

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76237**

**AT AUCKLAND**

**Before:** J Baddeley (Member)  
**Counsel for the Appellant:** C Curtis  
**Appearing for the Department of Labour:** No Appearance  
**Date of Hearing:** 23 September, 24 November 2008  
**Date of Decision:** 15 December 2008

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**DECISION**

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[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL) declining the grant of refugee status to the appellant, a national of Zimbabwe.

**INTRODUCTION**

[2] The primary issue in this appeal is the question whether a young Indian woman living alone in Zimbabwe, with no experience of fending for herself, is at risk of serious harm at the hands of soldiers, ZANU-PF supporters or others.

**THE APPELLANT'S CASE**

[3] The account which follows is a summary of the evidence of the appellant and her mother. The credibility of the evidence is assessed later.

[4] The appellant is 26 years of age. She is the third and youngest child of her

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parents and was born in Bulawayo but moved to X when a young child. Her parents opened their own restaurant in X. Both the appellant's parents are of Indian ethnicity. Her father was born in Bulawayo and her mother in India. Both are Zimbabwean citizens.

[5] There were about six other Indian families in X when the appellant grew up. Her parents were friendly with them all and did not socialise with white or African families. The appellant was the only Indian child in her class at primary school. She was sent to secondary school in Bulawayo where she boarded with family friends.

[6] After completing secondary school she studied interior design in Harare for a year, again boarding with family friends. In 2003 the appellant began a beauty therapy course in Harare. She returned home to X only once for a two week break during that year. The journey from Harare to X was dangerous for an unaccompanied young woman. She also felt scared living in Harare. She feared being attacked by African men because she was a young Indian woman. They would shout insults and threats at her. Once she had her handbag snatched but she was never physically harmed. She did not go out in public alone and would not use public transport.

[7] At the end of 2003 her parents decided it was unsafe for her to remain in Harare. She came home to X and worked as a beauty therapist at a hotel. She left that job after one month because she did not feel safe with African male clients. She found a job in Botswana in April 2004. She remained in that job until February 2006. She was employed as a beauty therapist at a resort. She enjoyed the work and had no African clients.

[8] She came home for the occasional holiday in vehicles owned by her employer which took guests from Botswana to X. At the border she was often questioned about how much money she had and asked about the reasons for her travel. She felt singled out by the border guards but did not know whether other travellers were also questioned. She never made a journey by herself. Sometimes she travelled with her father. They were also stopped at road blocks and questioned. Her father paid bribes to the soldiers. She did not experience

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any problems in X at that time but during her holidays she kept to her home. She noticed African men becoming more verbally abusive to herself and to her parents.

[9] She also visited her older sister who was married and living in South Africa. The appellant had no friends her own age in X by this time. They had mostly left Zimbabwe. Most of her parents' friends had also left X. Her parents' business declined as tourism numbers dropped. They had to reduce their staff from four to one and this caused resentment from those who no longer had jobs. Her father did not consider returning to Bulawayo probably because he would not be able to easily re-establish himself there. Although her parents were unhappy and insecure in X she was unaware of any plans that her parents had to improve their situation. She knew of two other Indian families there whose homes had been burgled. Her parents seldom went to Bulawayo because of the high cost of petrol and concerns about their safety. They did not visit her father's family in Bulawayo but were in frequent telephone contact with them. Her mother also felt unsafe outside the home in X. She only went to the restaurant when her husband needed her help. The appellant seldom left the house when she was at home. She was afraid of being kidnapped. Being the only child made her a more likely target, but no attempts were made to kidnap her.

[10] In January 2006, the appellant and her parents travelled to her brother's wedding in Mumbai. Her parents discussed the possibility of remaining in India but found living conditions there unpleasant, principally the pollution and overcrowding. They had no problems at the airport on departure or return beyond having their luggage searched and being questioned about the reasons for their travel. On their return home they discovered that their house had been broken into and some electrical appliances stolen. Her father had closed his business while they were in India and on his return some war veterans harassed him about this and wanted him to hand the business over to them. He did not do so and continued to operate the business himself.

[11] The appellant returned to her employment in Botswana. In March 2007, the appellant and her parents were issued with New Zealand visitors visas to visit her brother in New Zealand. On return to X prior to her departure for New Zealand the appellant noticed that conditions had deteriorated markedly. There were more

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people roaming the streets and she felt even less safe than she had before. The family had decided to come to New Zealand for a six weeks holiday believing that the situation in Zimbabwe would calm down during that time. Her father had no intention of applying for residence in New Zealand before they left Zimbabwe. Her mother believed that it was safer for the appellant to accompany them to New Zealand although she was still employed and living in Botswana. Before they left Zimbabwe her father sold his business. Their home was let to a white family. Her father also owned a shop which they left tenanted.

[12] The appellant felt she had no choice but to come to New Zealand otherwise she would be by herself in Botswana. She had a valid residence permit for Botswana which entitled her to remain there until May 2008. Her previous permits had been renewed because of her employment.

[13] After arriving in New Zealand her mother contacted her sister in Bulawayo who told them that the kidnappings and robberies continued and that Indian girls were being targeted. She also told them that the white family in their home had been threatened by veterans, so they had left the house and the war veterans had occupied it. Their shop has been taken over and they no longer receive rent from it. Her mother's, sister and her husband have since moved to Botswana to be with their daughter who works there. Her mother was guarded during these conversations with her sister because she feared the telephone might be tapped.

[14] Her parents applied for residence in New Zealand at her brother's suggestion. Their application for residence is currently being processed. Her brother sponsored them. The appellant has been looking for work in New Zealand which would enable her to apply for a residence permit. She has not yet found an employer who will sponsor her for residence.

[15] The appellant fears that on return she would be searched at the airport either in Harare or at X and no one would be available to meet her and take her to somewhere safe. If she had to use public transport she would be robbed and probably be taken by Africans to a village, raped and killed. She has nowhere to live and no male protection. She also has no job in Zimbabwe and would find it very difficult to get employment because Africans are preferred employees.

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Everyone she knows has left Zimbabwe. She does not know how money could be sent to her in Zimbabwe from her family overseas to help her.

[16] The appellant is now unable to return to Botswana. Her permit has expired and her employer gave her six weeks' leave and would not hold the job open for her any longer. She did not return to Botswana when she could have because her parents wanted her to remain with them. They thought it would be unsafe for her to be so far away from them. There is no absolute guarantee that her Botswana residence permit would be renewed although it had always been renewed in the past. Her parents did not consider that it would be culturally appropriate for her to live with her married sister in South Africa.

[17] The appellant remains unmarried. She states that it is not uncommon for Indian women of her age to be unmarried and living with their parents. Her parents had not arranged a marriage for her and she had not met anybody to marry. She says that as an unmarried woman she would be a burden on any Indian family even if her parents found one whom she could live with. She could not go out by herself and would be a target for rape and at high risk of contracting AIDS. Her parents would be ashamed to ask another family to look after her. It is not culturally appropriate for her, as a young woman, to be living alone.

### **The mother's evidence**

[18] The appellant's mother told the Authority that they were the last Indian family to leave X because they did not want to leave Zimbabwe. They had experienced increasing abuse, insults and threats. They had reduced the staff in the restaurant because their business had declined drastically and these lay offs caused resentment from their African staff. The staff stole their goods knowing that it was futile for the appellant's parents to complain to the police. Africans targeted them because they were perceived as being comparatively wealthy. They would come to the restaurant demanding food and money which her husband often provided in order to appease them. Their residence application is currently being processed. They have temporary permits for a year.

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[19] While they were in India attending their son's wedding their house was burgled. They did not consider remaining in India because the appellant's mother had renounced her Indian citizenship in order to have Zimbabwean citizenship so she had no right to remain in India. Further, her husband had never lived in India and could not tolerate the conditions there.

[20] The appellant's parents came to New Zealand at their son's insistence but intended to return to Zimbabwe after a few months in the belief that circumstances would improve. Before they left they sold the restaurant very cheaply. They let their house and shop, intending to live on the rent from the shop and start up a catering business from home when they returned. After coming to New Zealand they learnt that their house had been taken over by war veterans and their tenants evicted. The shop was also taken over by the Zimbabwe African National Union-Patriotic Front (ZANU-PF) supporters. These occurrences and a dramatic deterioration in economic and social conditions in Zimbabwe after their arrival here caused them to apply for residence in New Zealand. Their residence application is currently being processed. They have temporary permits for a year.

[21] The appellant's parents told her to come with them to New Zealand. They did not want her to remain in Botswana because it was too far away from them. Her mother and her father are very protective of the appellant. They believe she must be near her parents and live with them until she marries. It is culturally unacceptable for a young Indian woman to live by herself and it would be injurious to her reputation. Her mother does not know of any other young Indian women in Zimbabwe who live by themselves. Like her siblings, the appellant will have an arranged marriage but her parents have not yet found an acceptable husband for her.

[22] In the current climate if the appellant were living by herself, without the protection of an Indian family, she would be kidnapped and raped by African men. Many times African men had approached the appellant and her parents in public and said that they wanted to "marry" the appellant. This was insulting and intimidating.

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[23] No serious harm had befallen the appellant because her parents had always protected her. When she was in Harare she lived with an Indian family who were friends of her parents. The principal reason for her working in Botswana was because she was safe there. She lived in the resort where she worked. Her mother was able to telephone her regularly to check that she was safe.

[24] The appellant's family has had very little contact with anyone in Zimbabwe since coming to New Zealand. Telecommunication is very unreliable and in any event none of their relatives remain in Zimbabwe; the appellant's mother's siblings have all left, her husband's siblings have left and they have no uncles, aunts or cousins in Zimbabwe. All their friends have gone abroad to the United Kingdom, Australia, or Botswana because of the economic conditions, political instability and fear for their personal safety. Were the appellant to return to Zimbabwe, they would have to find an Indian family to accommodate her. However, she knows that even if this could be arranged, it would be done reluctantly and no-one would take any responsibility for the appellant. They would see her as a burden because she would be unable to find employment. Her mother has heard of people having to travel long distances even to buy bread. There is no food in the shops. Her mother is unsure whether the appellant would be able to reliably access money sent to her from overseas from her family. Any money sent to her would have to be converted into Zimbabwe currency which is continuing to devalue rapidly.

### **Documents received**

[25] The Authority received written submissions from the appellant's counsel dated 29 July 2008. A statement dated 26 September 2008 was filed by the appellant's brother together with country information. Her mother filed a statement dated 21 October 2008. Further items of country information were filed on 25 and 27 November 2008. All these documents have been taken into account in reaching this decision.

### **THE ISSUES**

[26] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides

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that a refugee is a 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[27] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

## **ASSESSMENT OF THE APPELLANT'S CASE**

### **Credibility**

[28] The Authority accepts that the appellant and her mother are credible witnesses. The appellant's evidence was consistent with previous accounts and each confirms the other's version of events in Zimbabwe. While the Authority accepts the truth of their account it is the assessment of risk to the appellant on return which requires close consideration.

### **Country information**

[29] Conditions in Zimbabwe continue to deteriorate. For approximately a decade the ZANU-PF regime has consistently committed human rights abuses, particularly targeting supporters of the opposition Movement for Democratic Change (MDC). Militia and war veterans have been able to detain, mistreat and often kill their opponents with impunity because the security forces do not intervene. The most recent United States Department of State *Country Reports on Human Rights Practices for 2007: Zimbabwe* (11 March 2008) describes the ZANU-PF regime as characterised by:

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“The denial to citizens of the right to change their government, state sanctioned use of excessive force unlawful killings and politically motivated abductions, intimidation and corruption by the government, widespread use of torture and violence against political opponents.”

[30] The situation worsened significantly throughout 2007 and in the lead-up to the elections in 2008. Conditions deteriorated further after the defeat of ZANU-PF in the March elections and again after the presidential run-off in June 2008. Refer Human Rights Watch *Zimbabwe – Surge in State-Sponsored Violence* (25 April 2008) [http://hrw.org/enclishdocs/2008/04/25/zimbab18653\\_twt.htm](http://hrw.org/enclishdocs/2008/04/25/zimbab18653_twt.htm).

[31] At present the talks between the MDC and Mugabe’s ZANU-PF party are at a stalemate. No agreement has been reached in respect of key issues such as the draft constitution and the appointment of cabinet ministers, (Refer *New power sharing hitch 2008* Institute of War and Peace Reporting 27 November 2008 [http://www.iwupr.net/index.php?m=po=348085&=f&8pc\\_state=henfzim348085](http://www.iwupr.net/index.php?m=po=348085&=f&8pc_state=henfzim348085)).

The political paralysis means that no constructive steps are being taken to address the severe economic crisis which has resulted in five million people in Zimbabwe being dependent on food aid from local and international relief agencies *Harare: Grim harvest predictions* Institute of War and Peace Reporting 12 November 2008 [http://www.iwupr.net/index.php?m=po=348085&=f&8pc\\_state=henfzim](http://www.iwupr.net/index.php?m=po=348085&=f&8pc_state=henfzim). Food aid is distributed on a discriminatory basis favouring ZANU-PF supporters.

[32] In a recent United Kingdom decision which extensively reviewed conditions in Zimbabwe [(RN returnees) Zimbabwe CG [2008] UKAITOOO83 19 November 2008], the situation is summarised at paragraph 250:

“The collapse of the economy and agricultural production has led to severe food shortages. The supermarket shelves are empty so that even those who do have money to spend find it difficult to buy food. For the many others without work or access to any means of financial support access to food aid is essential. The evidence does now establish also that the government of Zimbabwe has used its control of the distribution of food aid as a political tool to the disadvantage of those thought to be potential supporters of the MDC. This discriminatory deprivation of food to perceived political opponents, taken together with the disruption of the efforts of NGOs to distribute food by means of the ban introduced in June 2008, amounts to persecution of those deprived access to this essential support.”

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[33] The Tribunal also evaluated the differential risk of attack from ZANU-PF militia and war veterans depending on an individual's residential circumstances at paragraph 228:

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

at paragraph 229:

“The evidence suggests that those living in the more affluent low density urban areas or suburbs are likely to avoid such difficulties, the relative security of their homes and their personal security arrangements being sufficient to keep out speculative visits. Many of those with the means to occupy such residences are in general likely to be associated with the regime and so not a target on the basis of doubted loyalty.”

[34] The Authority also notes that at present life in Zimbabwe has been rendered even more difficult by a cholera epidemic which cannot be contained by the country's depleted health services and inadequate sanitation systems. In Amnesty International 2008: *Zimbabwe's health system in chaos* 21 November 2008, it is reported:

“As political parties in Zimbabwe argue between themselves about the form the new government should take, Zimbabwe's health system is on the verge of total collapse. An outbreak of cholera is affecting nine out of Zimbabwe's ten provinces and major hospitals are failing to provide medical care to those in need.

...

Failure to contain and manage the outbreak is the result of inadequate supply of safe drinking water and broken down sanitation systems that often leave residents surrounded by flowing raw sewage.”

## **Violence against women**

[35] There has been a continuing increase in violence against women both domestic violence and, in particular, politically motivated violence. In Afrol News “*Violence against women in Zimbabwe increases*” (8 March 2008) [http://www.afrol.com/printable\\_article/18383](http://www.afrol.com/printable_article/18383) it is reported that:

“According to a UNICEF analysis, Zimbabwe's increases in gender-based violence appear to arise from traditional practices and principles that include the subjugation of women, and that it is culturally permissible for a man to physically “discipline” his wife and children; Zimbabwe's worsening economic times have meant more and more women are becoming the breadwinners while the men have been forced to remain at home; and that Zimbabwe has a high HIV prevalence rate, at 20.1

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percent, and more than half of these are women and girls. ... Press reports and data collected at workshops and through non-governmental organisations (NGOs) indicate a steep rise in violence against women in Zimbabwe.”

[36] The United States Department of State (*supra*) notes:

“According to a Zimbabwe “Torture Victim Survivors Project Report” released in December 2006, at least 15% of Zimbabwean women refugees interviewed at a counselling centre in Johannesburg, South Africa between February 2006 and September 2006 reported that they had been raped in Zimbabwe; the victims most frequently named members of ZANU-PF, police, military and the Central Intelligence Organisation as the perpetrator.”

[37] It is clear that rape is being used by ZANU-PF militias as a political weapon. In IRIN UNHCR Refworld *Zimbabwe: Tortured, raped and forgotten* (23 September 2008) <http://www.unhcr.org/refworld/docid/48e085e11e.html>. It is reported that:

“During the bitterly contested Zimbabwe elections between President Robert Mugabe’s ruling ZANU-PF and Morgan Tsvangirai’s Movement for Democratic Change (MDC), the country’s rural areas became effective no-go areas. There were numerous reports of politically motivated killings and widespread rapes, allegedly by members of Zimbabwe’s national army, veterans of the country’s liberation war and members of the ruling party’s youth militia.”

### Indians in Zimbabwe

[38] It is evident that Indians, who form an easily distinguishable minority, may be targeted because of their perceived wealth and the hostility and resentment this has engendered on the part of the less well off. In “Zim militants target Indian property 2002” *African News Service* (25 April 2002) it was reported that:

“Government backed militants have threatened to seize property owned by members of Zimbabwe’s Indian community, who may have been accused of being economic looters unless they handed over to blacks. ... The Herald said Ndlovu had also given Zimbabwe’s 12,000 strong Indian community an ultimatum to reduce rent, stock trading and currency on the black market, bank their money locally and raise wages.”

[39] The Indian business community has attracted adverse attention mainly because it is perceived as being wealthier than many Africans. This adverse attention is exacerbated during times of economic hardship. Many of the Indian community have departed Zimbabwe because of increasing pressure, fear and the economic downturn. In “Harassed Indians On The Verge Of Leaving Zimbabwe” *Sunday Independent* (9 February 2003) it is reported that:

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“The private homes and businesses of Indians in Bulawayo, Harare and Mutara were being raided by police, tax investigators and the Central Intelligence Organisation to confiscate foreign exchange, jewellery, documents and transaction records.”

[40] The targeting of Indian businesses continued in 2005 and it is also reported the United States Department of State 2006 that ethnic Indian-owned businesses allege that authorities unfairly targeted their shops during raids. Canadian Immigration and Refugee Board, Research Directorate *ZWE37570.E Zimbabwe: Treatment By The Government, Its Supporters And War Veterans Of Mixed Race And Those Referred To As Coloured People Of South Asian Descent* (27 August 2001). It is noted that:

“During the violence of the campaign for the June 2000 elections there are reports that racial intimidation was spreading beyond the white-owned farms to include the Asian business community. Pamphlets were reportedly circulated in Bulawayo threatening Indians.”

[41] In a further report Canadian Immigration and Refugee Board, Research Directorate *ZEE38306.E Zimbabwe: Report On The Treatment By The Government Its Supporters And War Veterans Of Citizens Of Mixed Race* (27 August 2001) it was reported that Indian and Chinese businessmen unable to supply goods at prices set below production cost had become scapegoats and forced to shut their shops several times as mobs attacked their businesses in downtown Harare.

### **Circumstances on return to Zimbabwe**

[42] The appellant’s parents left Zimbabwe intending to return within one or two months. They arranged for their home and shop to be tenanted in their absence. Events since then have caused them to fear returning to Zimbabwe. Their shop and home have been taken over by war veterans. X has always been the appellant’s home in Zimbabwe and the place with which she is most familiar. She has no accommodation available elsewhere. On return to X she would have nowhere to live. The appellant’s family have in the past managed to appease the war veterans by giving them money or food. She will not have the resources to do this and is fearful of approaching them in any event. Any attempts she might make to regain their former home are unlikely to be successful. The war veterans take over property with impunity. She cannot expect help from the authorities who

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condone the activities of the war veterans. In her most recent sojourn in X the appellant remained at home because she was frightened to go out in public on her own. She no longer has her family to protect or support her in X. Were she to return to Zimbabwe it is most likely that she would live in Harare or Bulawayo where she had lived previously as a border while completing her education.

[43] The appellant has not lived continuously in Zimbabwe since 2003. She is inexperienced in the exigencies of daily life there. She is very frightened of living by herself and fears being assaulted and kidnapped if she were to venture in public on her own. On return it is most unlikely that the appellant would obtain employment. The unemployment rate is high [80 percent] and her skills as a beauty therapist will not be in demand in the current economic climate in Zimbabwe. She would have to rely on remittances from overseas for her support. Accommodation will be difficult to find and is likely to be expensive. Even if she is able to access money from her family abroad, food and other basic items are hard to come by. She will have no ready-made support networks to obtain items such as food which Zimbabweans are having to obtain from outside the country by a variety of informal and unreliable means. Much of the population is reliant now on food aid. This, however, is distributed discriminately in favour of ZANU-PF supporters. She would be unlikely to benefit from a distribution of food aid in these circumstances.

[44] While the Authority does not accept that all Indians are at risk of persecution or that all women are at risk of sexual assault, the circumstances of this particular appellant place her in a vulnerable situation. Not only is she a young, single, woman, but she is identifiably Indian. As such she is more likely to be targeted as being perceived as wealthy, particularly given that she has recently returned from overseas. She has no protective support network available to her. In the past while living in Zimbabwe, she has always been under the vigilant protection of her family. She is unlikely to benefit from the secure accommodation available to the affluent and to supporters of the ZANU-PF regime. She will have to fend for herself and her gender places her at increased risk of violence from ZANU-PF militia. She has not had the need or the opportunity to develop the kind of survival skills which would be required for a young woman returning to what is now an unfamiliar situation compounded by the current dire economic and political

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circumstances. It is the combination of these factors which the Authority finds will place her at risk of serious harm.

### **The Convention Ground**

[45] The focus in the “for reasons of” clause in the refugee definition is on the reasons for the claimant’s predicament. As noted in *Refugee Appeal No 76044* (11 September 2008) at [68]:

“The language draws attention to the fact of exposure to harm, rather than to the act of inflicting harm. The focus is on the reasons for the claimant’s predicament rather than on the mind set of the agent of persecution. In this context the Authority has held that it is sufficient for the refugee claimant to establish that the Convention ground is a **contributing** cause to the risk of “being persecuted”. It is not necessary for that cause to be the sole cause, main cause, direct cause, indirect cause or “but for” cause. It is enough that a Convention ground can be identified as being relevant to the cause of the risk of being persecuted.”

[46] On these facts two Convention grounds are relevant to the appellant’s case, namely her membership of a particular social group (women) and her ethnicity. As explained in *Refugee No 71427/99* 2000 NZAR:545, it is beyond dispute that gender can be the defining characteristic of a social group and that “women” may be a particular social group.

[47] Her gender places the appellant at a particular risk of violence from ZANU-PF militia and constrains her ability to gain access to basic sustenance thus placing her at risk of serious harm and her ethnicity.

### **CONCLUSION**

[48] For the above reasons, the Authority finds the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

“J Baddeley”

J Baddeley  
Member

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