

**1204288 [2012] RRTA 760 (5 September 2012)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1204288

**DIAC REFERENCE(S):** CLF2011/186720 CLF2012/9252

**COUNTRY OF REFERENCE:** Zimbabwe

**TRIBUNAL MEMBER:** Vanessa Moss

**DATE:** 5 September 2012

**PLACE OF DECISION:** Perth

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

## 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 [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] December 2011.
3. The delegate refused to grant the visa [in] March 2012, and the applicant applied to the Tribunal for review of that decision.

### RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. 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 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), or on other ‘complementary protection’ grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) 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 Refugees 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. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003*

(2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. 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.
12. 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.
13. 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 fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. 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.

15. 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**

16. 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').
17. '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.
18. 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.

### **CLAIMS AND EVIDENCE**

19. The Tribunal has before it the Department's file relating to the applicant's claim for protection (CLF2012/9252) and the Department's file relating to his application for a visitor visa (CLF2011/186720). The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

#### ***Evidence in the application for protection on the Department's file***

20. The applicant is aged [age deleted: s.431(2)]. In his application form, which he filled out with the assistance of a [registered migration agent], he stated he was born in [District 1], Zimbabwe, and that he speaks, reads and writes Shona and English. He states he is married with two sons and both his wife and two sons remain in Zimbabwe. His widowed mother lives in Zimbabwe. He has one sister in Australia. He states he is a citizen of Zimbabwe and does not hold any other citizenship or have the right to enter or reside in any other country.

21. The applicant arrived in Australia [in] December 2011 on a visitor visa issued [in] November 2011 and valid until [January] 2012.
22. The applicant lived in Chitungwiza from 1980 until 2005, at [Town 1] from 2005 until 2006 and in Chitungwiza from 2006 to November 2011.
23. He obtained a [certificate in] 2002, and worked [in transport] prior to coming to Australia. He was continuously employed from 2002 until he left for Australia in November 2011 apart from a gap in his employment from January to March 2005.
24. The applicant's claims are set out in his statement as follows:

#### Background

1. My name is [name]. I am a Zimbabwean national. I have no other citizenship. I was born in the rural area called [District 1] which is in Masvingo and then raised in Chitungwiza. Chitungwiza is a feeder town about 30 kilometres south of Harare. I am married with two children and another child is due in [date] Before I came to Australia I lived with my wife and two children and my mother at [address] Chitungwiza.

#### Why I left Zimbabwe

2. I left Zimbabwe mainly because I feared for my life. I have gone through so much terror, being beaten up and tortured because of the political party that I fully support - the Movement for Democratic Change - Tsvangirai (MDC "T").

3. I joined MDC in 1999 while at [College]. I and other students always faced a lot of beatings and were tear-gassed because we wanted the deteriorating standards of the school to be addressed as well as the sharp rise in fees. I believe these problems were caused by the unorganised way the government had undertaken the land reform program. We would demonstrate and the college would call in the police. I was an active member of the Students Union.

4. After college I became an active supporter of the MDC youth league in my community, that is [ward] in Chitungwiza, where we mainly took the front in mobilising people to join the party and attend rallies. We would put posters up for the MDC and give out flyers door to door and at shopping centres.

5. Unfortunately the neighbourhood I reside in is a location where a number of government workers have accommodation - that is police, CIO, municipal workers and many others in different government departments. Some of these people were also involved in the land grabs of commercial farmlands and had named themselves War Veterans, so I had many challenges, confrontations and insults.

#### March 2004

6 It first started in 2004 around March when we were preparing for a rally for the end of month by-elections in [Constituency 2]. Our role was to prepare the stage, check the power lines and

power sources. We were also keeping an eye on and reporting any loiterers to executive who could pose a threat. The rally was set to launch the MDC's campaign for the by-election to be held in the [Constituency 2] constituency towards the end of March. At mid-morning a group of about 100 or more ZANU PF sponsored militia descended on the venue of the MDC rally and attacked MDC supporters who were preparing for the event.

7. As I was trying to escape I was caught by two ZANU PF militia. They beat me with baton sticks on my buttocks and back and kicked me all over my body. I was hit on my back with something that felt like an iron bar. I still have the scars on my back. I passed out after I was hit in the head. I woke up lying in blood with a colleague trying to help me. There were 20 youths, including myself, who had been severely assaulted and beaten. We had to call for help from our colleagues who were outside the tennis courts and they were able to remove us and I was taken home.

8. The rally was a planned event with police permission who were present but did nothing to protect MDC supporters or restrain the militia.

9. I heard later that on the same day the militia eventually left and the executive decided to continue with the rally. At around midday the MDC campaign team was driving to the venue of the rally and it was again attacked by ZANU PF militia armed with knobkerries, stones and sticks. Members of the riot police stood by as the ZANU PF youths went on the rampage destroying vehicles and beating up people. No arrests were made despite the fact that all this happened in their presence.

10. I continued to support the MDC despite this because I really wanted things to change and wanted a new Zimbabwe. As a youth member I took orders from [Mr A] who was [an MDC Ward] chairman. With others, I would organise rallies and provide security for senior members of the party during rallies. If a senior member had been attacked by ZANU PF previously we would guard the place where the meeting was to be held and also check the premises for loiterers. I also distributed t-shirts and flyers and mobilised members.

11. I volunteered my personal vehicle which I used for the distribution of flyers, to take people to rallies and from time to time I would also place MDC posters and stickers on my car.

12. All this put me in danger because I was well known in my community for the above activities and some of the people I grew up with who were ZANU PF supporters started questioning my political motives. They called us traitors and would often throw rocks at our house in the middle of the night. This made me more passionate about wanting to change the situation in Zimbabwe because I did not want to spend the rest of my life living in fear.

Late 2004

13. In late 2004 I noticed things were getting worse when I was approached at the local shops. Four men were in a car. They were all dressed in suits so I assume they were from Central Intelligence Office (CIO). One man got out of the car and he told me that they knew of my relationship with [my late brother], [a cousin] who is the Treasurer of MDC 'T' in [Country 3] and [relative], who is deputy representative of MDC-T in [Country 3] and [country]. [Names] still hold these positions today.

14. My [brother] left Zimbabwe around 2002 to study in [Country 3]. Before he left he was in the executive of the youth league in [ward]. My brother returned to Zimbabwe in 2007 and died about a month later from an illness.

15. The CIO officer warned me that I was endangering myself and my family if I did not refrain from my political activism. I suspect they had found out that [relatives] had attended a demonstration in [Country 3] which was well documented in the press.

April 2005 - December 2006 – [Town 1]

16. To escape the threat I relocated to [Town 1] (April 2005 - December 2006) with my wife and child. [Town 1] is [distance] from Harare. I had been offered a job at [business]. I continued to actively support the MDC but faced the same struggles as before in Chitungwiza.

17. I found out where the MDC-T were holding their meetings in the small community and I soon started working with [name] who was an MDC activist. He gave me flyers to distribute and posters to put up. On several occasions I was surrounded by ZANU PF supporters and pushed about and threatened for voicing my political opinions. I remember another incident where they ripped off my MDC t-shirt and head scarf, made me do press ups and crawl around an open area with gravel.

18. Being a small community word was out that I supported MDC and the work environment became unbearable. As a charge hand no-one would listen or take orders from me.

2007

19. I returned to Chitungwiza and resumed my activism duties within the MDC-T party in January 2007. This was about the same time when we were preparing for the campaigning of the parliamentary by-elections. The threats continued to come. One time I went to do my grocery shopping I came out of the shop to find some ZANU PF youths spraying my car 'VOTE ZANU PF' and 'VOTE MUGABE'. I had to wait in the shop until they dispersed. People who I had grown up with had turned against me because they wanted me to denounce my MDC membership.

20. I took my car for re-spraying the following day. I refused to take notice of their threats and continued to support the MDC.

21. Whenever there were ZANU PF rallies they would pass by our house throwing rocks and ramming down our security fence as it was along the road which people used when coming in and out of my neighbourhood. As ZANU PF member and supporters passed by my house in

their numbers they would call out to people to join them and attend their ZANU PF rally. They would stop outside my house and shout out my name for me to join them. I would hide in the ceiling of our house because I was scared they would harass me if they saw me. They interrogated my mother and my wife as to my whereabouts and threatened to torture them if I didn't stop my political activities.

22. The situation became worse. Army trucks full of heavily armed soldiers were going round the neighbourhood harassing MDC supporters. Somebody directed them to my house. I was not at home. They slapped my mother and my wife around saying if I don't stop my activities there would be bloodshed.

23. [Date] February 2007 the ZANU PF supporters and the Chipangano militia were rounding up and marching through our area telling people to go to the ZANU PF base. I heard chants and slogans but I did not hear anyone come in to our yard. I did not have enough time to run or hide. They came into the yard asking for me.

24. My mother tried to intervene. She was pushed to the floor and they told her they were going to search the house till they found me. They broke furniture and I could hear them banging on the bonnet of my car shouting me to come out. I hid in my mother's bedroom waiting for them to go to the front of the house. What I did not know is some supporters were still at the front of the house. I went out through the window. A man I knew shouted - 'ARIPANO buda tamuwana' -- meaning he is on this side, we have seen him.

25. I knew my life was in danger. I ran very fast through one of the men and he fell down. I was trying to jump into our neighbour's yard when someone picked up a brick and threw it at me. I only remember something hitting me on the head and falling to the ground as I was already halfway through the fence.

26. I passed out and woke up in [name] clinic with a bandage wrapped around my head and covered in blood. The scar is still visible at the back of my head. My mother had asked for help from a neighbour and I was driven to the clinic.

27. The following morning my mother came to the clinic and told me the ZANU PF supporters had dragged my wife, pulling her by her hair extensions and forcing her to attend the rally and shout slogans worshipping Robert Mugabe. She had bruises on her face and knees from where they dragged her. She had to attend a ZANU PF rally in the middle of the night. My mother told me the ZANU PF said next time they would finish me.

28. A photo was taken of my injuries and used in an article by a journalist about the violence that happened around the place.

29. The following day after I was discharged I reported the matter at [location] police station which is the nearest station to my house. I told the officer what had happened to me. He then said - you are actually MDC -- you need to come inside until we finish our investigation. He told me that they wanted to investigate the matter and as there were no other casualties, that perhaps I had started the violence.

30. I was then detained for 78 hours which is against the Zimbabwean law, which requires that one be charged within 48 hours. I was held in a cell. I was not taken out of the cell and questioned. Different officers would come in to the cell and slap me. I was made to sit on the



floor with my legs stretched out. I was asked why I had made a report when no-one else had made a report. I was then beaten with a long black baton stick on the soles of my feet. I was beaten and instructed to stop inciting political violence.

31. My wife realised that I had not returned home and she came to the police station to find out whether I had actually reached the police station. She was told that I was in the cells. She came back with food. She had also contacted the MDC [ward] councillor, [Mr B], who engaged a [human rights lawyer], who assisted in my release.

32. My mother then arranged for my family and I to go and live with her sister in [location] I was given an ultimatum by my mother's sister that no politics was allowed in her house. My wife and I stayed here for about five months laying low. I was still [working at] the time.

33. My MDC colleagues started calling and asking me to attend some meetings. Still fearing for my life I only went to Chitungwiza for MDC meetings at the weekends.

34. Around July 2007 I returned to Chitungwiza because the economic situation had become so bad that fuel, food, and every basic commodity was being accessed through black market. Life became expensive living apart from my mother. I was the bread winner of our house and buying food at my mother's sister's house as well.

2008

35. We were informed that the presidential elections would be held on 29 March 2008. This was going to be a busy time for us because we only had eight weeks to campaign. [Mr A], who was [a MDC ward] chairman at the time, contacted MDC supporters and informed us we had to distribute flyers, t-shirts and mobilise as many supporters to attend rallies and put up campaign posters. We would go door to door in the neighbourhood campaigning for aspiring candidates for the coming harmonised elections.

36. One Saturday the ZANU PF militia followed us and grabbed all our campaign gear. There were about [four or five of us]. As we tried to get it back the police came and arrested us. Although it was the ZANU PF who had started this, none of them were arrested. We were taken to [Police Station 4]. I had managed to message my wife that we were being taken to [Police Station 4]. We were detained without charge for four days. We were stripped of our MDC regalia, leaving our upper bodies exposed in the cold holding cells.

37. We were denied access to food and toilet facilities. The officer in charge called us one by one and interrogated us, accusing us of inciting political violence. I was not beaten. The interrogations would go for about three hours. Different people would come and interrogate us. Some were not in uniform.

38. [Mr C], the MDC youth [ward] secretary, contacted Senator James Makore, an MDC member in the government, to inform him of our whereabouts. [Mr D], the MDC human rights lawyer, intervened and was able to obtain our release.

39. [In] June 2008 [Mr E] was appointed councillor for [ward]. I met with [Mr B] who was councillor of [ward]. [Name] informed me he was going to congratulate [Mr E] on his appointment. I drove to [Mr E]'s house ([address]) with other youth members. Around 21:30

hours we heard songs denouncing the MDC and ZANU PF slogans being chanted. We all moved out of the house wanting to investigate what was happening.

40. There were about 30 ZANU PF militia but there were more MDC members that came out of the house, so they disappeared. However they returned in greater numbers in unmarked and unregistered vehicles. They slammed the durawall and rushed in with stones, bricks and sjamboks and began beating people. There were not only ZANU PF attacking us. A utility car came with military soldiers who were well-armed, as if preparing for war.

41. We suddenly smelt petrol and realised they had thrown a petrol bomb into one of the rooms. People quickly started running for cover, [Mr E] and his wife leading them outside, as the house was on fire.

42. [Mr E]'s son, [and two others], who were all MDC youth members, hid in one of the rooms. It was chaotic. I tried to run to where [Mr E] was but was caught by two men who kicked me and one of them slashed my left cheek with a sharp item. I tried to free myself but I could not. I could hear [Mr E's son] and the others screaming as shots were being fired. I decided to play dead so I would be left alone. I was inhaling fumes and had to fight hard not to cough. I was terrified as I had never been so close to a person firing live ammunition and hearing the deafening sound of the rifle. I got a chance to crawl out as they were concentrating on taking [Mr E's son], [and two others] from the house. I managed to drive home and my mother cleaned my wound and took me to a friend who worked in the general hospital. I had nine stitches and a dressing applied.

43. [Mr E's son], [and two others] were tortured and killed.

44. A couple of weeks later I was at the shops having a beer and seated in my car. An unidentified man approached me and openly told me that they, ZANU PF, were watching me closely, and that it was not over yet. He got in to his car drove off. I later learned that this man's name was [Mr F].

45. I was frightened and I sought advice from a senior member, Mr Morgan Komichi, who now works in the prime minister's office. He encouraged me to keep on going.

46. After that encounter I was [quiet]. I never attempted to make a report to the police since there were soldiers on that bloody night and I knew the police would not help me. It was also around that time when the GNU (Government of National Unity) was put in place which was set up on the basis of the GPA (Global Political Agreement), and as a result some peace was restored. 2009 and 2010 were almost peaceful years.

47. In January 2009 I started work at [Company 5] [vocation] involved [delivering] newspapers throughout Zimbabwe to vendors who would then sell them on.

August 2011

48. Now in 2011 there is an election looming in Zimbabwe and ZANU PF are wary of the threat of the MDC. I have been attacked, detained and threatened for political reasons in the past. Because of these attacks in the past, ZANU PF militia have set their eyes on me again.

49. In August 2011 MDC youth were on our way to prepare the venue for the MDC rally which was to be held at [location] stadium. As we got to the entrance there were around 40 men who denied us entry, saying that they had already booked the venue for a soccer match. An argument broke out and within minutes we were rounded up by the Chipangano group who were armed with knobkerries, stones and sticks. The police then arrived and provided support for the Chipangano group by driving us away from our venue. The MDC party leadership called the rally off.

50. The incident of the rally happened during a weekend. The following Monday as I was about to finish work, I was called outside of my work premises. Waiting for me was that very man who had threatened me in 2008, after the three boys had been killed. When I saw his face I recognised him immediately. He interrogated me on why I was involved in the clash on the weekend.

51. As I walked away from him four people who had been playing a card game suddenly seized me and bundled me into a utility vehicle with a canopy and government plates. Government plates are recognisable as they are white plates and have "GL". They bound my hands and feet, gagged me and a bag was placed on my head. They started punching and kicking me as the vehicle drove off at speed. One of them was choking me and I overheard a man instructing him to save the strangling for later. We made one stop and three other people were thrown into the back of the utility. I heard one of the men thank someone for having made life easier for them by tying the 'traitors' up before the pick-up.

52. The vehicle stopped after a long drive. We were thrown out of the vehicle at a place called [Town 6], which is about [distance] south of Harare. The hoods were taken off our heads and I saw the logo of the [Town 6] police station. We arrived at [Town 6] around six or seven in the evening.

53. We were all put in a cell together. We were then assaulted by men who were in plain clothes, dressed in pants and shirts with ties. We were beaten up, spat at, kicked and made to drink some bitter-tasting liquid. I vomited and was forced to eat the vomit off the floor. I felt dizzy and I must have passed out several times because I do not remember a lot of what happened.

54. The man who had come and spoke to me at the shops also came in to the cell to beat me up. He was called [Mr F] by a police officer. That is how I learned his name.

55. I remember being thrown into a utility vehicle full of people on a dark night. My head was not covered. After a few minutes' drive on a dirt road I started vomiting again and I felt my bowels open. I was thrown off the truck and ordered to relieve myself on the side of the road. I ran off into the bush and heard people shouting and chasing after me. They threw rocks at me but gave up chase when one of them shouted that the poison would get me.

56. I must have passed out again because it was morning when I woke up in a maize field. I washed myself in a stream and hitch-hiked my way to a friend's house in Chitungwiza. I contemplated reporting this to the police but feared I would end up being detained.

57. I scheduled a meeting with [Mr A], [ward] chairman, to inform him of the assault, and that I feared for my life but that I wanted to continue to serve the party. I spoke to [name], because he was once a target of ZANU PF, to see how he dealt with being targeted and assaulted. I had met him earlier in rallies and some of our meetings he attended. He offered

me to stay at [location] as a temporary measure. However as [location] can be raided so I would still feel insecure.

58. I stayed away from work for about a week because I feared [Mr F] and his friends would find me again. When I returned to work I made sure I was always around people when I was going to and from work.

October/November 2011

59. Towards the end of October 2011 we were distributing flyers and t-shirts in preparation for Morgan Tsvangirai's rally which was to be held on 6 November. The Chipangano boys from [Constituency 2] started harassing me again. They approached me and instructed me to distribute ZANU PF flyers in the next issue of the [name] newspaper.

60. As I was going to work one of them jumped into my utility vehicle and told me he was coming with me to work to make sure I didn't dispose of the ZANU PF flyers. He knew where I distributed the newspapers and was going to go around with me checking I had done it.

61. My [manager] caught me with the flyers and informed me it was against company policy to express/promote political and religious views using company property. The flyers were confiscated. I knew the Chipangano were going to check in the papers to make sure I had inserted their flyers in the newspapers.

62. After work I tried to sneak out but they were waiting by the gate. One of them called me by name and I knew I was in trouble. He pretended to be friendly until all my workmates had driven off. He started punching me and gave more flyers to distribute the following day.

63. He forced me into his car where there were three other men. They made it clear if I wanted to live I had to do as they said. We drove off and I recognised the route they were taking. We were driving to my son's [school]. The men told me they were not joking and were going to show me how serious they were. It was around four or five o'clock. My son had been attending sports and would usually walk home from school. As we got closer I saw my son surrounded by five men from my neighbourhood and I could see him skipping. We got to where they were and my son was chanting ZANU PF slogans. The men made my son and I chant together. We were made to say - Pamberi nezanu pamberi naMugabe. Pas naTsvangirai. This meant - Forward with ZANU PR Forward. Forward with President Mugabe. Forward. Down with Tsvangirai.

64. I was terrified. I did not know what they had said to him. I hugged my son and told him it was ok. The men said they would see me the following morning. They left me and I sat down and started crying. I realised there was nowhere to hide. My son did not understand why I was crying. I could not go back home. My car was at work. I went to a [relative's house], and rang my wife and mother to inform them I was not going home. The following morning I used public transport to go to work and asked my aunt to take my son to school. This continued for a week. I was living in different people's houses. I could not tell my wife what had actually happened, that our son was being used by ZANU PF, for fear of upsetting her since she was pregnant.

65. I eventually decided to stop my son from attending school and to relocate my pregnant wife and children to [Town 7]. I felt that my family was relatively safe in my absence as I was the target of all the attacks I chose not to join my family in [Town 7] or any other part of the country because I always feel the need to express myself freely and did not want to endanger my family.

66. I made a decision to leave the country. I thought that like my late brother, aunt and cousin I could best actively support my party from outside the country without fear of persecution. I contacted my sister to let her know that I wanted to visit her for Christmas and also to see her new house.

67. I returned home on [date] November 2011 and this time we were preparing for the rally. I continued distributing flyers. [Date] November as we were mobilising MDC supporters to attend a rally which was to be addressed by Morgan Tsvangirai I saw the Chipangano following us. They were taking orders from the ZANU PF [youth leader]. They were chanting their slogans. One of the ZANU PF youth members picked up a brick and threw it at us. Suddenly all of them were beating us and throwing stones at us. I saw [Mr F]. He was shouting at me - this time we will end all your activities. He said to me - remember 2008 - and made shooting gestures. The ZANU PF and the Chipangano used catapults, iron bars, machetes and stones to attack the MDC youth.

68. We did not run because we feared that this would encourage them and they would not hesitate to maim or kill. We retaliated by throwing stones back at them. The whole neighbourhood was turned into a war zone. In a short while then we saw trucks of antiriot police surrounding the place. I ran and hid as I did not want to be caught by the police again. I hid behind the surrounding wall of the stadium and could see ZANU PF throwing stones at MDC Chitungwiza province chairman Alexio Musundire's vehicle. The youths were shouting - "Uri mutengesi, vanhu vekwa Tsvangirai, muri kutengesa nyika zvino tinakurayai". (You are a sell-out. You Tsvangirai people are sell-outs. We will kill you.)

69. All this was happening in full view of the police who did not intervene. The ZANU PF were not stopped but started pounding on vehicles they saw at the stadium.

70. When it became quieter I ran and boarded a commuter omnibus and went home. I related the incident to my mother and told her am leaving to go stay with a friend in town because I was scared if they catch me this time they might kill me, because the person who had kidnapped me at work had shouted threats again.

71. As there was a fleet of cars at work I continually changed the that I was using to go to work and home to see my mother. Until the day I came to Australia it was just hide and seek. I would dress in cap and glasses so I could not be easily identified. I started finding it hard to sleep and when I did I had nightmares. I became very paranoid. I was too scared to go and see my wife and part with my family properly.

72. I had a wonderful job at [Company 5]. As part of my package [details of benefits].

73. The last day I worked at [Company 5] was on [date] November 2011. I asked to take some personal leave which I had accumulated. This leave has now finished. The human resources manager has since emailed me and asked when I was returning. I told her I was not coming back as I was frightened for my life.

What do you fear may happen to you if you go back?

74. I fear that I will be detained, tortured, maimed or killed. I also fear for the lives of my family. In the past I have been a victim of political detainment, I have been beaten up badly which left scars on the back of my head, my right cheek and on my back. I have been kicked with booted feet and in one instance left for dead. Rocks have been thrown at our house. I have been threatened, called a traitor and had my civil liberties taken away from me when I had approached the police to report the harassment and physical attacks.

75. ZANU PF militias have made my life hell. I have had sleepless nights and when I did manage to sleep I had constant nightmares and became paranoid because they would find me every time I left Chitungwiza to lay low.

76. ZANU PF and Chipangano are rotated among different provinces and have the support of the CIO and the police. They will find you anywhere in the country.

77. As recently as October 2011 I was physically attacked by ZANU PF youths who had jumped out of a government truck. I also had militias waiting for me at my son's school threatening me and forcing both of us to repeat ZANU PF slogans.

Who do you think may harm or mistreat you if you go back?

78. I have had a horrible history with ZANU PF militias, the CIO and the police who have turned a blind eye or have been actively involved in logistical support of ZANU PF by providing transport and detaining myself and other MDC youths.

79. After the Government of National Unity (GNU) was formed in 2008 things quietened down for some time but with impending elections the rapes, the tortures, detainments, beatings, and threats have started again. I have already been accosted by ZANU PF and had threats against my life. I have already been beaten up and forced to repeat slogans.

80. It's like 2008 all over again but this time I am among the first to be targeted among the MDC youths responsible for mobilisation of supporters and distribution of flyers, red cards and t-shirts hence the early beatings, threats and psychological torture of ZANU PF waiting for me with my son at his school.

Why do you think this will happen if you go back?

81. There is an election coming in Zimbabwe and ZANU PF is wary of the threat of the MDC. I have been attacked, threatened and detained for political reasons in the past. From the last time that happened ZANU PF militias have paid a lot more attention to me. I am among the first MDC youths in my neighbourhood to be attacked and have had thugs turn up at my son's school and waited for me with him.

82. I was in charge of mobilisation for rallies as well as distribution of red cards, t-shirts and flyers. They said that they want to make an example of me and reminded me of the 2007-2008 attacks. I almost died at the hands of these people and I fear this time they will either maim or kill me or my family.

83. I chose not to join my family in [Town 7] or any other part of the country because I did not want to endanger my family. I am the kind of person who cannot be silenced and always feel the need to state my political views in support of the MDC, which would make me a target. I have learnt that the ZANU PF militia (Chipangano, Green bombers and war veterans), CIO and police, are rotated among the provinces so I am a target wherever I go.

Do you think the authorities of this country can and will protect you if you go back? If not, why not?

84. If the police and CIO in Zimbabwe were not partisan they would be able to maintain the rule of law and protect me and others in my situation. However, these institutions are in fact an extension of Mugabe's ZANU PF party and will at the best of times turn a blind eye to atrocities against perceived enemies of ZANU PR.

85. At their worst both the police and CIO actively torture, maim and detain members of the public either at the bidding of prominent ZANU PF members or in order to gain political favours from them. I also believe that the CIO is used to track down people of interest to ZANU PF.

25. The applicant was interviewed, in English, by the Department [in] February 2012. He did not raise any further claims in his interview.

26. Subsequent to the interview the applicant provided a statutory declaration dated [February] 2012 making the following further claims:

**IVIDC political violence report 2004**

1. In my interview I was told that sentences in paragraph 9 of my statement were a direct quote from the MDC political violence report of 2004. I do not remember reading the report. The phrases I used are common and I only wrote down what I had heard and saw.

**Leave**

2. My sister told me that my visa would not be granted until December and that I would arrive around Christmas. When I asked for leave I calculated that I would leave Zimbabwe sometime in late December. My visa came sooner than expected and I started my leave earlier.

3. In my interview I stated that after the attempted rally on [date] November 2011, Morgan Tsvangirai did not have a further rally. I was very focused on getting my visa and leaving the country.

4. [Date] November I received a call that my visa had been granted. My sister in Australia told me to go to South Africa to get the visa stamped. Myself and my [relative] left that same day and I drove to [Town 8], which was a drive of about six or seven hours. It was [relative] that went to South Africa to get my visa stamped. Because of money [relative] went to South Africa to collect my visa and I stayed in [Town 8]. I had written an affidavit and provided my ID. The reason I stayed in [Town 8] was in case I had to go to South Africa myself. We were there for a few days which is why I was not focused on the second rally.

27. [In] February 2012 the applicant's solicitor provided a short written submission to the Department in support of the application which referred to country information in respect of the cyclical nature of violence in Zimbabwe, and the Human Rights Report dated 8 April 2011 from the US Department of State regarding violence by the security forces, police and ZANU PF against non-ZANU PF political activists, party members and civil society activists. The Tribunal has taken into account the submission in its deliberations.

28. The following documents were provided to the Department by the applicant in support of his application:

- a certified copy of his Zimbabwean passport (folios 44-68);
- a copy of his MDC card (folio 70);
- an undated letter from the National Chairman of the MDC stating that the applicant is an active member of the MDC, has held several positions in the Youth Assembly Wing of the MDC, has participated in many activities directed towards democracy, is a target of the state security agents and the ZANU PF militia who have on several occasions attempted to take his life. The writer states his life is in jeopardy (folio 71);
- copy black and white photograph of man's scarred back dated [February] 2007 (folio 92);
- a certified copy of a handwritten medical report dated [February] 2007 in respect of the applicant (folios 96, 97);
- a copy of a letter dated [December] 2011 from [Mr C], Secretary Main Wing Ward [details deleted: s.431(2)] stating that the applicant is an active member of the MDC Youth Wing [ward] who had his activities set for democracy in Zimbabwe, which got him and his family into danger from the ZANU PF state security agents and the ZANU PF militia. It states he was beaten up, threatened and threatened his 8 year who they abducted. The writer states his life is in danger.
- A copy of a letter dated [in] January 2012 from [Mr A] (Chairman [ward]) in similar terms to the letter of [December] 2001 (above) except that it states that the applicant rather than his son was abducted;
- A copy of a letter dated [January] 2012 from the Honourable Senator Morgan Komichi (Deputy National Chairperson MDC-T) stating that the applicant is an active member of the MDC, is a known activist in the MDC Youth Assembly, has suffered politically motivated attacks carried out by the ZANU PF State Security agents and the ZANU PF militia groups. He has been beaten up, detained without trial, tortured, abducted as well as attempts made on his life. There were also some incidents where his family would be verbally or physically threatened by known ZANU PF militias. The writer states the applicant's life is in danger;
- Copy letter dated [February] 2012 from [name deleted: s.431(2)], [Mr D] and [a legal firm] regarding a case by the state against the applicant, in which the writer was called in March 2008 by James Makore, an MDC-T executive member who is now a Senator in the parliament, to represent members of the MDC who had been arrested by the police and detained at [Police Station 4] in Chitungwiza. The writer states that among



those arrested was the applicant. The writer interviewed those arrested who advised that they had been arrested while campaigning for the MDC-T. The applicant and others advised the writer that they had clashed with ZANU PF activists. They were detained for 4 days. The writer engaged the police who eventually released the accused without charge. The writer states that it became unsafe for the accused to continue staying in the country as he like many other activists became targets of police and political party militia harassment.

### ***Evidence on the Tribunal's file***

29. The Tribunal requested the Department of Foreign Affairs and Trade to verify the authenticity of the following letters with the relevant MDC authorities;
- letter dated [January] 2012 from the Honourable Senator Morgan Komichi (Deputy National Chairperson MDC-T);
  - letter dated [January] 2012 from [Mr A] (Chairman [ward deleted: s.431(2)]); and
  - letter dated [December] 2011 from [Mr C], Secretary Main Wing [ward deleted: s.431(2)].
30. The letters were provided to the MDC Organising Department with a request that it provide advice on their authenticity. [In] June 2012 the Tribunal was provided with advice that an official with the Structure, Membership and Skills Database, MDC Organisation had contacted the writers of the letters to verify that they were the authors of the respective letters and all confirmed that they were and attested they were genuine. The official advised that he was satisfied that the letters were genuine.
31. [In] August 2012 the applicant's representative forwarded to the Tribunal a lengthy detailed submission. The submission set out the legal framework in respect of the criterion for the grant of protection visas, country information on Zimbabwe, details relating to the basis of the applicant's claim for protection, and a response to the delegate's reasons for decision. The submission requested that the Tribunal take evidence from 5 witnesses in Zimbabwe, namely Senator Morgan Komichi (Senator and Deputy National Chairman MDC-T), [Mr C] (MDC Ward Secretary), [Mr D] (lawyer), [Mr A] (MDC Chairman Ward) and [name deleted: s.431(2)] at [Company 5]. The Tribunal has read the submission and taken it into account in its assessment of the applicant's claims.

### ***The applicant's evidence at the hearing***

32. The applicant appeared before the Tribunal [in] August 2012 to give evidence and present arguments. The Tribunal was assisted by an interpreter in the Shona and English languages. The applicant was represented by [a migration agent who] attended the hearing.
33. The applicant gave evidence that he joined the MDC in 1999 whilst at college and he articulated the reasons that prompted him to join the MDC at that time and outlined the nature of his involvement in the MDC whilst at college. After leaving college he remained active in the youth league of the MDC in his local ward.
34. When asked about his MDC membership card he initially indicated that he had only ever had one membership card. He was uncertain when he was issued with the card but

thought that it was in 2002. He indicated that he used to pay subscription fees to the MDC and that he had done so since joining in 1999. Upon being referred to the card which he provided to the Department, the Tribunal drew to his attention the fact that this card had a schedule of subscription fees from 2007 -2011, the applicant conceded that he may have forgotten that he had another card before he had been issued with this one.

35. The applicant indicated that his mother, [details of family deleted: s.431(2)] were all MDC members and were active in the same local ward as he was, and that they were all involved in the same activities as he was. He indicated that his brother was an executive member of the youth league of the MDC. He indicated that his brother was involved in similar activities to him, that he had a job seeking police permission to attend rallies, that his brother gathered information on the expectations of people and passed these on to the chairman. He indicated that his brother continued his activism within the MDC after he left Zimbabwe for [Country 3] and that he remained active until his death in 2007.
36. The Tribunal enquired whether the applicant had been mistreated or harmed because of his membership and activities in the MDC. The applicant indicated that he had and he provided details in relation to a series of incidents spanning 2004 – 2011.
37. He began by describing an incident in March 2004 when he had been assaulted whilst preparing for a rally in his ward. The applicant's evidence was consistent with his written statement. The applicant indicated that he had sustained injuries and although he had wanted to go to hospital for treatment if a person goes to hospital as a result of political violence the hospital asks for a police report to show the cause of the injuries. The applicant indicated that his mother therefore treated him in relation to his injuries on this occasion.
38. The applicant gave evidence regarding the occasion in late 2004 when he had been approached by a man he believes was from the CIO, who warned him that his association with the MDC could lead to his injury or death and put his family in danger. The details provided by the applicant were consistent with his written statement.
39. The applicant provided details regarding an incident in early 2007 when the ZANU PF were rounding up people to attend a rally. The applicant provided details in relation to his attempted escape during which he sustained a blow to the head and became unconscious. He indicated that he has suffered from headaches since that time and has a scar on the back of his head. His mother told him that there was a lot of blood and that the ZANU PF disbursed thinking that he was dead. His mother told him that she asked for help from one of the neighbours and that he was taken to a clinic. The applicant's description of this incident was detailed and vivid and he was animated and appeared to be distressed when recalling this incident.
40. The applicant's mother relayed to him that his wife had been taken forcibly to the ZANU PF rally and to a ZANU PF base that night. The applicant indicated that he had been concerned to hear this and he outlined the nature of the human rights abuses that occur at these bases. The applicant stated that his wife had told him that she was amongst a group of women and that they were asked to chant slogans and denounce MDC members. His wife told him that she was not beaten or touched whilst she was at the ZANU PF base.
41. After the applicant spoke to his wife about this experience they decided that he would go and report the incident to the police. The applicant went to his local police station and reported what had happened to him and his wife. He reported that the police had scoffed at

him and said that they knew that he was an MDC activist as they had seen him in the local area putting up posters. The applicant indicated that he used his vehicle to carry people to rallies and to go door to door and that there were posters on his vehicle and that he was easily recognised as an MDC member in his community. The applicant indicated that he was told by the policeman that they would need to verify the facts of what had happened to him as it could have been he who was the perpetrator of the violence rather than the victim. The applicant indicated that after he had been at the police station a few hours his wife came looking for him and that on being told that he was locked up there and that the police were verifying whether he was the perpetrator or the victim of violence, his wife left the police station and went to seek help.

42. The applicant provided details of his three-day detention at the police station, which was consistent with his written statement. He provided vivid descriptions of the cell he was held in and the conditions of his confinement.
43. The applicant indicated that on the fourth day a [human rights lawyer], came to the police station to speak with him. He indicated that [the lawyer] asked the police what he had been charged with and when the police responded that they were investigating him, he was released and left the police station with [the lawyer].
44. When asked about any further incidents when he had been harmed or mistreated because of his membership and activities in the MDC the applicant provided details of an incident in 2008 when he and a number of other MDC supporters, who were distributing flyers on their way to a rally, were involved in an altercation with the ZANU PF. When the police showed up some of the MDC group were taken to [Police Station 4] One of the MDC group who managed to get away was [Mr C], their ward secretary. The applicant indicated that on the way to the police station he messaged his wife that he was being taken to [Police Station 4] At the police station they were accused of being the cause of the altercation and harassed and assaulted by the police. The applicant indicated that after four days they were released after their ward secretary got help from Senator James Makore to arrange for their release. A lawyer [Mr D], was able to obtain their release and they were not charged.
45. The applicant provided details of an altercation at a stadium in August 2011. The altercation escalated and became violent and the MDC rally was called off. The applicant indicated that he ran off. He provided details of his abduction from work on the Monday after the aborted rally. The applicant provided vivid and detailed evidence in relation to his abduction and detention at [Town 6] police station. He was visibly upset and distressed when recounting this experience to the Tribunal.
46. The Tribunal indicated to the applicant that it had arranged for the Department of Foreign Affairs and Trade to authenticate the support letters provided by Senator Morgan Komichi, [Mr A] and [Mr C]. The Tribunal indicated that it had been provided with advice from an official in the MDC Organising Department, who had contacted the writers of the letters to verify that they were the authors of the respective letters and that all of the writers had confirmed that they were and attested that the letters were genuine. The Tribunal indicated that in a letter from [Mr C] he had made a statement that the applicant's son had been abducted. The Tribunal enquired of the applicant whether his son had ever been abducted. The applicant responded that in November 2011 he had been told he had to distribute ZANU PF flyers and that his manager had caught him with flyers and that these were confiscated. On leaving work he was accosted for his failure to distribute flyers in a newspaper and he was assaulted and forced into a car and driven to his son's school. On

arriving at his son's school he saw his son skipping, chanting ZANU PF slogans, surrounded by five men. During the applicant's relaying of this incident he became extremely upset, particularly when talking about his son, who had become distressed on seeing his father upset, crying and humiliated when he witnessed what his son was doing.

## COUNTRY INFORMATION

### *On the treatment of ordinary MDC supporters*

47. The power-sharing arrangement between ZANU-PF and the MDC, established by the Global Political Agreement (GPA), remains in place.<sup>1</sup> Robert Mugabe has previously stated on numerous occasions that the power sharing arrangement is to be a one-off.<sup>2</sup>
48. Political violence in Zimbabwe is cyclical, tied to the election cycle. During election campaigns, low ranking MDC members and supporters are at greater risk of intimidation and harm:
49. In the lead up to elections...levels of violence and intimidation are likely to increase. At present, the main form of intimidation in rural areas is forced attendance at ZANU-PF party rallies or forced signing of the Anti-Sanctions Petition. There is a strong possibility that more traumatic violence and intimidation will be strategically deployed in the lead-up to the next elections to prevent voters supporting MDC-T or MDC-N. Election related violence is generally calculated and coordinated. It is deliberately limited to the extent necessary to cow the electorate. The scars from the 2008 peak of Zimbabwe's electoral violence are still fresh and in many areas it is still sufficient to let people know that it could reoccur if there is evident support for MDC-T.<sup>3</sup>
50. Harm may not necessarily be targeted or coordinated by ZANU-PF or the military. Rather, militants allied to ZANU-PF may act independently and opportunistically on the basis that they have a sense of greater impunity.<sup>4 5</sup>
51. The US Department of State 2011 Human Rights Report: Zimbabwe, 24 April 2012, stated:

The most important human rights problems in the country remained the government's targeting for harassment, arrest, abuse, and torture of members of non-ZANU-PF parties and civil society activists, widespread disregard for the rule of law among security forces and the judiciary, and restrictions on civil liberties....

The government did not take steps to prosecute or punish security force or ZANU-PF supporters who committed abuses, and impunity continued to be a serious problem.....

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<sup>1</sup> Solidarity and Peace Trust 2011, *The Hard Road to Reform*, Solidarity Peace Trust website, 13 April p. 32-35 [http://www.solidaritypeacetrust.org/download/report-files/TheHardRoadtoReform\\_13April.pdf](http://www.solidaritypeacetrust.org/download/report-files/TheHardRoadtoReform_13April.pdf) – Accessed 16 November 2011

<sup>2</sup> 'Mugabe wins endorsement for Zimbabwe's 2011 vote' 2010, *ABC News*, source: *Agence France Presse*, 19 December <http://www.abc.net.au/news/stories/2010/12/19/3097004.htm?site=news> – Accessed 9 February 2011

<sup>3</sup> Department of Foreign Affairs and Trade 2011, *DFAT Report No. 1272 – Zimbabwe: RRT Information Request: ZWE38606*, 12 May

<sup>4</sup> Human Rights Watch 2009, *False Dawn: The Zimbabwe Power-Sharing Government's Failure to Deliver Human Rights Improvements*, 31 August p.1

<sup>5</sup> Aids Free World 2009, *Electing to Rape: Sexual Terror in Mugabe's Zimbabwe*, December, p.11 <http://www.aidsfreeworld.org/Our-Issues/Legal-Work/~media/0435F634DD3A44A08B14348CC1878F2B.pdf> – Accessed 28 January 2010

There were several credible reports of politically motivated abductions and attempted abductions during the year. Leaders of both MDC factions reported that state security agents and ZANU-PF party supporters abducted and tortured MDC-T and MDC-M members, civil society members, and student leaders as part of an effort to intimidate them. Perpetrators were rarely punished.....

Security forces assaulted and tortured citizens in custody, particularly perceived opponents of ZANU-PF. In some cases police arrested the victims of violence and charged them with inciting public violence. Police units also organized and participated in political violence affiliated with ZANU-PF.....

ZANU-PF supporters--often with support from police--continued to assault and torture suspected and known MDC members and their families, civil society activists, and student leaders. Violent confrontations between various youth groups aligned with either ZANU-PF or the MDC-T continued, particularly in urban areas. Supporters of both parties instigated such incidents.

During the year ZANU-PF youth attacked scores of people, mainly MDC supporters, in the high-density neighborhoods of Harare, as well as in areas outside the capital such as Chitungwiza, Mbare, and Bikita. Police arrested the victims of the violence rather than the perpetrators.<sup>6</sup>

### ***On violence in Chitungwiza in June 2008***

52. Chitungwiza is a dormitory town, 20 miles south of Harare.<sup>7</sup>
53. There were reports of violence and intimidation carried out by ZANU-PF supporters in Chitungwiza in June 2008. [Country information deleted: s.431(2)].<sup>8</sup> On 20 June 2008, it was reported that there had been numerous petrol bombings, assaults and abductions during the previous week in Chitungwiza. [Country information deleted: s.431(2)].<sup>9</sup>
54. Human Rights Watch reported that prior to the presidential runoff vote on 27 June 2008, ZANU-PF supporters rounded up and beat many people in Epworth and Chitungwiza on the outskirts of Harare. After the beatings, people were informed by ZANU-PF supporters that they would vote for Mugabe if they valued their lives. Also, early on 28 June 2008, ZANU-PF supporters reportedly went door to door in Chitungwiza and Westlea and forced people to show if they had indelible ink on their fingers which showed they had voted. Those without ink on their fingers were taken to ZANU-PF bases and beaten. People were also targeted because their names were not on a ZANU-PF list showing who had voted in particular polling stations.<sup>10</sup>

### ***On the treatment upon return to Zimbabwe of people involved in activist groups overseas, and the situation for family members of people involved in such NGOs***

55. Limited information was located on the likely treatment upon return to Zimbabwe of people involved in activist groups overseas, or the likely treatment of their family members in Zimbabwe.

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<sup>6</sup> US Department of State, *2011 Human Rights Report: Zimbabwe*, 24 April 2012, p1,2,4,6,7

<sup>7</sup> 'Mugabe thugs killed and mutilated MDC youth activists' 2008, *The Times*, 20 June

<sup>8</sup> [URL and citation details deleted: s.431(2)]

<sup>9</sup> [Citation deleted: s.431(2)]

<sup>10</sup> Human Rights Watch 2008, *African Union: Reject Result in Zimbabwe's Sham Election*, 29 June <http://hrw.org/english/docs/2008/06/28/zimbab19221.htm> - Accessed 30 June 2008

56. A 2010 paper on the political activism of the Zimbabwean diaspora in the UK states that “Zimbabweans in diaspora have been presented by national (government-controlled) media as traitors of their own country”. The Zimbabwean Central Intelligence Organisation (CIO) reportedly monitors the activities of Zimbabweans in the UK, although it is unclear to what extent this occurs. Nevertheless, the potential presence of the CIO has led to insecurity, fear and distrust among political activists. It is reported that “[e]ven though the CIO based in the UK is not able to commit the atrocities that have become known from within Zimbabwe, the fear of being under the surveillance of the CIO and the possible consequences for family members back home restrain a number of political activists in their activities”.<sup>11</sup>
57. In relation to whether a person studying overseas would face difficulties upon return to Zimbabwe, the Department of Foreign Affairs and Trade (DFAT) advised in 2007 that “[i]f an individual student was active in organisations subject to harassment by the GOZ [Government of Zimbabwe], such as...civil society organisations, it is possible that she might be identified on arrival at Harare Airport”.<sup>12</sup> In 2011, DFAT advised that members of the CIO continue to work undercover as immigration officers at Harare International Airport.<sup>13</sup>
58. In December 2011, the UK-based National Coalition of Anti-Deportation Campaigns (NCADC) expressed concern that a Zimbabwean activist set to be deported from the UK would be at risk of harm in Zimbabwe due to her political activism whilst overseas. During her 9 years living in the UK, Gladys Mabvira had reportedly engaged in open and public participation with opposition group Zimbabwe African People’s Union (ZAPU) UK, including online blogging. The NCADC claim that the upcoming elections in Zimbabwe will heighten political tensions and, as a result, the repression of political opponents will increase.<sup>14</sup>
59. In October 2011, *SW Radio Africa* reported that similar concerns were being raised over the scheduled deportation of another Zimbabwean activist from the UK. A campaign was launched to prevent the removal of Shamiso Kofi, “an active and recognisable member of the London based protest group the Zimbabwe Vigil”, on the grounds that she may be at risk of harm in Zimbabwe.<sup>15</sup> Another Zimbabwean activist with Vigil, Josephine Chari, was similarly scheduled for deportation from the UK in July 2011. Vigil coordinator Rose Benton claimed that Chari “is being deported when there is no guarantee of her safety, particularly as she is a person who has been visible as a Vigil activist”.<sup>16 17</sup>

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<sup>11</sup> Kuhlmann, J. 2010, *Political Activism of the Zimbabwean Diaspora: Opportunities for, and Challenges to, Transnational Mobilisation*, Working Paper Series of the Graduate Centre Humanities and Social Sciences of the Research Academy Leipzig, No. 5, p.22 [http://www.uni-leipzig.de/ral/gchuman/documents/working\\_paper\\_series/RAL\\_WP\\_5\\_jenny\\_kuhlmann\\_web.pdf](http://www.uni-leipzig.de/ral/gchuman/documents/working_paper_series/RAL_WP_5_jenny_kuhlmann_web.pdf) – Accessed 20 January 2012

<sup>12</sup> Department of Foreign Affairs and Trade 2007, *DFAT Report No. ZWE32420 – Zimbabwe: RRT Information Request: ZWE32420*, 23 October

<sup>13</sup> Department of Foreign Affairs and Trade 2011, *DFAT Report No. 1272 – Zimbabwe: RRT Information Request: ZWE38606*, 12 May

<sup>14</sup> ‘Urgent Action Needed for Zimbabwean Activist’ 2011, National Coalition of Anti-Deportation Campaigns website, 9 December <http://ncadc.cmph.org/o/HHHw9UstcPHm4Irq4UusapA> – Accessed 20 January 2012

<sup>15</sup> Bell, A. 2011, ‘Zimbabwe: Fears Rise for Activist Facing Deportation From UK’, *All Africa Global Media*, source: *SW Radio Africa*, 18 October <http://allafrica.com/stories/201110210863.html> – Accessed 20 January 2012

<sup>16</sup> ‘UK set to deport Zimbabwean woman’ 2011, *Nehanda Radio*, 19 July <http://nehandaradio.com/2011/07/19/uk-set-to-deport-zimbabwean-woman/> – Accessed 20 January 2012

60. In July 2010, a Zimbabwean activist with Vigil and the Restoration of Human Rights in Zimbabwe was reportedly identified as a Vigil supporter, arrested, beaten and tortured upon return to Zimbabwe on a visit. Vigil claims that “[h]e would still be there if it hadn’t been for our efforts to get him legal help and escape from Zimbabwe”.<sup>18 19</sup>
61. According to Vigil, “activism in the UK...increases the risk of being known by the forces within Zimbabwe that still perpetrate violence against [Zimbabwean President] Mugabe opponents”. The group claims to be a high-profile protest organisation “that has been under constant surveillance by intelligence operatives of the [Mugabe] regime”, whose “supporters are easy to identify because we are an on-the-street protest constantly photographed by the passing public (including unidentified people who do not join the protest and who our supporters confirm as Zimbabwean). Photos taken by ourselves appear on many photo and video websites which can be accessed by the Zimbabwe Central Intelligence Organisation”.<sup>20 21</sup>
62. Vigil further claims that a report accompanied by a photograph of a Vigil supporter appeared in *The Zimbabwean* newspaper, which is circulated in Zimbabwe and the UK. Within days of the report being published, the supporter’s “family home in Zimbabwe was raided by the police who spoke angrily about Zimbabweans in the UK”. Additionally, the funeral of the mother of a Vigil member in Zimbabwe in 2011 was reportedly “disrupted by Mugabe’s Zanu PF members because of his involvement with the Vigil”.<sup>22 23</sup>

***On whether the police are connected to the ZANU-PF party***

63. It has been widely reported that members of the Zimbabwe Republic Police act with a high level of impunity in support of the ZANU-PF, and in countering the MDC, its supporters and non-government organisations that have been supportive of human rights.
64. The US Department of State’s report on human rights practices in Zimbabwe in 2009 noted that army and police units “organized, participated in or provided logistical support to perpetrators of political violence and generally permitted their activities”<sup>24</sup>. The report noted that “[p]olice routinely and violently disrupted public gatherings and demonstrations, and they tortured opposition and civil society activists in their custody”, and that continued

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<sup>17</sup> ‘UK detains Zim Vigil activist for deportation’ 2011, *The Zimbabwean*, source: *SW Radio Africa*, 20 July <http://www.thezimbabwean.co.uk/news/zimbabwe/51008/uk-detains-zim-vigil-activist.html> – Accessed 19 January 2012

<sup>18</sup> ‘UK set to deport Zimbabwean woman’ 2011, *Nehanda Radio*, 19 July <http://nehandaradio.com/2011/07/19/uk-set-to-deport-zimbabwean-woman/> – Accessed 20 January 2012

<sup>19</sup> ‘UK detains Zim Vigil activist for deportation’ 2011, *The Zimbabwean*, source: *SW Radio Africa*, 20 July <http://www.thezimbabwean.co.uk/news/zimbabwe/51008/uk-detains-zim-vigil-activist.html> – Accessed 19 January 2012

<sup>20</sup> ‘UK set to deport Zimbabwean woman’ 2011, *Nehanda Radio*, 19 July <http://nehandaradio.com/2011/07/19/uk-set-to-deport-zimbabwean-woman/> – Accessed 20 January 2012

<sup>21</sup> ‘UK detains Zim Vigil activist for deportation’ 2011, *The Zimbabwean*, source: *SW Radio Africa*, 20 July <http://www.thezimbabwean.co.uk/news/zimbabwe/51008/uk-detains-zim-vigil-activist.html> – Accessed 19 January 2012

<sup>22</sup> ‘UK set to deport Zimbabwean woman’ 2011, *Nehanda Radio*, 19 July <http://nehandaradio.com/2011/07/19/uk-set-to-deport-zimbabwean-woman/> – Accessed 20 January 2012

<sup>23</sup> ‘UK detains Zim Vigil activist for deportation’ 2011, *The Zimbabwean*, source: *SW Radio Africa*, 20 July <http://www.thezimbabwean.co.uk/news/zimbabwe/51008/uk-detains-zim-vigil-activist.html> – Accessed 19 January 2012

<sup>24</sup> US Department of State 2010, *2009 Human Rights Report: Zimbabwe*, March, Section 1c

politicisation of the force's upper echelons made it difficult for rank-and-file police to act impartially. Further to this, it was reported:

Security forces were rarely held accountable for abuses. Frequent allegations of excessive force and torture were often dismissed by senior government officials who claimed that the actions were necessary to maintain public order.

...

Police continued to refuse to investigate cases of political violence...  
Police seldom responded during incidents of vigilante violence.

...

There were numerous reports of security forces arbitrarily arresting opposition and civil society activists, interrogating and beating them for information about their organizations' activities, and then releasing them the next day without charge.<sup>25</sup>

65. Numerous arrests of MDC parliamentarians throughout 2009 were considered by civil society to have been politically motivated and intended to erode the MDC's power in parliament.<sup>26</sup> Human Rights Watch reported that police intimidation and harassment of MDC and human rights activists continued unabated in 2009, and that the "[p]olice, prosecuting authorities, and court officials aligned with ZANU-PF have persecuted MDC legislators and activists through politically motivated prosecutions".<sup>27</sup>

Similarly, Amnesty International's report for 2009 included information that the suppression of perceived political opponents of ZANU-PF persisted, and that:

No meaningful measures were taken to bring to justice perpetrators of serious human rights violations during the state-sponsored violence and torture of political opponents of ZANU-PF in the run-up to the second round of the presidential elections in June 2008.... Throughout 2009, elements within the army, police and intelligence services felt able to continue targeting human rights activists and members of the MDC-T for human rights violations.<sup>28</sup>

### *On Senator Morgan Komichi*

66. Morgan Komichi reportedly joined the Movement for Democratic Change (MDC) in 1999. He was a founding party organiser in Matabeleland North, where he served as MDC provincial chairman from 2000 until 2006. In 2006, Morgan Komichi was elected as the MDC deputy organising secretary.<sup>29</sup> In March 2009, he was sworn in as an MDC-Tsvangirai (MDC-T) non-constituency senator;<sup>30</sup> Zimbabwe's Senate reserves five seats for senators who are not directly elected, but appointed by the president.<sup>31</sup> Senator Komichi has been MDC coordinator in Zimbabwe's new constitution drafting process.<sup>32</sup> The Movement for Democratic Change website indicates that the Senator was also elected as Vice Chairperson

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<sup>25</sup> US Department of State 2010, *2009 Human Rights Report: Zimbabwe*, March, Section 1d

<sup>26</sup> US Department of State 2010, *2009 Human Rights Report: Zimbabwe*, March, Section 1e

<sup>27</sup> Human Rights Watch 2010, *World Report 2009 – Zimbabwe*, January

<sup>28</sup> Amnesty International 2010, *Amnesty International Report 2010 – Zimbabwe*, May

<sup>29</sup> 'Leadership profiles' 2006, *The Zimbabwean* <http://www.thezimbabwean.co.uk/viewinfo.cfm?id=1169> – Accessed 22 September 2006

<sup>30</sup> 'Bennett Sworn in As Senator' 2009, *All Africa Global Media*, source: *The Herald* <http://allafrica.com/stories/200903200002.html> – Accessed 14 November 2011

<sup>31</sup> 'Zimbabwe' 2010, *Political Handbook of the World Online Edition*, CQ Press Electronic Library

<sup>32</sup> Sibanda, T. 2010, 'Influential Chief accused of destabilising outreach program', *The Zimbabwe Situation* website, source: *SW Radio Africa*, 6 July [http://www.zimbabwesituation.com/july7\\_2010.html](http://www.zimbabwesituation.com/july7_2010.html) – Accessed 15 November 2011



on the MDC-T national standing committee in May 2011.<sup>33</sup> Morgan Komichi's position within the party is also referred to as "deputy national chairperson".<sup>34 35</sup>

Reports cite three separate cases whereby Morgan Komichi has been detained by authorities. Most recently, in July 2010, Komichi was summonsed to Lupane police station after reportedly accusing senior police officer Edmore Veterai of confiscating three MDC vehicles.<sup>36</sup> He was released on US\$60 bail,<sup>37</sup> and the trial relating to the case took place in August 2011. An article in the *Zimbabwe Reporter* stated that Komichi was removed from remand on 15 August, but does not state how long the Senator had been detained for in this instance. Only one of the State's witnesses is said to have showed at court when the trial commenced; the presiding magistrate apparently ordered that the State would need to pursue the case by way of summons.<sup>38</sup>

In May 2010, Komichi was reportedly charged with undermining the authority of the president for singing a song which insulted President Robert Mugabe. Komichi denied singing the song and was granted free bail by a Magistrate's court.<sup>39</sup>

In March 2007, Komichi was detained in a remand prison, along with 17 other people, accused of terrorism and political violence. He was reportedly assaulted in custody by police and Zimbabwe African National Union – Patriotic Front (ZANU-PF) militia.<sup>40</sup> According to *SW Radio Africa*, Komichi was assaulted at a "torture house" during his 174 day long detention, resulting in his admittance to a remand hospital. Komichi was reportedly released from remand on 9 August 2007. During his period of detention he had been suspended by his employer, a subsidiary of the Zimbabwe Electricity Supply Authority, for absenteeism. Komichi was an employee of Hwange Power Station at this time, although immediately prior to his arrest he had been working at Munyati Power Station in Midlands province. Komichi had reportedly been confronted by ZANU-PF officials on more than one occasion, who had informed him that they wanted him out of Matabeleland North province.<sup>41</sup>

Reports indicate that Morgan Komichi has publicly criticised ZANU-PF on multiple occasions. For instance, in September 2011, he was quoted in *The Zimbabwe Mail* as stating that ZANU-PF was responsible for the death of founding MDC member Diamond

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<sup>33</sup> 'Wednesday, 11 May 2011 – Issue 93' (undated), Movement for Democratic Change website [http://www.mdc.co.zw/?option=com\\_content&view=article&id=935%3Awednesday-11-may-2011-issue-193&catid=41%3Atop-headlines&Itemid=1&fontstyle=f-larger](http://www.mdc.co.zw/?option=com_content&view=article&id=935%3Awednesday-11-may-2011-issue-193&catid=41%3Atop-headlines&Itemid=1&fontstyle=f-larger) – Accessed 15 November 2011

<sup>34</sup> 'Thousands mourn death of MDC founder' 2011, *The Zimbabwe Mail*, 21 September <http://www.thezimbabwemail.com/zimbabwe/9121-condolence-message-to-the-karanda-family-from-the-mdc.html> – Accessed 15 November 2011

<sup>35</sup> 'Senator Komichi on trial for talking' 2011, Movement for Democratic Change website, 2 August <http://www.mdc.co.zw/index.php/component/content/article/45-around-zimbabwe/1055-senator-komichi-on-trial-for-talking.html> – Accessed 15 November 2011

<sup>36</sup> 'Police summon Komichi to Lupane over Tsvangirai's BMW' 2010, *Zimbabwe Reporter*, 12 July <http://zimbabwereporter.com/politics/1311.html> – Accessed 14 November 2011

<sup>37</sup> 'Komichi gets bail' 2010, Great Indaba website, source: *Radio VOP*, 1 August <http://greatindaba.com/issue/august-vol-20/article/komichi-gets-bail> – Accessed 15 November 2011

<sup>38</sup> Mafunda, K. 2011, 'Komichi removed from remand', *Zimbabwe Reporter*, 27 September <http://zimbabwereporter.com/politics/3809.html> – Accessed 15 November 2011

<sup>39</sup> Mugabe, M. 2010, 'MDC Senator charged with insulting Mugabe', *SW Radio Africa*, 25 May <http://www.swradioafrica.com/news250510/mdcsenator250510.htm> – Accessed 15 November 2011

<sup>40</sup> Mushonga, M. 2007, 'Fears for Komichi's life', *The Zimbabwean*, 19 July <http://www.thezimbabwean.co.uk/news/9102/fears-for-komichis-life.html> – Accessed 15 November 2011

<sup>41</sup> Gonda, V. 2007, 'Freed political detainee suspended by employer', *SW Radio Africa*, 29 August <http://www.swradioafrica.com/news290807/zesa290807.htm> – Accessed 15 November 2011

Karanda. Karanda had been assaulted by ZANU-PF and state security forces on multiple occasions.<sup>42</sup>

67. In July 2010, Komichi was reportedly critical of ZANU-PF's conduct during the process of drafting a new constitution. According to *The Zimbabwean*, Komichi claimed that intelligence operatives were speaking on behalf of ZANU-PF at constitutional outreach meetings with communities across the country.<sup>43</sup> Komichi also accused ZANU-PF of using violence and intimidation against those perceived to be government opponents during the constitutional outreach process.<sup>44 45</sup> At one constitutional outreach meeting, a provincial MDC Women Assembly chairperson was attacked; Komichi was quoted in the relevant news report as stating that the attack took place in full view of police, and was perpetrated by ZANU-PF officials.<sup>46</sup> Also in July 2010, Komichi directly criticised Chief Fortune Charumbira for allegedly turning constitutional outreach meetings in Masvingo province into ZANU-PF rallies.<sup>47</sup> Chief Fortune Charumbira is a relative of President Mugabe,<sup>48</sup> a Member of ZANU-PF, a Senator, and President of the Chief's council.<sup>49</sup>

## FINDINGS AND REASONS

68. The applicant travelled to Australia on what appears to be a Zimbabwean passport and claims to be a national of Zimbabwe. On the basis of this evidence the Tribunal accepts that the applicant is a national of Zimbabwe and has assessed his claims against Zimbabwe as his country of nationality.

### *Claims arising from the applicant's membership of the MDC*

69. The applicant claims that he joined the MDC in 1999. In his oral evidence before the Tribunal the applicant initially indicated that he only ever had one membership card, being the one he provided to the Department, which he thought had been issued in 2002 although he indicated he had been paying subscription fees since he joined the MDC in 1999. Upon being referred to the card which he provided to the Department, the Tribunal drew to his

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<sup>42</sup> 'Thousands mourn death of MDC founder' 2011, *The Zimbabwe Mail*, 21 September <http://www.thezimbabwemail.com/zimbabwe/9121-condolence-message-to-the-karanda-family-from-the-mdc.html> – Accessed 15 November 2011

<sup>43</sup> 'CIO speaking on behalf of ZANU PF at constitution meetings' 2010, *The Zimbabwean*, 1 July <http://www.thezimbabwean.co.uk/human-rights/32269/cio-speaking-on-behalf-of-zanu-pf-at-constitution-meetings-.html> – Accessed 15 November 2011

<sup>44</sup> Sibanda, Tichaona 2010, 'Zimbabwe: Zanu PF Unleashes Violence to Thwart Outreach Program', *All Africa Global Media*, source: *SW Radio Africa*, 24 June <http://allafrica.com/stories/printable/201006250224.html> – Accessed 28 June 2010

<sup>45</sup> 'CIO speaking on behalf of ZANU PF at constitution meetings' 2010, *The Zimbabwean*, 1 July <http://www.thezimbabwean.co.uk/human-rights/32269/cio-speaking-on-behalf-of-zanu-pf-at-constitution-meetings-.html> – Accessed 15 November 2011

<sup>46</sup> Sibanda, T. 2010, 'Zimbabwe – Senior MDC Official Assaulted During Meeting', African Seer website, source: *SW Radio Africa*, 21 July [http://news.africanseer.com/general/14579-zimbabwe\\_senior\\_mdc\\_official\\_assaulted\\_during\\_meeting.html](http://news.africanseer.com/general/14579-zimbabwe_senior_mdc_official_assaulted_during_meeting.html) – Accessed 15 November 2011

<sup>47</sup> Sibanda, T. 2010, 'Influential Chief accused of destabilising outreach program', The Zimbabwe Situation website, source: *SW Radio Africa*, 6 July [http://www.zimbabwesituation.com/july7\\_2010.html](http://www.zimbabwesituation.com/july7_2010.html) – Accessed 15 November 2011

<sup>48</sup> Corcoran, B. 2010, 'Farms destined for poor went to Mugabe loyalists' *Irish Times*, 2 December <http://www.irishtimes.com/newspaper/world/2010/1202/1224284567125.html> – Accessed 14 April 2011

<sup>49</sup> 'Constitution Select Committee' (undated), Zimbabwe Constitution Select Committee (COPAC) website <http://www.copac.org.zw/home/constitution-select-committee.html> – Accessed 14 April 2011

attention the fact that this card had a schedule of subscription fees from 2007 -2011, the applicant conceded that he may have forgotten that he had another card before he had been issued with this one. The Tribunal found this aspect of the applicant's evidence to be somewhat unsatisfactory. However at the hearing the applicant was able to clearly articulate the reasons why he joined the MDC when he was at college in 1999 and his involvement in MDC activities as a student and thereafter. The applicant's oral evidence in respect of these claims was consistent with his written claims. He claims to have organised rallies and provided security for senior MDC members during rallies, distributed flyers and t-shirts and mobilised members. His car was used to distribute flyers and take people to rallies and it was emblazoned with posters and stickers. His claims of being an active MDC member in his ward were corroborated by the support letters referred to above and provided by [Mr C] and [Mr A], and these have been verified as genuine by the MDC and the Tribunal so finds. Further the letter provided by the Honourable Senator Morgan Komichi (Deputy National Chairperson MDC-T), corroborates that the applicant is an active member of the MDC and a known activist in the MDC Youth Assembly, which letter has been verified as genuine by the MDC and the Tribunal so finds. On the basis of this evidence the Tribunal accepts that the applicant joined the MDC in 1999 and remained active in the MDC until he departed for Australia in 2011.

70. The applicant claims to have suffered harm as a result of his MDC activism. A summary of the major incidents follows.
71. The applicant has claimed that in March 2004, when preparing for a rally, he and a number of other MDC supporters were attacked by ZANU PF militia. He claims he was beaten with batons all over his body and passed out after he was hit on the head. The applicant's oral evidence in respect of these claims was consistent with his written claims and the Tribunal accepts his claims.
72. In late 2004 the applicant claims that he was approached by people he believes were CIO who told him they knew about his relationship with his brother and other relatives who were MDC activists in the UK He was told to refrain from his political activism. The applicant's claims are consistent with the country information referred to above which indicates that the Zimbabwean Central Intelligence Organisation (CIO) reportedly monitors the activities of Zimbabweans in the UK, and that there may be consequences for family members remaining in Zimbabwe. On the basis of the applicant's oral evidence in respect of these claims (which was consistent with his written claims) and the country information the Tribunal accepts his claims.
73. The applicant claims that [in] February 2007 ZANU PF supporters and the Chipangano militia came to his home looking for him, whereupon he hid and then escaped but was pursued and was hit with a brick and passed out. He sustained head injuries. The following day he reported the attack at the police station and as a result was detained for 78 hours, and mistreated. He was released after his wife engaged a human rights lawyer to assist in his release. The applicant claims that on the night of [February] 2007 his wife had been forced to attend a ZANU PF rally in the night and that she was injured. He claims that his mother was told by the ZANU PF that the next time they would finish him.
74. The applicant has provided a copy of a black and white photograph of a man's scarred back dated [February] 2007 which is consistent with the injuries claimed however it is inconclusive as to whether it is the applicant who is photographed. He has also provided a certified copy of a handwritten medical report dated [February] 2007 and as is often the

hallmark of medical reports, it is somewhat difficult to decipher. Nevertheless the Tribunal is able to discern that it emanates from [a] Medical Surgery, that the applicant's attendance there related to an assault on him, and that he presented with, inter alia, injuries to his scalp.

75. The applicant's oral evidence in respect of these claims regarding the assault on him [in] February 2007 and the sequelae to that assault including the mistreatment of his wife and his 78 hour detention was consistent with his written claims. The applicant's claims are also consistent with the country information, which indicates that forced attendance at ZANU-PF party rallies is a common form of intimidation by ZANU PF supporters and militia and that the police participate in and permit this and other forms of violence directed at non-ZANU PF supporters, and that they are known to arrest the victims of the violence rather than the perpetrators. On the basis of the applicant's oral and written claims, the photograph, the medical report and the country information the Tribunal accepts his claims in relation to the assault on him [in] February 2007 and the sequelae to that assault including the mistreatment of his wife.
76. On a Saturday in 2008 in the lead up to the elections to be held [in] March 2008 the applicant claims that he was followed by ZANU PF militia and detained and interrogated at [Police Station 4] for 4 days. An MDC human rights lawyer, [Mr D], assisted in his release. In support of this claim the applicant has provided a copy of a letter dated [February] 2012 from [name deleted: s.431(2)], [Mr D] and [a legal firm] regarding a case by the state against the applicant, in which the writer was called in March 2008 by one James Makore, an MDC-T executive member who is now a Senator in the parliament, to represent members of the MDC who had been arrested by the police and detained at [Police Station 4] in Chitungwiza. The writer states that among those arrested was the applicant. The writer interviewed those arrested who advised that they had been arrested while campaigning for the MDC-T. The applicant and others advised the writer that they had clashed with ZANU PF activists. They were detained for 4 days. The writer engaged the police who eventually released the accused without charge. The applicant's oral and written evidence in respect of this incident were consistent and credible. It is also consistent with the country information, which is accepted by the Tribunal, that the police organize and participate in political violence affiliated with ZANU-PF, and that they arbitrarily arrest opposition and civil society activists, interrogating and beating them for information about their organizations' activities, and then releasing them the next day without charge. On the basis of the applicant's written and oral evidence, the corroborating letter from his lawyer, and the country information, the Tribunal accepts the applicant's claims.
77. The applicant claims that in August 2011 whilst preparing for an MDC rally he and others were attacked by the Chipangano group, that the police arrived and took sides with the Chipango group, and that the rally was called off. The applicant claims that on the Monday following the aborted rally he was approached at work by a man who asked him why he had been involved in the clash at the weekend. He was then abducted and taken, along with some others, to the [Town 6] police station where he was put in a cell and assaulted and forced to drink a bitter tasting liquid, which made him vomit. He was later taken in a van at night, and when he was thrown off the truck and ordered to relieve himself he managed to escape. The applicant's oral evidence regarding the abduction and his mistreatment was compelling and consistent with his written claims. His description of this incident was very detailed and vivid. The applicant's claims are consistent with the country information, which is accepted by the Tribunal, which reports that state security agents and ZANU-PF party supporters are known to abduct and torture MDC-T and MDC-M members in an effort to intimidate them,

and that the police are complicit in violence perpetrated by the ZANU PF. In light of the country information the Tribunal accepts the applicant's claims regarding his abduction and mistreatment in August 2011.

78. The applicant claims that in October /November 2011 he had been told he had to distribute ZANU PF flyers and that his manager had caught him with flyers and that these were confiscated. He claims that on leaving work he was accosted for his failure to distribute the flyers and he was assaulted and forced into a car and driven to his son's school. On arriving at his son's school he saw his son skipping, chanting ZANU PF slogans, surrounded by five men. The applicant's recollection of this incident at the hearing was made in a highly agitated state. He became particularly distressed when recounting seeing his son, surrounded by men, singing ZANU PF slogans and he described his humiliation at the sight of this and of his son being forced to also sing ZANU PF slogans. The Tribunal was left in no doubt of the truthfulness of this claim, which was very detailed and consistent with his written claims.
79. The Tribunal notes that in the letter from [Mr C], he states that the ZANU PF abducted the applicant's son. The Tribunal notes that this is not a claim that has been made by the applicant and when the Tribunal enquired of the applicant whether his son had ever been abducted, the applicant gave details of the incident that had occurred in November 2011 when he (the applicant) had been abducted and taken to his son's school, and on arriving at his son's school he saw his son skipping, chanting ZANU PF slogans, surrounded by five men. The Tribunal finds that the writer of the letter was mistaken in his statement and as stated above, it accepts that the incident in November 2011 as described by the applicant occurred. The Tribunal does not consider that this mistake in the writer's letter detracts from the remainder of the contents of his letter.
80. The applicant fears that if he returns to Zimbabwe he will be detained, tortured, maimed or killed by the ZANU PF militias. He also fears for the life of his family. The Tribunal accepts that the harm feared by the applicant amounts to persecution for the purposes of s 91R(1). The Tribunal accepts the applicant's claims to have been physically mistreated and harassed and detained. The Tribunal accepts that the persecution involves serious harm in the form of either a threat to his life or significant physical harassment or ill-treatment.
81. The Tribunal accepts that the applicant's political opinion is or would be the essential and significant reason for the persecution. The Tribunal also accepts that this feared persecution involves systematic and discriminatory conduct against MDC supporters for reasons of their political opinion.
82. The country information referred to above indicates that known MDC members and supporters, as well as their families, continue to be harassed, arbitrarily arrested, assaulted, intimidated and killed and that the perpetrators are primarily members and supporters of ZANU PFF, ZANU PF affiliated youth militia, war veterans and the police and security forces. The Tribunal finds that there is a real chance that the applicant will experience serious harm for reasons of his political opinion if he returns to Zimbabwe in the reasonably foreseeable future.

### *State protection*

83. The Tribunal finds that the applicant would not be able to avail himself of the protection of the authorities of Zimbabwe. In making this finding the Tribunal notes that the

agent of the feared persecution is the Zimbabwean authorities. The Tribunal is therefore satisfied that state protection against the feared persecution would not be available to the applicant in Zimbabwe.

### ***Relocation***

84. As to whether the applicant can safely relocate within Zimbabwe the Tribunal considers that in the present circumstances of escalating violence in Zimbabwe, it is difficult to predict with any certainty the relative safety of the applicant in different parts of Zimbabwe, particularly given that the applicant is a known MDC supporter. In these circumstances the Tribunal does not accept that there is anywhere in Zimbabwe where there is no real chance of feared persecution. The Tribunal considers that there is no part of Zimbabwe to which the applicant could reasonably be expected to relocate where he would be safe from the persecution which he fears.

### ***Safe Third Country***

85. The Tribunal finds that the applicant is outside of his country of nationality. For the reasons stated above, the Tribunal finds that the applicant has a well-founded fear of being persecuted for reasons of his political opinion if he returns to Zimbabwe. The Tribunal finds that the applicant is unwilling, owing to his fear of persecution, to avail himself of the protection of the government of Zimbabwe. There is no evidence before the Tribunal that the applicant has the right to enter and reside in any third country for the purposes of s.36(3) of the Act, and the Tribunal finds accordingly that he does not.

### **CONCLUSIONS**

86. 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).

### **DECISION**

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