

1304794 [2013] RRTA 750 (30 October 2013)

DECISION RECORD

RRT CASE NUMBER: 1304794

DIAC REFERENCE(S): CLF2012/79990

COUNTRY OF REFERENCE: Zimbabwe

TRIBUNAL MEMBER: Stuart Webb

DATE: [30 October 2013](#)

PLACE OF DECISION: Melbourne

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Zimbabwe, applied to the Department of Immigration for the visa on 19 April 2012 and the delegate refused to grant the visa on 13 March 2013.
3. The applicant appeared before the Tribunal on [15 October 2013](#) to give evidence and present arguments. The Tribunal also took evidence from [Ms A], wife of the applicant and presently in Zimbabwe. The applicant provided a copy of the delegate's decision to the Tribunal. The applicant was represented in relation to the review by his registered migration agent.

RELEVANT LAW

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

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
8. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

9. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). Examples of 'serious harm' are set out in s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
10. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
11. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
12. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
13. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
14. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

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

real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').

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

Section 499 Ministerial Direction

18. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

19. The applicant provided the following statement with his application, slightly edited.

I was born in Gweru in Zimbabwe. My father worked as a [occupation deleted] and my mother was a housewife. I have six [siblings]: [Information on siblings]. I am married to [Ms A]. We have [children]. Before leaving Zimbabwe I was employed full time as a [tradesperson]. My wife remained at home to look after the children.

In 2004, I joined the Movement for Democratic Change (MDC), This was my first involvement with a political group. I decided to join the MDC because of the hardship in Zimbabwe, I hoped that the MDC could save the economic and social situation in Zimbabwe, I hoped that if we elected another party, the situation, politically and economically, would improve. The MDC would be an alternative to the problems we are facing. I also wanted to be heard, to have my voice heard and contribute to change. I had plenty of friends who were involved with the MDC. My brother-in-law, my sister's brother, [Mr B], is active in the MDC. He was the MP of [District 1] before [Mr C] replaced him in 2008.

I attended MDC meetings which were held once a week. I would attend the meetings on average twice per month, depending on whether I was able to due to work commitments, We would hold meetings at alternate houses of members in [a ward] of [a] province, [District 1]. They were held in secret because if we were discovered by the Zanu PF holding a political meeting there would have been trouble. It is well known in Zimbabwe that if you support the MDC and not the Zanu PF you are at

great risk of being targeted by supporters of the Zanu PF. Fifteen to twenty people would attend the meetings. [Mr B] would occasionally chair these meetings. We would discuss the current political situation, and be told to remain strong when we were being intimidated. Members would often come with stories of intimidation such as people verbally and physically threatening them in the street and at their houses. Again, we were encouraged to persevere.

In 2006 I was elected to be the [position] of our MDC ward. This involved [details of the position]. I remained in this position until I left Zimbabwe. However, there were periods where there was not much required in this role. In the lead up and during elections it was very busy.

In 2008, I campaigned for the MDC in the parliamentary elections, I campaigned in [District 1] for the MDC candidate for [District 1, Mr C]. I would carry placards supporting the MDC along the roads. I would encourage people to vote for the MDC using a loudspeaker. We would also hand out fliers. There were over twenty people campaigning. We also attended rallies which were held at the stadium in [the district]. About seven hundred people attended the rallies. There were about four rallies between January and March 2008 (in the lead up to the elections which were held in March 2008). We had to be very careful campaigning because we were afraid of the reaction by Zanu PF. In March 2008, [Mr C] was elected. However, it was difficult for the MDC MPs to introduce change because the key political positions are held by the Zanu PF.

While I was campaigning for elections during this period in 2008 I received verbal threats from the Zanu PF supporters. For example, if they saw me on the street, they would say "If you carry on like this you will die for nothing". They could identify me as a MDC supporter as I would be wearing a pro-MDC t shirt. This happened about five times in the months leading up to the elections and the months following the 2008 elections. After the elections, the Zanu-PF supporters could identify me even if I wasn't wearing a t-shirt as they now knew I was a MDC supporter,

Between the parliamentary and the presidential elections, between March and June, it was very common and well known that Zanu PF supporters would beat up people who voted for the MDC. It was like retribution, trying to wipe out or punish those who voted against Zanu PF.

At the end of April in 2008, after the March elections, Zanu PF supporters came to my house and assaulted me. I was at home with my wife and children in the evening. They knocked on the front door like any other visitor. I opened the door and then they pulled me out of the house. They beat me with fists and sticks. I did not recognise the people who were beating me. I think that they were from another district. They took me somewhere by truck, I don't know exactly where. I think I became unconscious while they were beating me up. I think there were at least eight people. While they were beating me up, they told me that I must know which party to support, that I must continue to support MDC. After several hours during which I was beaten regularly and told to stop supporting the MDC they dumped me near the area where I live.

I was found by people from the neighbourhood in the early hours of the morning. They took me to my home where I waited til the morning when the [medical clinic] would open and I could receive medical treatment. The clinic said I needed a police report. I went with my wife to the [police station] to make a report. They took my statement. They said they would investigate. I then returned to the clinic and sought

medical treatment. My cuts were cleaned, I was bandaged and given pain killers. In the following weeks I did not hear anything from the police. I went and asked how the investigation was going but they said they had not found anything. I do not believe they had any intention of investigation. It is common for attacks on MDC supporters by Zanu PF supporters to go without investigation.

A few days after the attack I informed the MP, [Mr C], the elected MDC member for my constituent, of what had happened. He went to the police to see if they were investigating. Again, they said they were but nothing ever occurred to demonstrate that they were.

After being attacked in 2008 I reduced my work with the MDC, I was frightened after the attack and wanted to keep a low profile. As I kept a low profile I received no further attacks or threats during this period, however, my political beliefs were always with the MDC.

When the talk of an election began in late 2011 I decided I had to be involved and support the MDC publicly again. The MDC are the only party that can bring democracy to Zimbabwe. In late 2011 I publicly began supporting the MDC.

Last year, the Zanu PF announced that they want to hold elections this year. In preparation for the general elections at the end of January, there were elections to choose a MDC candidate for the [District 1] district. The MDC members voted for the District Chairman. I voted [in] January 2012. I voted for [name deleted]. He did not win.

I believe there were Zanu PF informers present when we lodged our votes as I believe this is what has caused the threats against my life and the lives of my family as outlined below.

[In] January 2012 I left Zimbabwe for Australia via [another country] on a visitor's visa to attend [a family event]. I arrived [in] January 2012, I had a return ticket booked for [April] 2012.

On approximately [February] 2012 members of the Zanu PF came to my house looking for me, but at this time I was in Australia for [a family event]. The Zanu PF supporters did not know I was in Australia. My wife told them that I was in Australia but they didn't believe her. They threatened my wife and told her that she must tell them where was when they came back. They told her to tell me that I must stop my support for the MDC or they will do to me what they did in 2008.

My sister [Ms D] had come with me to Australia and left her children with my wife to look after. When they came to my house there was my wife and [children]. Once they left my house my wife was very afraid and so fled from our town Gweru, [District 1], the next day and went into hiding with my and [Ms D]'s children. At first, she went into hiding in a rural area. She stayed for a short time with my [relative]. During this time, she called my sister [Ms E] to tell her what had happened as I didn't have a phone. I was staying with my sister [Ms E] at that time,

My wife did not go to the police as she did not know who to trust. I am in contact with my wife by text message, but I don't know exactly where she is as she is afraid to tell me as she is worried the phone may be being monitored by the government. She tells me of the hardships she is facing. She told me she hasn't returned to our home, because she is too afraid. My children are not going to school as it is too dangerous, as they might be found out by Zanu PF. My wife is not working and must

remain in hiding as nowhere is safe from the Zanu PF. Her parents are giving her some small financial support.

The Zanu PF are present throughout Zimbabwe. It is common for Zanu PF supporters to pursue known MDC supporters if they move or try to hide. The Central Intelligence Organisation act as agents for the government and will find you wherever you are.

Following the attack in 2008 and my continued activity in the MDC I believe that this time they may kill me or my family if they find us. I had no intention of staying in Australia and my sister [Ms E] who I am staying with can no longer accommodate me. However, I know that I have no other option than to seek protection here as I am sure that my life and my families are at serious risk if I return to Zimbabwe.

In 2006 I was diagnosed [with a medical condition]. Prior to be diagnosed I was frequently unwell. When I went to the doctor they tested me and confirmed my [medical condition].

Since receiving this diagnosis I have been prescribed [medication] on a daily basis. Access to the medication has been restricted in Zimbabwe due to challenges with the supply. On average I would receive 3 weeks supply to cover me for 4 weeks, Often I would go to the [Clinic] to resupply but they would not have any medication remaining. As you can only attend the clinic that you are registered with I had no other options than just to wait until the next supply arrived. Following the attack in May 2008 my condition deteriorated for a period and it was difficult for me to recover. I stayed at home and did not go to work. My wife took care of me during this period.

Since arriving in Australia I have had regular access to the medication I require. I went to see a doctor when the medication I brought from Zimbabwe ran out. Since this time I have been receiving the appropriate quantity on a daily basis.

My doctor, [name and hospital deleted] has said that my condition has improved as a result of taking my medication consistently.

My inability to access this medication will significantly jeopardise my health should I be forced to return to Zimbabwe. My ability to recover from a further attack, as threatened by the Zanu PF, will also be extremely jeopardised by my [medical] condition.

I fear that I will be harmed and even killed if I return to Zimbabwe.

20. A submission from the applicant's advisor stated that the applicant feared persecution for the following reasons.

- His actual/imputed political opinion as a member and active supporter of the MDC
- His membership of a particular social group, namely;
 1. Failed asylum seekers with known membership or support of the MDC, and/or
 2. Returnees from a Western country with known membership or support of the MDC; and/or

3. Members of his family (a family with several well-known MDC activists and members)

21. It was submitted that the power sharing agreement between the ZANU-PF and the MDC had not stopped the repression of political activists by the Mugabe supporters. Persecution is still continuing. The Australian government has criticised the ZANU-PF, and the association of the applicant with Australia will place him at risk. It was submitted that the applicant's health concerns presented a real risk that the applicant will be arbitrarily deprived of his life due to the lack of medical assistance in Zimbabwe. The applicant could not relocate within Zimbabwe.
22. A post hearing submission was made. This stated that between 2008 and 2011 the applicant lived discreetly to avoid being harmed. It was submitted that he had to abstain from carrying out political activities. The submission provided further country information regarding the concerns for MDC supporters. The applicant could not relocate to a location such as Bulawayo. The delegate's concerns regarding a letter provided by the MP [Mr C] should be discounted, and that failures in the letter should not be discounted. Document fraud, though common in Zimbabwe, had not occurred. In relation to [Mr B]'s MDC participation, it was noted that an error was made in paragraph 7 of the statement, that [Mr C] was elected in 2005 and 2008, and that [Mr D] had not been MP in 2005. The applicant had relied on [Mr B]'s reference to himself as MP. Things were getting worse in Zimbabwe.
23. The applicant was interviewed in relation to his claims. The delegate considered country information that prominent MDC activists and people with a high national profile retain some risk of serious harm. The mere membership of the MDC will not in itself involve adverse attention from the Zimbabwe authorities. The delegate considered if the applicant was high profile. The delegate did not accept that being a [position] of a small ward was a high profile position. He travelled in and out of Zimbabwe without difficulty. There was a significant concern regarding the individual '[Mr B]'. Little weight was put on the documents as provided by the applicant. Any risk was very localised. The applicant could relocate and find work. In relation to his [medical condition], the delegate considered that medical services were available in Zimbabwe through urban and rural clinics. This included medication for [the medical condition], which was prevalent in Zimbabwe. The applicant was a skilled tradesman and could afford the medications. The issue of discrimination was dismissed, given the high prevalence of [the medical condition] in Zimbabwe.
24. The Tribunal received a submission and a medical report. The medical report stated that the applicant was in excellent health. Treatment for his [medical condition] and [another condition] continued, and he had completed in March 2013 a [number] month course of medication for [an infection]. The report stated that the applicant may be able to obtain [medications] in Zimbabwe, but is unlikely to continue on the combination of [medications] available in Australia, and may have side effects from other drugs provided instead. He may not be able to obtain a medication for [another condition] in Zimbabwe. There is a concern with the continuity of medications in Zimbabwe.
25. The submission stated that since the 31 July 2013 elections in Zimbabwe the situation was volatile and MDC supporters were at risk of persecution from ZANU PF and its supporters. Country information about the 'sham' election was provided. Female political activists have been threatened with violence. There is a 'tense atmosphere of intimidation and unrest in Zimbabwe. The submission discussed the delegate's finding that 'ordinary' members of the

MDC do not face persecution. It submitted that a Freedom House report of June 2013 stated that:

"State-sponsored political violence is a serious and chronic problem, though it declined somewhat in 2012. In general, MDC activists, and supporters are subjected to harassment, assault, and arbitrary detention by security forces and militias allied with ZANU PF. ... ZANU-PF-affiliated militias reportedly began attacking MDC linked businesses as well as development projects and social service providers in MDC-led Municipalities.

The submission points to the recent history of political violence in Zimbabwe, during which persons have been targeted not only for their actual support of MDC, but also for their perceived support of MDC. Low profile and localised political activities are still targeted for harm, as are affiliates of the MDC. Other recent decisions of the Tribunal have found that low profile activists are targeted for harm for political reasons. Even 'fence sitters' who are not actively engaged with the ZANU-PF can be targeted for harm. The submission referred to a UK Supreme Court decision that even an apolitical individual may be deemed a political opponent of the ZANU-PF.

26. The submission stated that the support letter from [Mr C] MP, that the delegate did not make a finding that it was not fraudulent without confidence, and that the delegate should have considered the possibility that it was authentic. The submission stated that relocation was not an option, as it was not reasonable to expect the applicant to live discretely.
27. The Tribunal sought verification of information from Zimbabwe. The Tribunal was advised that the applicant was a Member of the MDC-T in Gweru from 2004 – 2012, and was elected [position] for [a Ward] in [District 1] in 2006. [Mr C] was elected to represent the [District] in 2005 and remains the sitting member. [Name deleted] was a candidate for the MDC internal election in January 2012. [Mr B] was a member of the MDC-T in [District 1] between 2002 – 2005. [Mr B] was not an elected member of the party.

FINDINGS AND REASONS

Country of nationality

28. The applicant claims to be a citizen of Zimbabwe and provided his passport at the hearing. The Tribunal finds that the applicant is a citizen of Zimbabwe, that Zimbabwe is the applicant's country of nationality for the purposes of the Refugees Convention, and that Zimbabwe is his receiving country for the purposes of complementary protection.

Third country protection

There is no evidence before me to suggest that the claimant has the right to enter and reside in any safe third country for the purposes of s.36(3) of the Act.

Credibility

29. The Tribunal considers that the applicant presented as a credible witness. Information, such as his membership of the MDC, was shown to be genuine through inquiries made by the Tribunal. The applicant provided evidence regarding the situation in Zimbabwe that was supported by the country information as seen by the Tribunal. The applicant professed a fear

of returning to Zimbabwe due to the influence of the ZANU – PF, which the Tribunal considers is reasonable given that it accepts that the applicant has had previous difficulties with the ZANU-PF. The question for the Tribunal is whether the applicant’s subjective fears of persecution are objectively founded, now and in the reasonably foreseeable future.

Claims

Political Opinion

30. The Tribunal discussed the applicant’s political history, and noted that it had been provided confirmation of the information he had included in the application, including the applicant’s submission prior to and in the hearing that [Mr B] was never an elected member of the party. It also supported the letter of support from [Mr C], provided as part of the applicant’s evidence.
31. The Tribunal stated that it accepted that the applicant was a member of the MDC, was the [position] of a ward for the MDC, which included about 300 MDC members, was a member in the electorate of [District 1], held by the MDC in 2005 and 2008 and in the recent election held on 31 July 2013, where [Mr C] was re-elected¹. The Tribunal accepts that the applicant has been politically active, and is likely to be politically active on return to Zimbabwe. The applicant comes from Gweru, the capital of the Midlands district, a significant city in Zimbabwe behind Harare and Bulawayo.
32. The Tribunal stated that it was prepared to accept that the applicant had had previous difficulties in relation to his political activism, including being attacked in 2008 by ZANU-PF supporters. The applicant stated in the hearing that after that period he was not active in the MDC, as there was little to do in the post 2008 election results. The Tribunal noted that this was a different explanation to that put in his submissions, that the applicant was acting discreetly during this time. The applicant stated that his wife had left the family home after ZANU-PF supporters had come to the home looking for the applicant in February 2012. This was supported by the evidence of the applicant’s wife in Zimbabwe.
33. The Tribunal discussed country information with the applicant, which disclosed that violence in Zimbabwe followed a pattern relating to the election cycle. The Tribunal acknowledged the country information that stated that the election process in 2008, which required a run-off between the Presidential nominees from the ZANU-PF and the MDC, was a violent process. This had changed in 2013. Country information discussed included information that violence in Zimbabwe is linked to the political cycle,² with levels of violence typically increasing following the announcement of elections.³ Increased levels of violence surrounding elections can be attributed to the consistent use of violence and intimidation as an election

¹[Source deleted].

² Horsey R 2011, *Local Protection in Zimbabwe*, September, Relief Web, p.32
<http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report2_5.pdf>

³ UK Foreign and Commonwealth Office 2012, *Human Rights and Democracy: The 2011 Foreign and Commonwealth Office Report*, April, p.382 <<http://www.fco.gov.uk/en/news/latest-news/?view=News&id=758877882>> Also see: Tohbi V 2009, *Elections and Conflict in Africa: Alternative Conflict Resolution Mechanisms* in Electoral Institute for Sustainable Democracy in Africa 2009, *Preventing and Managing Violent Election-Related Conflicts in Africa: Exploring Good Practices*, Presented at the Electoral Institute for Sustainable Democracy in Africa Annual Symposium 17-18 November, Section 1.3, p.7 <<http://www.eisa.org.za/PDF/symp09cp.pdf>>

campaigning tool by ZANU-PF⁴ and, to a lesser extent, the MDC.⁵ Sources indicate that during the July 2013 election, ZANU-PF shifted its strategy slightly, opting for intimidation rather than the widespread overt violence used against political opponents in 2008.⁶

34. The traditional pattern of increased levels of violence following the announcement of elections appears to have varied somewhat during the 31 July 2013 harmonised elections. While incidents of physical violence were reported following the announcement on 4 July that elections would occur on 31 July 2013, the limited reporting available indicates that the level of violence was lower than in previous months and that which occurred during the 2008 election.⁷ Of note, the MDC has publically acknowledged that there were fewer violent incidents against its supporters during the recent elections than occurred in 2008.⁸

35. DFAT advice provided to the Tribunal in December 2012 indicates that while low-profile supporters may be vulnerable to political violence, the risk is generally higher for vocal, active supporters and organisers:

The overall degree of risk faced would depend on the factors outlined below and the degree to which the relevant supporter was active. Nonetheless, support for MDC is widespread, reflected in their parliamentary majority, and their rallies are well-attended so it is unlikely someone would be targeted simply for being a supporter, if that person was not particularly vocal or an organiser.⁹

36. The advice does identify, however, that among ‘those most at risk’ are ‘those at grassroots levels’ who, if harmed, ‘would not generate as much adverse publicity.’¹⁰ In its advice DFAT states:

At present, those most at risk are likely to be:

- those who are most vocal in their criticism of ZANU-PF or Mugabe
- those who are seen to be organising or mobilising support for MDC
- those at grass roots level who will not generate as much adverse publicity if they are harmed.¹¹

37. The advices also goes on to state that ‘there are many people overtly engaged in assisting the MDC...who manage to do so without harm.’¹²

⁴ Kriger N 2005, ‘ZANU(PF) Strategies In General Elections 1985-2000: Discourse and Coercion’, *African Affairs*, vol. 104, no. 414, JSTOR Database, p.2

<<http://afraf.oxfordjournals.org/content/104/414/1.full.pdf+html>> Accessed 22 August 2012

⁵ Compagnon D 2011, *A Predictable Tragedy: Robert Mugabe and the Collapse of Zimbabwe*, University of Pennsylvania Press, Philadelphia, pp.75-76

⁶ ‘Zanu PF Refines Election Strategy’ 2013, *Zimbabwe Independent*, 5 April

<<http://www.theindependent.co.zw/2013/04/05/zanu-pf-refines-election-strategy/>>; Crisis in Zimbabwe Coalition 2013, *CiZC Report on Zanu-PF Strategies: No Naked Violence, Coercive Tactics Remain*, 13 April <<http://eu.crisiszimbabwe.org/archives/40-news/525-cizc-report-on-zanu-pf-strategies-no-naked-violence-coercive-tactics-remain-1860.html>>

⁷ Zimbabwe Peace Project 2013, *ZPP Monthly Monitor July 2013*, 14 August

<http://www.zimpeaceproject.com/index.php?option=com_phocadownload&view=category&id=6&Itemid=157>

⁸ Smith, D 2013, ‘Zimbabwe: Rural Violence Mars Peaceful Election Campaign’, *The Guardian*, 31 July

<<http://www.theguardian.com/world/2013/jul/30/zimbabwe-election-rural-violence-mars-campaign>>

⁹ Department of Foreign Affairs and Trade 2012, *DFAT Report No. 1463: ZWE40995*, 20 December

¹⁰ Department of Foreign Affairs and Trade 2012, *DFAT Report No. 1463: ZWE40995*, 20 December

¹¹ Department of Foreign Affairs and Trade 2012, *DFAT Report No. 1463: ZWE40995*, 20 December

38. The Tribunal identified that there is very limited information regarding the present circumstances in Zimbabwe, post-election 2013. The Tribunal noted that the ZANU-PF had won a significant majority of seats, and about 61% of the vote, compared to the MDC 39%, and even with disputes over the fairness of the election the ZANU-PF would form government. ZANU-PF dominated the parliamentary election results, winning two-thirds of parliamentary seats (158 of a total of 210 seats) compared to the MDC party's 49 seats.¹³ ZANU-PF made major inroads into provinces previously considered to be MDC-T strongholds, including the Matabeleland provinces and urban areas such as Harare.¹⁴ The elections brought to an end over four years of the power sharing Government of National Unity (GNU) between ZANU-PF and the MDC, established following the violent 2008 elections. The MDC has rejected the election results, calling the poll fraudulent and a 'sham.'¹⁵ The parliament-appointed election body (The Zimbabwe Election Commission – ZEC), monitoring groups and non-government organisations (NGOs) agree that there were some irregularities with the poll; however, they disagree over whether they are enough to warrant a re-run of the elections.¹⁶ The applicant stated that this was because the ZANU-PF had made significant promises regarding basic living and employment, which it won't be able to fulfil. The Tribunal noted that MDC failings in the campaign and prior to that had also caused the vote to change. The applicant agreed that the MDC campaign was poor, but stated that it was because of the MDC involvement in the government that the financial situation in Zimbabwe had improved.
39. The applicant stated that the ZANU-PF had been in power for 33 years and had institutional power over most of the government. The applicant stated that the ZANU-PF would seek to ensure that the results of 2008 would not be repeated, and that it would seek to get rid of anyone who could be considered a threat in the next election in 5 years. The applicant stated that the 2013 result gave the ZANU-PF the power to pass any law in its quest to remain in power. The applicant stated that he had heard that the ZANU-PF wanted to declare Robert Mugabe 'President for life', and make Zimbabwe a one party state. The Tribunal stated it had not seen such comments made, and invited the applicant to provide information about these claims. The applicant stated that the media was all supporting the ZANU-PF and censored information about the opposition. The Tribunal noted that state run media was certainly pro-ZANU-PF, but there are independent and private media outlets, and social media was relatively active on Zimbabwe, and would disseminate information about current violent incidents. The applicant stated that social media, like computers and cell phones, were available only to a small number of people in Zimbabwe, certainly not the rural majority who supported ZANU-PF. The applicant stated that there were reports of teachers who had voted

¹² Department of Foreign Affairs and Trade 2012, *DFAT Report No. 1463: ZWE40995*, 20 December

¹³ 'Supporters of Zimbabwe Opposition MDC Allege Attacks' 2013, *BBC*, 5 August <<http://www.bbc.co.uk/news/world-africa-23568694>>

¹⁴ Gumbo, L 2013, 'Zimbabwe: Zanu-PF Ravages Through MDC-T "Strongholds"', *The Herald*, 8 August, All Africa <<http://allafrica.com/stories/201308080154.html?viewall=1>>

¹⁵ 'Stealing the Vim from Zim' 2013, *The Economist*, 10 August <<http://www.economist.com/news/middle-east-and-africa/21583254-robert-mugabe-claims-another-dubious-victory-polls-stealing-vim>>

¹⁶ Zimbabwe Election Support Network 2013, *2013 Harmonised Elections Preliminary Statement*, 1 August <http://www.zesn.org.zw/images/statements/ZESN_2013_Harmonised_Election_Preliminary_Statement_01_August_13-1026hrs.pdf>; 'Zimbabwe: 300,000 Voters Turned Away, ZEC Admits', *New Zimbabwe*, 8 August, All Africa <<http://allafrica.com/stories/201308090023.html>>; 'Zimbabwe Electoral Commission: 305,000 voters turned away' 2013, *BBC*, 8 August <<http://www.bbc.co.uk/news/world-africa-23618743>>; Scoones, I 2013, 'Zimbabwe: Confusion and Uncertainty in the Aftermath of Elections', *Think Africa Press*, 5 August <<http://thinkafricapress.com/zimbabwe/zimbabwes-elections-2013-more-confusion-more-uncertainty>>; Freedom House 2013, *Zimbabwe Elections Rife with Irregularities and Intimidation* <<http://www.freedomhouse.org/article/zimbabwe-elections-rife-irregularities-and-intimidation>>

for the MDC losing their positions, and civil servants being evicted from their homes. The applicant stated that now the elections were over the interest of the international community would move on and reprisals would occur. The Tribunal stated that it could also be said that the small opposition could be used by the ZANU-PF regime as a form of legitimacy, there had been an election, there was an opposition, they had won.

40. The Tribunal considered a report providing a synthesised overview of the pattern of violence against MDC supporters in the lead up to the July 2013 election. In its monthly monitoring report, the Zimbabwe Peace Project (ZPP)¹⁷ observed that during July 2013, people affiliated with the MDC-T represented 518 of the total 895 victims of reported human rights abuses¹⁸ (58 per cent) and ZANU-PF supporters were allegedly responsible for 81 per cent of all reported incidents.¹⁹ These figures are similar to those provided by the ZPP for June 2013; MDC-T supporters represented 355 of the total 749 victims of reported human rights abuses (48 per cent) and ZANU-PF supporters were allegedly responsible for 82 per cent of all reported incidents.²⁰ The ZPP provides reports of incidents it received during July 2013, including:

- ZANU-PF ‘foot soldiers, war veterans and traditional leaders were harassing and threatening people if they chose not to be assisted by appointed ZANU-PF activists on polling day.’
- Forced attendance at ZANU-PF meetings and rallies
- Harassment by traditional leaders of people perceived to be MDC-T
- Disruption of MDC-T meetings
- Threats that ‘there would be war’ if ZANU-PF lost the election.²¹

News reports were found indicating that in the lead up to the election ZANU-PF used intimidation against MDC supporters. A sample of such reports includes:

- A *BBC* article from 20 August 2013 states that according to the MDC, ahead of the elections ‘there were reports of traditional leaders threatening villagers if they voted

¹⁷ The Zimbabwe Peace Project was established in 2000 by a group of non-governmental and church organisations including the Catholic Commission of Justice and Peace in Zimbabwe and the Zimbabwe Civic Education Trust and Counselling Services Unit. The Zimbabwe Peace Project produces national monthly monitoring reports on violence and human rights violations. For more information please see: Zimbabwe Peace Project n.d., *About Us*

<http://www.zimpeaceproject.com/index.php?option=com_content&view=article&id=3:welcome&Itemid=22>

¹⁸ The ZPP defines human rights abuses as including harassment, intimidation, discrimination, assault, malicious damage to property, disrupted political meetings, theft/looting and unlawful detention. It is noted that the number of victims in July 2013 (895) is considerably higher than the number of reported incidents (496), indicating that some incidents involved multiple victims.

¹⁹ Zimbabwe Peace Project 2013, *ZPP Monthly Monitor July 2013*, 14 August, p.10

<http://www.zimpeaceproject.com/index.php?option=com_phocadownload&view=category&id=6&Itemid=157

²⁰ Zimbabwe Peace Project 2013, *ZPP Monthly Monitor June 2013*, 14 June, p.10

<http://www.zimpeaceproject.com/index.php?option=com_phocadownload&view=category&id=9:2013-reports&Itemid=107> It is noted that this report has a publication date of ‘14/06/2013’; however, this appears to be incorrect given that the report makes reference to incidents which occurred in late June. It is therefore assumed that this report was published on 14 July 2013.

²¹ Zimbabwe Peace Project 2013, *ZPP Monthly Monitor July 2013*, 14 August, pp.5-9

<http://www.zimpeaceproject.com/index.php?option=com_phocadownload&view=category&id=6&Itemid=157

for MDC' and 'village leaders were reportedly given food and kitchenware to persuade people to vote for Zanu-PF.'²²

- On 4 August 2013, *SW Radio Africa*²³ reported that ahead of the election, ZANU-PF used traditional chiefs to 'threaten MDC-T supporters with eviction if they did not vote for Mugabe.'²⁴
- On 24 July 2013, *The Zimbabwean*²⁵ similarly reported that ZANU-PF officials had told MDC-T supporters in the village of Mazowe, Mashonaland Province that they would be evicted from resettled farms if they did not vote for the party in the elections.²⁶ The report notes that ZANU-PF denied that it was threatening farmers.²⁷

Two news reports were also found indicating that since the announcement of ZANU-PF's electoral victory, there has been 'increased political retribution' against MDC supporters.²⁸ Reports indicate that this has taken the form of door knocking visits, threats to evict MDC supporters and attacks against MDC supporters. Examples of such reports, in reverse chronological order, include:

- On 19 August 2013, *SW Radio Africa* reported that 'post-election retribution by ZANU-PF has seen many who served as MDC-T polling agents and aspiring candidates evicted from their homes countrywide.'²⁹ The report states that 'SW Radio Africa has received such reports from Mt. Darwin, Mberengwa, Zaka, Muzarabani, Chegutu, Chimanimani and Mbare [a] high-density suburb of Harare.'³⁰
- On 15 August 2013, *SW Radio Africa* reported that 'villagers in remote areas of Binga are reported to be living in fear, due to serious threats from ZANU-PF activists, who are "promising" to target all MDC-T supporters when Robert Mugabe is sworn in as President.'³¹ According to the article, MDC-T Councillor Million Mudenda from the

²² 'Zimbabwe's Tsvangirai May be Charged for 'Judiciary Insult' 2013, *BBC*, 20 August <<http://www.bbc.co.uk/news/world-africa-23771763>>

²³ *SW Radio Africa* is an independent Zimbabwe radio station and news website that is broadcasted from London, and is broadcast into Zimbabwe on short wave radio and the internet. It is staffed and run by Zimbabweans in exile

²⁴ Karimakwenda, T 2013, 'ZANU PF Militias Threaten Witnesses of Electoral Fraud', *SW Radio Africa*, 4 August <<http://www.swradioafrica.com/2013/08/04/zanu-pf-militias-threaten-witnesses-of-electoral-fraud/>>

²⁵ According to its website, *The Zimbabwean* is the 'first newspaper for Zimbabweans in exile'. The website states that the hardcopy of the newspaper is printed outside of Zimbabwe and 'trucked in' to Zimbabwe to 'exploit a loophole in the...[Zimbabwe Access to Information and Protection of Privacy Act] AIPPA legislation which requires all local newspapers to register with the government Media and Information Commission' <<http://www.thezimbabwean.co/pages/about-us>>

²⁶ Gweshe, E 2013, 'New Farmers Threatened with Eviction', *The Zimbabwean*, 24 July <<http://www.thezimbabwean.co/news/zimbabwe/67124/new-farmers-threatened-with-eviction.html>>

²⁷ Gweshe, E 2013, 'New Farmers Threatened with Eviction', *The Zimbabwean*, 24 July <<http://www.thezimbabwean.co/news/zimbabwe/67124/new-farmers-threatened-with-eviction.html>>

²⁸ Sibanda, T 2013, 'Increasing Political Retribution Against MDC-T Supporters', *SW Radio Africa*, 14 August <<http://www.swradioafrica.com/2013/08/14/increasing-political-retribution-against-mdc-t-supporters/>> 'Political Retribution Must Stop' 2013, *The Zimbabwean*, 14 August <<http://www.thezimbabwean.co/comment/editor/67746/political-retribution-must-stop.html>>

²⁹ Karimakwenda, T 2013, 'MDC-T Under Attack in Mugabe's Home District', *SW Radio Africa*, 19 August <<http://www.swradioafrica.com/2013/08/19/mdc-t-under-attack-in-mugabes-home-district/>>

³⁰ Karimakwenda, T 2013, 'MDC-T Under Attack in Mugabe's Home District', *SW Radio Africa*, 19 August <<http://www.swradioafrica.com/2013/08/19/mdc-t-under-attack-in-mugabes-home-district/>>

³¹ Karimakwenda, T 2013, 'Zimbabwe: Binga Villagers in Fear as ZANU-PF Retribution Continues', *SW Radio Africa*, 15 August, All Africa <<http://allafrica.com/stories/201308160353.html>>

remote Chunga district, states that ‘gangs of ZANU PF members from the youth and women’s structures have been showing up at people’s homesteads, singing war songs and chanting party slogans’ and ‘promising to evict’ MDC-T supporters from the area once President Mugabe is sworn in.³²

- On 7 August 2013, Amnesty International reported that ‘women in rural Zimbabwe’ have reported ‘that they were threatened with violence and forced to flee with their children for refusing to reveal their vote to supporters of Robert Mugabe’s party during [the] elections.’³³ According to the report, the families ‘say that they were targeted due to their support – real or perceived – for the Movement for Democratic Change (MDC) party.’³⁴ At least six women said they left home with their 12 young children after ‘facing intimidation from village heads in Mukumbura district, Mashonaland Central Province soon after the 31 July poll.’³⁵
- On 5 August 2013, the *BBC* reported that 11 people in Harare and 20 people in Mashonaland Central Province claimed to have been attacked by known ZANU-PF supporters after the election results were announced. According to the report, the people ‘allege they were attacked by ZANU-PF supporters who went door-to-door ordering MDC supporters and their families to pack their bags and leave.’ The report notes that ZANU-PF has denied that their party is attacking opponents.³⁶

41. Country information supports the applicant’s contention that the ZANU-PF controls particular institutions. When considering the state’s treatment of MDC supporters it is important to note that ZANU-PF exerts considerable influence and control over state security institutions, to the extent that it is often difficult to differentiate between the state and ZANU-PF.³⁷ Since independence, ZANU-PF has sought to transform state security institutions into agencies that serve and advance the interests of the party.³⁸ As such, state security institutions have been used by ZANU-PF to target MDC supporters.
42. On the material before it, the Tribunal accepts the applicant has a genuine commitment to the policies and beliefs of the MDC, and demonstrated this in the past by active involvement in MDC matters in his local area in Gweru. It also accepts as a result of those activities, he was identified as an MDC supporter, and experienced adverse treatment from ZANU-PF supporters. The Tribunal accepts he continues to have such commitment and also accepts if he returned to Zimbabwe now or in the reasonably foreseeable future he would continue to hold and express such views and engage in similar activities again.

³² Karimakwenda, T 2013, ‘Zimbabwe: Binga Villagers in Fear as ZANU-PF Retribution Continues’, *SW Radio Africa*, 15 August, All Africa <<http://allafrica.com/stories/201308160353.html>>

³³ Amnesty International 2013, *Zimbabwe: Women Forced to Flee Their Homes for Refusing to Reveal their Vote*, 7 August <<http://www.amnesty.org.au/news/comments/32435/>>

³⁴ Amnesty International 2013, *Zimbabwe: Women Forced to Flee Their Homes for Refusing to Reveal their Vote*, 7 August <<http://www.amnesty.org.au/news/comments/32435/>>

³⁵ Amnesty International 2013, *Zimbabwe: Women Forced to Flee Their Homes for Refusing to Reveal their Vote*, 7 August <<http://www.amnesty.org.au/news/comments/32435/>>

³⁶ Supporters of Zimbabwe Opposition MDC Allege Attacks’ 2013, *BBC*, 5 August <<http://www.bbc.co.uk/news/world-africa-23568694>>

³⁷ Laakso L n.d., ‘Opposition Politics in Independent Zimbabwe’, *African Studies Quarterly*, No.2&3 <<http://www.africa.ufl.edu/asq/v7/v7i2a6.htm>>

³⁸ Hendricks C & Musavengana T 2010, *The Security Sector in Southern Africa*, October, Institute for Security Studies, Monograph 174, p.175 <<http://www.iss.co.za/uploads/Mono174.pdf>>

43. The Tribunal does not accept that the applicant has a high profile with authorities in Zimbabwe, nor does it accept that when he left Zimbabwe he was of any formal adverse interest to authorities in that country. Nevertheless, despite the absence of an official adverse profile for the applicant, the Tribunal accepts that at a local level his activities as an MDC supporter are known, and have attracted adverse attention to him in the past. It accepts in Zimbabwe much of the harm perpetrated against political opponents of the government is not carried out by formal elements of government, but by informal supporters and groups, in particular local ZANU PF groups, youth groups, militia and other organisations aligned to the government, and who act with its tacit support. That information³⁹ also indicates informal elements that support the ZANU PF government continue to exercise considerable power, and act with relative impunity in their local areas. The Tribunal considers those informal local area elements are more likely to be the source of immediate adverse attention and mistreatment of the applicant if he returned to Zimbabwe now or in the reasonably foreseeable future, particularly if he again engaged in active local MDC support, which the Tribunal considers is likely.
44. This risk from supporters of the Government or its related elements, such as ZANU PF supporters and militias has been recognised for many years. The 2008 United States Department of State “Country Reports on Human Rights Practices” noted during 2008 and early 2009 unlawful killings and politically motivated abductions increased. It noted “killings were primarily committed by members of ZANU-PF, ZANU-PF youth militia, war veterans, and, to a lesser extent, members of the military and police”. It noted State-sanctioned use of excessive force increased in that period, and that security forces tortured members of the opposition, student leaders, and civil society activists with impunity. Since then there appears to have been some improvement, however reports still indicate security forces continued to refuse to document cases of political violence committed by ruling party loyalists against members of the opposition, and such perpetrators appeared to act with relative impunity. The 2011 US Department of State “Country Reports on Human Rights Practices” also noted the government of Zimbabwe failed to prosecute or punish security forces or ZANU-PF supporters who committed abuses, and that impunity continued to be a serious problem. It also noted the government or its agents committed arbitrary or unlawful killings and police units sometimes organized or participated in political violence and perpetrators were rarely punished. The Tribunal accepts those reports as relevant in these circumstances.
45. The Tribunal has considered the more recent reports of violence against MDC supporters in Zimbabwe after the election of July 2013. This supports the applicant’s contention that the ZANU-PF, and most particularly its supporters, freed from the two party coalition government imposed upon it after the 2008 election, feel that they have the unfettered ability to seek out known MDC activists and intimidate or harm them in some manner. Whilst the applicant has been out of Zimbabwe for a period of time, his background and activity for the MDC in his town is known. As one of the few locations in Zimbabwe to withstand the electoral dominance of ZANU-PF, somewhat isolated from other Midlands province results which predominantly went to the ZANU-PF, the applicant’s home electorate will be under further scrutiny by the ZANU-PF factions and vulnerable to being targeted for harm.
46. On considering all the material before it, provided by the applicant during the application process and discussed with the applicant, whilst the Tribunal has some reservation regarding there being a high likelihood of harm to the applicant, the Tribunal nevertheless finds he faces something more than a remote or fanciful chance of this occurring from local elements

³⁹ See the 2011 US Department of State “Country Reports on Human Rights Practices” on Zimbabwe

such as ZANU PF supporters if he returned to Zimbabwe now or in the reasonably foreseeable future, and that there is accordingly a real chance of serious harm occurring. In reaching this conclusion the Tribunal takes into account the intimidation of MDC activists that led up to the recent 2013 election, and the reports of violence after the 2013 election, with ZANU-PF supporters unfettered in their actions. The Tribunal considers this elevates the risk to the applicant if returned to Zimbabwe now or in reasonably foreseeable future.

47. The Tribunal accepts the harm experienced in the past amounted to the “serious harm” required to constitute persecution, and accepts the real chance of harm the Tribunal has found exists for the applicant on return would be of a similar level and would amount to persecution. It also finds such persecution would be for reason of his political opinion, and in particular the local profile he developed through political activities in Zimbabwe. It further finds he would be unable to avail himself of protection from his own country because of politicisation of police. Under these circumstances, the Tribunal is not satisfied in the event he was threatened or experienced harm as in the past, he could avail himself of protection in Zimbabwe, or that such protection would be offered to him. The Tribunal is therefore satisfied his fear of persecution for reason of his political opinion if returned to Zimbabwe now or in the reasonably foreseeable future is well founded.
48. There is no evidence that the applicant has a legally enforceable right to enter and reside in any other country, and the Tribunal is not satisfied he has such right. The Tribunal therefore finds he is not excluded from Australia’s protection by s36(3) of the Act.
49. The Tribunal finds the harm feared by the applicant exists in his local area, which was Gweru. The Tribunal considered whether he could avoid that harm by relocating to some other part of Zimbabwe. The outcome of the 2013 election shows that the influence of ZANU-PF exists across Zimbabwe, with rural areas being almost exclusively ZANU-PF controlled, the ZANU-PF has made significant political inroads into previous MDC areas including Harare and the Midlands region, where the applicant comes from. Previous country information that suggested relocation might be possible in some cases, particularly to an urban area like Harare or Bulawayo, has altered due to the landslide election result. The Tribunal considered whether relocation to some other urban area like Bulawayo or a rural area would avoid a real chance of serious harm. Country information indicates relocation to a rural area was, in practice considered difficult (see the UK Border Agency “Fact Finding Mission”) and the Tribunal concludes relocation to a rural area is not be reasonable in his case. The Tribunal also concludes that given his profile and history, his MDC affiliation would become known if he was to seek to relocate to an area such as Bulawayo In reaching this conclusion the Tribunal accepts the August 2012 UK Border Agency “Country of Origin Report” that “*no express legal restrictions [on internal relocation ... [but] the intelligence systems of the main political parties are sophisticated and it would not be possible for those who have come to the adverse attention of a party to avoid that risk by relocating within Zimbabwe ... this applies equally to rural and urban areas.*”⁴⁰ As such, the Tribunal is not satisfied relocation is reasonable in this case.
50. For the reasons given above, the Tribunal is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).

⁴⁰ UK Border Agency, Zimbabwe Country Of Origin Information (CoI) Report, COI Service 13 July 2012

DECISION

51. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

Stuart Webb
Member