mood and told the leaders that he was fed up with continuously having to discuss simple issues which could be resolved amicably". President Zuma felt that "only credible elections will help resolve the political crisis in Zimbabwe". Reporting on the same visit, another internet site said that the talks had been expected to focus on the timing of new elections "after the ZANU-PF party had declared that polls would be held around June 2011". After the meeting, none of the leaders "would elaborate on the timeline for elections or the future of the unity deal".

9. The evidence supplied by the parties up to 28 January 2011 also contains a substantial amount of material relating to the timing of elections. Despite the public pronouncements at the ZANU-PF annual conference in December and party hardliners pushing for an early poll, voanews.com reported on 11 January that Mugabe was "amenable to a delay", given the "intense pressure for a slower pace towards elections" from the SADC. A referendum on the constitution in September 2011 looked like "a more likely timeline", according to the report. Reuters had reported on 14 December that analysts considered the elections could still be postponed for at least a year due to regional pressure. A professor of political science at the University of Zimbabwe was quoted as saying that, despite Mugabe's apparent preference for early elections, "His major problem is that SADC is not convinced that early elections are good for Zimbabwe or the region". The Chair of the National Constitutional Assembly considered that ZANU-PF "might not call early elections for strategic reasons". This report echoed one in the Zimbabwean.co.uk of 8 December, which quoted a "well-placed source" in civil society in Zimbabwe as saying that SADC had told Mugabe that he could not unilaterally call for elections without SADC's involvement and input".

10. On 4 January 2011, an Angolan press report referred to Zimbabwe's state-owned Sunday Mail as saying that it would not be possible to hold elections because the constitutional reforms needed to be completed first; and that Zimbabwe had informed the SADC it was not feasible to hold elections "in the first half of 2011". A report in the standard.co.zw of 10 January claimed Mugabe had angered hardliners by supporting the recommendations of his deputy, Joice Mujuru, to set aside plans to hold elections in 2011, and that constitutional changes needed to come first. Political observers were said to have expressed the view that "it was highly unlikely that polls would be held this year".

11. On 18 January, the MDC's finance minister said in Johannesburg that it was a "probability" that elections would see a repeat of the violence of 2008. Although asserting the MDC would not boycott the elections, if called in 2011, the minister, Mr Biti, said that, if conditions were "in any way close to June 2008, it would be immoral for us to

lead people to the slaughterhouse". A report in zimonline.co.za of 19 January observed that, although Mugabe had said elections must take place in 2011, "they may yet be postponed to 2012 or 2013".

12. In the House of Lords on 27 January 2011, the Minister of State said "Mr Mugabe seems to be pressing for early elections". The "sensible view", however, was for elections to come only after the constitutional process had been completed. The United Kingdom government would press for EU monitoring to play a part "when elections come in sight". On the same day, zimonline.co.za said that "rising reports of political violence suggest a vote is imminent (sic) either at the end of the year or early next year".

Consequences of elections

13. As can be seen from the foregoing, the question whether the calling of elections is likely to unleash the sort of violence seen during 2008 (or worse), with war veterans, youth militias and the like subjecting people on a wide scale to "loyalty tests", and with the prospect of violent retribution in the event of failure, cannot be entirely separated from the question of when such elections are likely to be held. A rush towards early elections, say in the middle of 2011, would fuel fears that ZANU-PF and Mugabe are determined to retain power by any means possible, including violent coercion. On the other hand, such a move may well be opposed by the international community, in particular the SADC and President Zuma of South Africa.

14. Entirely understandably, the appellants' main witnesses and various of the civil society organisations interviewed by the FFM team were extremely concerned that any future elections will be attended by the widespread serious violence seen in 2008. W66 noted grave fears that violence would quite rapidly escalate and intensify as the expected 2011 election approached, in view of ZANU-PF's track record and determination to stay in power at any cost. Zimbabwe's history indicated that the coming election would be a "violent event". W66 considered that the SADC and others would have no real influence in securing a fair outcome. Whilst that was necessarily speculation, he based it on the history of Zimbabwe over the past ten years. Although when President Zuma came to power, there was a feeling he would encourage a more democratic approach in Zimbabwe, there did not appear to be any principled or pragmatic policy coming from South Africa. Asked about Tsvangirai's statement that he would not participate in elections if this would risk violence as in 2008 (appellants' bundle C), W66 did not recall the Prime Minister saying this; but if the MDC did pull out, this would lead to "more complications".

15. W77 doubted that, despite its supposed disbandment, the JOC had any intention of abandoning its strategies of maintaining power for ZANU-PF. As before, youth militia or "green bombers" would be mobilised under the control of senior military as "shock troops for a ZANU-PF victory". The destruction of the education system in Zimbabwe meant that ZANU-PF now had a "pliable youth". In his "balance sheet", W77 put on the debit side "every indication that violence such as that seen in 2008's election periods would recur". There would need to be regional or continental pressure to ensure that GPA commitments were honoured.

16. We have already noted Professor Ranger's description of fears regarding future elections. He regarded the Chair of the Electoral Commission, a Namibian Supreme Court Judge whom Professor Ranger had taught as a student, as a "splendid man" but Mtambanengwe faced an impossible task as the voters' roll was in chaos and there had been chaos in all previous elections. On the other hand, there had been some measures in place to protect people in 2008, which was why the March elections in that year had been relatively successful. In particular, publicising the results and the votes cast had made it difficult for ZANU-PF to carry out too much vote-rigging. There had also been further reforms in the process recently, in that results would be posted publicly, the overall outcome would be published within a week and there was supposed to be a police presence at each polling station. Human rights organisations had commended certain of the proposals, whilst criticising others. Professor Ranger considered that, if the elections were held later, then perhaps these measures would be implemented. However, nothing appeared to have been done to resolve the problems regarding the electoral roll and the Commission could not stop elections happening if Mugabe insisted.

17. Professor Ranger agreed in cross-examination that Tsvangirai had assured his supporters that he would not go into a violent election or take part in one. Professor Ranger nevertheless found it hard to believe that Tsvangirai would not take part in elections if they were called. This time, however, Professor Ranger acknowledged that there was an Electoral Commission that could suspend the process and the MDC also hoped to get SADC support. Tsvangirai's withdrawal might be a compelling factor if MDC supporters were being exposed to violence.

18. Professor Ranger regarded the prospect of an SADC monitoring system or even peacekeeping force as being low. There had been monitors present in past elections. Nevertheless, Professor Ranger agreed that the SADC and South Africa were under pressure to see the stabilisation of Zimbabwe. There was a possibility that South Africa would apply adequate pressure, although Professor Ranger regarded this as very unlikely.

19. Anthony Reeler considered that long-term SADC observers were needed both before and after the election, as well as independent control of the election process. He thought there was no sign that SADC had the will or ability to impose this. If the election went ahead without such measures, it was likely to be a very violent situation "at least comparable to 2008" or indeed "worse than 2008". Dewa Mavhinga of Crisis Zimbabwe Coalition said that although limited electoral reforms had been undertaken, these had not been "around prevention of violence". Civil society groups were demanding that SADC should deploy monitors "with significantly more authority than mere observers". The forthcoming election was likely to bring organised violence throughout Zimbabwe, although it was difficult to predict how the worst of the violence would be distributed. The witness thought Mashonaland would suffer especially badly.

20. W78 of the Catholic Commission for Justice and Peace Zimbabwe considered that "We are now back on the road to the violence we saw during the 2008 election". The MDC had failed to gain a real control over the Home Affairs Ministry.

21. On 28 July, Zimbabwe Human Rights NGO Forum, speaking of their shift in emphasis from the working of the GNU to preparing for elections, stated that they were "very mindful of the fact that there might be a repeat of political violence". Without saying what they were doing, the spokesman indicated that the Forum was putting in place strategies that would assist victims and try to mobilise the grassroots to stop fighting political wars among themselves. On 5 December, Justina Mukoko of the Zimbabwe Peace Project gave a speech entitled "Political violence in Zimbabwe: a curse or an age old tradition", in which she said the fear for elections in 2011 was that they would "prove to be more violent than the ones held in 2008". Although violence had been perpetrated with impunity in Zimbabwe since colonial times, only recently had attacks occurred mainly against those promoting the democratisation of the national government. She said that the 2005 elections had been "relatively peaceful", compared with 2008.

22. In the FFM report, Anthony Reeler of RAU said that that organisation was currently researching communities where militia bases existed and looking at northern Zimbabwe "where the violence was worst in 2008. We are looking at what was in place in 2008 where there were multiple bases which explicitly targeted MDC and non-participating voters." He considered that ZANU-PF was currently identifying areas for bases to open in January 2011. They were also recruiting youth to operate from these bases. Some bases would be used "again and again, and others will be set up anew". One constituency they had monitored had five bases, whilst in other areas the bases would rotate, "being in existence for only a week or two, then moving on to another area. There is no strong evidence of bases in urban area[s], although Epworth did have a base in 2008. Rural districts can become no go areas in the election run-up and visitors to an area will be closely monitored. In urban areas, retaliation violence is not uncommon. Some MDC communities have developed a strategy where all members carry a whistle to attract other members if there is violence so the community can protect themselves." The issue of whether there was a base at present in Epworth (a township to the south-east of Central Harare) was also the subject of comment from the Zimbabwe Human Rights NGO Forum in February 2010, which spoke of the "alleged reopening" of a militia base in Epworth. The Zimbabwe Association of Doctors for Human Rights were recorded in the FFM report as saying that it had heard that bases were being set up in a similar way to those established in 2008.

23. We are aware of what was said on behalf of the appellants regarding the weight to be placed on the Counselling Services Unit's response to the FFM team. We consider, nevertheless, that some weight can be placed upon the comments of that Unit regarding what it considered to be the nature of the victims of violence in 2008, given that the Unit's remit extends to assisting those who are or had been the subject of such violence. The CSU considered that in the 2008 elections, "80% of the victims of such violence were known to have had a role in the electoral process above and beyond of merely being opposition supporters. Most of the abductions and executions were at the hands of a death squad and took place on four particular days period (sic) with the victims being clearly targeted for their political effectiveness rather than random killings."

24. The major international organisation interviewed on 12 August told the FFM team that there was "great potential" for violence levels to increase or even exceed 2008 levels, when the elections came round. Violence in connection with elections would, it thought, follow the pattern of 2008 and be targeted at areas that were previously ZANU-PF strongholds. The organisation considered that "targets will primarily be political activists and former ZANU-PF voters who defected to the MDC". The anonymous organisation interviewed on 11 August, likewise, had a fear that "any future election will lead to more violence". The major NGO interviewed on 11 August noted actual and implied threats that victims of violence in 2008 could expect the same in the run-up to the next elections. The potential for political violence was "significantly higher in most rural areas, with the exception of Matabeleland North and Matabeleland South, than it is in urban areas". The Zimbabwe Human Rights NGO Forum were quoted in the FFM report as saying that the "infrastructure to deliver large scale

violence remains in place". The Catholic Commission for Justice and Peace Zimbabwe said that there was "potential for even higher levels of political violence before the anticipated 2011 elections than were in 2008". However, the source said that it was "not however possible to predict with any confidence" in that if ZANU-PF thought it could win by sleight of hand it may decide to use such means; otherwise it might unleash "unprecedented violence on the basis that it has nothing to lose".

25. We have already mentioned the interview given by Anthony Reeler on swradioafrica on 18 June 2010. Here, Mr Reeler said that peacekeeping forces were put into "failed states", which was not so with Zimbabwe. The best that could be hoped for from the international community and SADC was an "incredibly intense observation and that would require the cooperation of the state in Zimbabwe, where you have observers observing the Electoral Commission, the police, the army, the prisons, the civics, the political parties, the rallies, there are different ways of doing this thing". Mr Reeler thought that such very intense observation "could ensure a genuine election". Although Zimbabwe was in many ways a disaster, there were encouraging signs, such as the people's demand for democracy.

26. The swradioafrica.com article of 19 November, referring to the SADC troika meeting on Zimbabwe, recorded SADC leaders as "pushing for the immediate deployment of an SADC team to oversee the reform and electoral process. But some observers remain concerned that other leaders in SADC are firmly on Mugabe's side and are not impartial enough to help run free elections in Zimbabwe." On 23 November, the same organisation reported that the regional SADC block had said that an independent investigation was required in Zimbabwe "to verify reports of violence and intimidation before a general election could be held". Civic leaders were insisting such elections could be held only if soldiers returned to their barracks to allow for the smooth running of an election that was free from militarisation, manipulation and violence. On 29 November, South African President Zuma was said, during his visit to Zimbabwe to meet Mugabe and Tsvangirai, to have indicated that he wanted SADC "to be heavily involved and wants an election roadmap which is credible. Zuma does not want bloody elections and does not want members of the intelligence and uniform forces to interfere with elections. In short, Zuma effectively wants elections to be run by SADC together with the Zimbabwe Electoral Commission." Commenting on this visit, a British Embassy egram of 1 December concluded that "despite his many other distractions, Zuma remains engaged on Zimbabwe" and concerned that elections proceed without violence in a free and fair manner.

27. On 7 January 2011, a research group called "Afrobarometer" said an opinion poll indicated 7 out of 10 Zimbabweans feared intimidation and violence "if elections go ahead this year"; but despite these fears, 70% still wanted elections in 2011. According to zimonline.co.za on 19 January, a three month investigation had revealed plans for more than 80,000 youth militia, war veterans and soldiers to be deployed across Zimbabwe "in an army-led drive to ensure victory for President Robert Mugabe in the next elections". The report said the Joint Military Operations Council (JOC) planned to intervene before foreign or even local election observers were on the ground. Their plan was to unleash violence and terror to ensure that "a thoroughly cowed electorate will on voting day back Mugabe in enough numbers to save the veteran President" from a second round of voting in the Presidential elections. The JOC were said to have worked "quietly" and "almost unnoticed" to reactivate the structures that waged violence in previous polls, "apart from the occasional [reports of] human rights groups or the media of resurgent violence in some parts of the country". Referring to Laurent Gbabgo, President of Ivory Coast, who in late 2010 refused to cede power after defeat at the polls, the report described Zimbabwe's generals as fearing that SADC "is unlikely to accept another blood-soaked second round election for Mugabe or allow him to refuse – Gbabgo style – to hand over power to a victorious Tsvangirai". The report contained a list of senior soldiers who would be based in particular districts, across Zimbabwe. A ZANU-PF spokesman dismissed the report as an attempt to smear his party.

28. Tsvangirai was quoted on 7 December as saying that one of the fundamental issues to be addressed was that of violence in any future elections. Civil society groups were pressing the SADC to deploy monitors, although how this would be done was not clear.

29. A number of the recently produced reports concerned the release by the organisation WikiLeaks of US diplomatic emails, some of which involved Zimbabwe. The leaks suggested Tsvangirai had met US officials to discuss policy, as a result of which there were suggestions the Attorney General would charge him with treason, and also contained the alleged observation from a minister of the government of South Africa that Mugabe was a "crazy old man". Voanews.com commented on 10 December that these leaks "could lead to instability and violence" ahead of the election expected in 2011.

30. A report in the zimbabweamail.com of 26 January 2011 claimed that ZANU-PF had set up "campaign bases in various constituencies" in Harare. The bases were said to be "confined to high-density areas". According to "some residents" this involved turning the homes of some district level party leaders and losing parliamentary candidates into campaign bases "to organise meetings where youths spend most of their time strategising for the

next election". This was said to have "unsettled residents" and resulted in clashes between ZANU-PF and MDC youths in Mbare and Budiriro. An ZANU-PF spokesman denied his party was setting up bases, saying it was a normal part of party activity for members to meet for "mini rallies" at their leaders' homes.

31. The Minister of State in the Foreign Office told the House of Lords on 27 January that the United Kingdom government "has contributed to the UN funding of the constitutional review process, with a referendum due to be held in the summer of this year. We are also working with international partners, particularly the Southern Africa Development Community, on a process to seek to ensure that elections, when held, will not see a repeat of the violence of 2008. The prospects for credible elections will be greater if sufficient time is allowed for important reforms to be implemented". In the same debate, the Minister told peers that "Jacob Zuma has said, while leading SADC's support programme, that he will take personal responsibility to see that the constitutional process goes forward and that the country is properly prepared for elections. We support him in these aims; that must be the right way forward".

32. According to zimonline.co.za, again on 27 January, Morgan Tsvangirai had told President Zuma "that a SADC-backed election roadmap would still fail to deliver free and fair polls in Zimbabwe in the face of resurgent political violence that has in recent days spread into urban areas". Zuma was said to be drafting a roadmap, whereby "elections will follow a referendum on a new constitution and will also set milestones such as electoral reforms, the role of the security forces and how to smoothly transfer power". The MDC reportedly said escalating political violence from ZANU-PF hardliners and the military would render the roadmap "meaningless".

APPENDIX C

DOCUMENTARY MATERIAL

Item	Document	Date
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602	Bulawayo Progressive Residents Association, "BPRA engages parliamentary portfolio on Chombo issue"	Undated
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634	Witness statement of Dewa Mavhinga, Regional Information and Advocacy Coordinator of Crisis Zimbabwe Coalition	Undated
635	Witness statement of Peter Iliff, Secretary of the Zimbabwe Association of Doctors for Human Rights	Undated
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649	Letter from UK Border Agency, "Reasons for Refusal"	28 July 2009
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653	MDC membership card of CLM, with subscription schedule paid for and signed to November 2007	Undated/various dates
654	Rule 15(2A) Notice and additional evidence (photographs and minutes from MDC local branch meetings)	Undated
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663	Determination of IJ Braybrook	19 August 2009
664	Letter from Tribunals Service and order granting reconsideration	21 September 2009
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666	Witness statement of EM	18 January 2010
667	Belvedere Teachers' Technical College, Ministry of Education, identity card for	Undated

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669	City & Guilds, "Notification of Candidate Results" Processing Period 0610	Undated
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680	Witness statement for JG	30 August 2009
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682	Appointment letter from Heatherwood and Wexham Park Hospitals NHS Foundation Trust to JG	4 September 2009
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684	UK Border Agency letter, "Determination of Asylum Claim"	15 September 2009
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691	Letter from Assistant Headteacher, to parents regarding child participation in "FRIENDS for Life" program	January 2010
692	Letter from Ros Curwood, Educational Therapist, to Assistant Headteacher, regarding oldest son of JG	14 March 2010
693	Letter from Dr Dennis Guiney, Comprehensive CAMHS Hub Co-ordinator, regarding oldest son of JG	13 April 2010
694	Letter from Dr Dennis Guiney, Comprehensive CAMHS Hub Co-ordinator, to JG regarding oldest son of JG	26 May 2010
695	Assessment of oldest son of JG by P Sefton	24 September 2010
696	Statement of JG	29 September 2010
697	"Report from School" for oldest son of JG	4 October 2010
698	"IEP Review Sheet" for oldest son of JG	6 October 2010
699	Medical Report of Dr R Russell regarding JG	8 October 2010
700	Expert report of Christine Brown, Independent Social Worker, regarding JG and dependents	10 October 2010
701	Addendum Report of Christine Brown, Independent Social Worker, regarding JG plus dependents	21 October 2010
702	Supplementary statement of JG	24 November 2010
703	Statement of sister of JG	24 November 2010
704	UK Border Agency letter "Determination of Asylum Claim"	14 December 2010
705	Letter from Immigration Advisory Service regarding JG and "Notice of intention to pursue appeal after grant of leave"	12 January 2011
706	IAS Research Analysis on Humanitarian Situation	Undated
707	IAS Research Analysis on Political Situation	Undated
708	Individual Education Plan regarding oldest son of JG	Undated
709	Permission slip from JG to college regarding oldest son of JG's participation in	Undated

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710	Reconsideration grounds	Undated
	Documentation specific to COM	
711	Letter giving reasons for refusal of asylum claim	12 August 2009
712	Notice of Decision (to remove COM)	19 August 2009
713	Minutes of Northampton Branch, MDC meeting	September 2009
714	Notice of appeal and grounds	7 September 2009
715	Determination of IJ Dawson	10 October 2009
716	Application Notice	21 October 2009
717	Order granting reconsideration	10 December 2009
718	Minutes of Northampton Branch, MDC meeting	20 February 2010
719	Sokwanele.com summary of Highfield constituency results 2008	8 August 2010
720	Wikipedia article on Highfield	31 August 2010
721	Letter from Organising Secretary, Northampton Branch, MDC	4 October 2010
722	Witness statement	5 October 2010
723	Map of Highfield area	Undated
724	Photographs taken at Zimbabwe Vigil	Undated