Asylum and Immigration Tribunal

AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061

THE IMMIGRATION ACTS

Heard at Field House
Between 3rd and 7th July 2006

Determination Promulgated
2nd August 2006

Before

The Hon Mr Justice Hodge OBE, President
Senior Immigration Judge Warr
Senior Immigration Judge Southern

Between

AA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M. Henderson, instructed by The Refugee Legal Centre
For the Respondent: Mr S. Kovats, instructed by The Treasury Solicitor

A failed asylum seeker returned involuntarily to Zimbabwe does not face on return a real risk of being subjected to persecution or serious ill-treatment on that account alone.

SM and Others (MDC – internal flight- risk categories) CG [2005] UKIAT 00100 is reaffirmed. Two further risk categories are identified: those whose military history discloses issues that will lead to further investigation by the security services upon return to Harare Airport and those in respect of whom there are outstanding and unresolved criminal issues.

A deportee from the United Kingdom who, having been subjected to the first stage interview at the airport, is allowed to pass through the airport is likely to be the subject

of some monitoring in his home area by the local police or the CIO but the evidence does not indicate a real risk of persecutory ill-treatment for those who are being monitored solely because of their return from the United Kingdom.

The general country conditions are extremely difficult but those difficulties will not generally be sufficiently severe to enable an appellant to rely upon article 3 to resist removal.

DETERMINATION AND REASONS

Introduction

1. This reconsideration comes before us by order of the Court of Appeal (AA [2006] EWCA Civ 401). That Court set aside the determination of a panel of the Asylum and Immigration Tribunal (AA [2005] UKAIT 00144) ("the first Tribunal"). The first Tribunal, following a hearing in October 2005, found there to be a material error of law in the determination of the immigration judge who had allowed the appellant's appeal against the decision of the respondent to remove him as an illegal entrant. The first Tribunal substituted a fresh decision to allow the appeal on asylum and human rights grounds. The appellant's appeal was remitted to this Tribunal by the Court of Appeal to be heard *de novo.* But we do refer where appropriate to the determination of the first Tribunal. It is important to recognise that we have before us much evidence that was not before the first Tribunal and that this is not a review of the decision of the first Tribunal.

2. Over a five day period commencing on 3rd July 2006 we heard from a number of witnesses who gave oral evidence. We received submissions from both counsel who have each provided skeleton arguments. The scale of the material before us is so extensive that it was not realistically possible for all the evidence to be discussed in submissions. The documentary evidence is arranged in six volumes. Volume one contains the evidence in judicial review proceedings that now stand adjourned pending the completion of the process of this Tribunal giving country guidance in relation to the issues with which this reconsideration is concerned. Volumes two and three contain the evidence that was before the first Tribunal in AA [2005] UKAIT 00144. Volumes four and five contain the additional evidence filed by the respondent and the appellant respectively. Volume six contains further evidence and it is into this volume that further documentary evidence has been inserted as it emerged during the hearing. When we refer to this documentary evidence it is by volume and page number (volume number/page number).

3. After the hearing had concluded we received a document from Mr Kovats headed "Note on Statistics". Some days later we received a much longer note from Mr Henderson in which he objected to us having regard to Mr Kovats' note. He argues that it is inappropriate that additional evidence be introduced in this way. Mr Henderson then, over thirteen pages, responds to the material in Mr Kovats' note. We have decided to have no regard to the additional information contained in any communication received after the hearing. We reach our conclusions upon the evidence, both written and oral, put before the Tribunal during and prior to the hearing alone.

4. We have had regard to all of the documentary evidence listed in the schedule to this determination as well as the many witness statements and other material listed in the index to the six volumes of documentary evidence. We cannot discuss it all specifically within this determination. We have decided, at the request of and with the consent of the parties that the identity of the majority of the witnesses and organisations is to be kept anonymous. This means that many of the documents in the schedule are also anonymised.

Background

5. AA, who was born on 8th April 1975, is a citizen of Zimbabwe. He arrived at London City airport on 6th November 2002, having travelled via South Africa and France. He travelled on his own passport, which remains valid. He was granted temporary admission but absconded and next came to notice when he came to the attention of police two and a half years later. At first he gave a false name, that of his brother who had been granted leave. But checks showed that the leave had expired. AA then gave his correct name, and was detained under immigration powers. He then claimed asylum.

6. AA's asylum claim was refused on 27th July 2005 and he appealed to an immigration judge who rejected as untrue his claim to be at risk on account of anything he had done in Zimbabwe. But he allowed the appeal on asylum and human rights grounds. He found that the appellant would face, on return to Zimbabwe, a real risk of being subjected to persecutory ill-treatment at the hands of the authorities simply because he would be seen to be a person who was being returned to Zimbabwe after having made an unsuccessful asylum claim in the United Kingdom. In reaching that conclusion the immigration judge had relied upon a recent news report concerning country conditions in Zimbabwe which he had found on the internet after the hearing.

7. Reconsideration of that decision was ordered because it was a material error of law for the immigration judge to rely upon evidence not adduced at the hearing. If the immigration judge wished to rely upon such material he should have reconvened the hearing to give each party the opportunity to comment upon it.

8. That reconsideration hearing came before the first Tribunal in October 2005. It was listed before a legal panel of the Tribunal because this was seen as a suitable case to give country guidance upon the issue of risk on return to those removed involuntarily to Zimbabwe after having made an unsuccessful asylum claim in the United Kingdom. A moratorium on compulsory returns to Zimbabwe in respect of all those having no right to remain, including those who had not made an asylum claim, had been introduced in January 2002. Removals recommenced on 16th November 2004. But, on 7th July 2005, the Secretary of State suspended the involuntary return of failed asylum seekers once more after reports in the press of accounts of such returnees being mistreated and after judicial review proceedings had been brought in the High Court.

9. The first Tribunal found there to be a material error of law, for the reasons given above. This meant that the decision of the immigration judge was set aside and the Tribunal was to substitute a fresh decision to allow or dismiss the appeal.

10. The first Tribunal agreed that the immigration judge was plainly correct to reject the factual basis of AA's claim to be at risk upon return to Zimbabwe on account of his association with the MDC. The first Tribunal said this:

> "There is no doubt in our mind that the Appellant's claim to asylum was, in all its substantive parts, fraudulent, and that the Appellant himself has been deliberately dishonest in almost all his dealings with the authorities in this country."

That finding of fact is not challenged before us and we adopt it.

11. We heard oral evidence from a number of witnesses. They included Professor Ranger who gave country expert evidence on behalf of the appellant, two witnesses from the Home Office, Mr Walker who is a senior executive officer in the Country Specific Asylum Policy Team of the Asylum and Appeals Directorate, Mr Walsh, who is Acting Director of the Asylum Policy Directorate, and three witnesses who had personal experience of procedures at Harare airport. Those three witnesses had not given oral evidence before the first Tribunal.

12. Thus the issue in AA's appeal is whether the evidence establishes a real risk of serious ill-treatment for a person who had been found to have no objectively well founded fear of being so treated for any reason other than that he was being forced to return to Zimbabwe and would be regarded as a failed asylum seeker when he arrived at the airport. If he was able to get through the airport there needed to be an assessment of his position generally, again on the basis of being returned in these circumstances.

13. Before considering the evidence in detail we set out a brief overview.

Overview of the evidence

14. As mentioned above, since January 2002 the respondent has only carried out involuntary returns of failed asylum seekers to Zimbabwe between 16th November 2004 and 7th July 2005. The evidence indicates that during that period 210 "principal applicants" were removed. We sought to enquire whether this means that if dependants were removed with the principal applicant the figure might increase in any significant way. This information was not available. Both Mr Henderson and Mr Kovats accepted at the hearing that we should proceed on the basis of the figure of 210 removals. It appeared probable that when selecting candidates for removal from the large pool available the respondent had been unlikely to select individuals with dependants as that might complicate the removal process.

15. At the hearing before the first Tribunal the main evidence available of what became of those returned to Zimbabwe was provided by the London based Zimbabwe Association. They sought to monitor twenty eight such removals and had information as to what had happened in fourteen of them. There was also information from press reports concerning other persons removed. Taken together

this represented only a small number of those removed. The first Tribunal had also information obtained by the respondent in the form of a "field report" prepared by a team of persons of which Mr Walker was a member that had visited Harare for that purpose. The first Tribunal criticised the respondent for not doing more to find out about what had happened to those returned. The respondent was reluctant to follow up individual citizens of Zimbabwe once returned. It was considered inappropriate for embassy staff to monitor citizens in this way but also there was concern that to do so might give rise to a risk that would not otherwise exist.

16. The respondent sought to obtain for this hearing more evidence from NGOs in Zimbabwe as to whether they knew of a systematic pattern of ill-treatment of involuntarily returned asylum seekers and if not whether they would expect to have been aware of it if such ill-treatment was going on. These enquires were made on behalf of the respondent by the British Embassy in Harare. The response received to these enquiries, broadly, was that the NGOs were not aware of involuntarily returned failed asylum seekers being ill-treated. A number also said they would have expected to have been aware if there was a pattern of such ill-treatment in fact going on. We shall examine this evidence and how the respondent went about collecting it in more detail below.

17. It is argued on behalf of the appellant that this evidence is of no value. The methodology is criticized. It is said that the views expressed were not those of the organisations but simply the individuals contacted. In any event, it is said that as the number of involuntarily returned failed asylum seekers is so small and because the NGOs are not "set up" to monitor such individuals it is not at all surprising that the NGOs did not pick up this information. The NGOs had other matters to deal with, not least the massive scale of the problems caused by "Operation Murambatsvina" which had led to hundreds of thousands of people being displaced and being in urgent need of assistance. The Refugee Legal Centre ("RLC") has contacted the people concerned within some of the NGOs. It is argued that what they discovered casts further doubt upon the reliability of this evidence. The appellant agues also that such is the climate of fear generated by the ruthlessness with which the authorities respond to any form of dissent that most Zimbabweans do not seek to report abuses perpetrated by the authorities. This, it is said, explains why nothing was heard from returnees who had expressed an intention to contact The Zimbabwe Association following removal but did not.

18. As mentioned above, we heard from Professor Ranger. We discuss his evidence in more detail below. We had written evidence from another country expert, Dr McGregor. Her evidence was concerned with the ability of the Harare based NGOs to monitor returnees from the United Kingdom and the reasons why persons mistreated in Zimbabwe would be reluctant to seek help from the NGOs. She had seen Professor Ranger's first report and agreed with what he said.

19. We heard oral evidence at length from three witnesses who had personal experience of working at Harare airport. Two had been with the Central Intelligence Organisation ("CIO") in Zimbabwe. Each had kept in contact with colleagues who work at the airport today. These witnesses told us that they were in a position to give evidence not just about procedures at the airport when they were there but procedures in place today. Importantly we had evidence about a number of

individual returnees. This evidence, in the appellant's view, supported the case that involuntarily returned failed asylum seekers faced a real risk on return to Zimbabwe. We analyse that evidence below.

20. Mr Walker and Mr Walsh gave evidence about the respondent's policy and procedures relating to involuntary returns. They also described what had been done to gather as much information as possible about what had become of those who had been returned between November 2004 and July 2005. Mr Walsh gave evidence about the draft Memorandum of Understanding agreed with the International Office for Migration ("IOM").

21. The respondent proposes to put in place a new initiative to assist with the collection of information as and when it returns people to Harare if it is permitted to do so. A draft Memorandum of Understanding has been negotiated with the IOM since the hearing before the first Tribunal. This is an international organisation funded by states including the United Kingdom that assists those returning to their home country. The IOM has provided assisted return and resettlement packages to voluntary returnees to Zimbabwe for some years. It has now agreed to provide similar assistance, for the first time, to those being returned involuntarily after making an unsuccessful asylum claim in the United Kingdom, if the person concerned wishes to avail himself of the reintegration package offered. There would then be contact between the returnee and the IOM for a period of some months after return. This will, it is said, provide further information of what became of returnees. IOM agreed to report to the respondent if any returnee, for example, did not emerge from the airport upon being returned to Zimbabwe. On behalf of the appellant it is argued that this does nothing at all to prevent any ill-treatment to returnees. IOM is said by the appellant not to be a suitable body to conduct such a monitoring exercise because of its links with the Zimbabwean government. The respondent says this arrangement has nothing to do with the safety of an individual return, which is assessed before removal takes place. The exercise is simply to enhance the ability of the respondent to collect information to inform future decisions.

22. The first Tribunal had said that it was possible that they might have taken a different view if removals could be made in a way that ensured, as far as possible, that those who returned involuntarily were indistinguishable from those who were returning voluntarily from the United Kingdom, who they did not consider to be at risk on that account alone. We heard evidence from the respondent that consideration had been given to this. It had been decided that no changes could at present be made to the system used. Thus, where there was an escorted removal the escort would hand the travel documents to immigration officials at Harare airport. Where the involuntary returnee is not escorted the travel documents would be handed to the airline staff who had some discretion in the matter but who, in the main, would pass them on to the immigration officers at Harare airport. In both cases this would identify the traveller as someone who was being returned involuntarily but it would not be disclosed whether or not an asylum claim had been made.

The key issues

23. The respondent considers it is safe to recommence the involuntary return of failed asylum seekers to Zimbabwe via flights from the United Kingdom to Harare airport. It is said on behalf of the appellant that any such person would be at real risk on return of persecution or article 3 ill-treatment merely as a result of being an involuntarily returned failed asylum seeker.

24. Both counsel assisted us with their skeleton arguments. In his skeleton argument Mr Henderson suggests that there are two questions before us:

> "This case is concerned firstly with whether it is presently safe for the SSHD to re-commence expelling asylum seekers to Zimbabwe by the same route and method as he adopted between November 2004 and July 2005 (the only period during the last four and a half years that such removals have been effected), ie whether there is now "no real risk" that such persons will face any treatment contrary to Article 3.
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> A second issue arises as to what risks AA would face if he were hypothetically to return to Zimbabwe voluntarily (there being no evidence that he would actually be willing to do so, and the Immigration Judge having found as a fact that he had a genuine subjective fear). This question determines whether AA (and others in the same position) are entitled to the rights conferred by the Refugee Convention while in the UK."

Mr. Kovats puts it more specifically:

> "There are four principal issues, namely whether any of the following classes of returnees from the United Kingdom to Zimbabwe have as such (i) a well founded fear of persecution for reasons of imputed political opinion or membership of a particular social group or (ii) are as such at real risk of torture or of inhuman or degrading treatment or punishment:
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> 1. failed asylum seekers whose return is enforced by the Home Office ("involuntary FAS");
> 2. failed asylum seekers who return voluntarily ("voluntary FAS");
> 3. all Zimbabweans, whether or not they have claimed asylum, whose return is enforced by the Home Office ("involuntary returnees");
> 4. all Zimbabweans, whether or not they have claimed asylum, who return voluntarily ("voluntary returnees")."

<u>The correct test for assessing "real risk"</u>

25. There is some evidence that some persons being returned involuntarily to Zimbabwe after having made an unsuccessful claim for asylum in the United Kingdom have been subjected to serious ill-treatment. This in itself does not mean that the appellant is entitled to succeed. Neither Convention seeks to provide a guarantee of safety. It is, then, essential to identify the correct test to apply in assessing the level of risk.

26. Mr Henderson submits that we should adopt the approach taken by the first Tribunal, not least because this was considered specifically by the Court of Appeal who did not suggest that approach to be inappropriate. The first Tribunal directed themselves as follows:

> "The Appellant's claim succeeds if he shows a real risk: he does not need to prove a certainty. As we have attempted to explain above, the claim that every person

returned involuntarily is at real risk of ill-treatment is not a claim that every one will in fact suffer ill-treatment. Likewise, looking at the past, the Appellant does not need to show that all those who have been returned involuntarily did suffer ill-treatment. He is entitled to rely, as he does, on evidence pointing to a substantial number of cases in the context of general evidence showing the source or reason for the risk."

27. This appellant is within a class of persons, failed asylum seekers facing an involuntary return. So here we are concerned with risk said to arise not because of individual characteristics of this particular appellant but because the appellant says he faces risk as he will be perceived to fall within a class of persons. This class in our judgement therefore is to be considered in the context of the "gross and systematic test" approved by the Court of Appeal in Hariri v SSHD [2003] EWCA Civ 807. Where the personal characteristics of the appellant do not give rise to risk, there can be no real risk of relevant ill-treatment unless the situation in the receiving country for the class of persons concerned is one in which the level of abuse amounts to a "consistent pattern of gross, flagrant or mass violations of human rights". Laws LJ said at paragraph 8:

> "…"In those circumstances, as it seems to me, the 'real risk' … could not be established without its being shown that the general situation was one in which ill-treatment of the kind in question generally happened: hence the expression "gross and systematic". The point is one of logic. Absent evidence to show that the appellant was at risk because of his specific circumstances, there could be no real risk of relevant ill-treatment unless the situation to which the appellant would be returning was one in which such violence was generally or consistently happening. There is nothing else in the case that could generate a real risk. In this situation, then, a "consistent pattern of gross and systematic violation of fundamental human rights", far from being at variance with the real risk test is, in my judgment, a function or application of it."

28. This point is illustrated clearly by Sedley LJ in Batayav v SSHD [2003] EWCA Civ 1489:

> "37. I want to add a word, however, about the evaluation of conditions which are alleged to create a real risk of inhuman treatment. The authority of this court has been lent, through the decision in *Hariri*, to the formulation that ill-treatment which is "frequent" or even "routine" does not present a real risk to the individual unless it is "general" or "systematic" or "consistently happening": see paragraphs 9 to 10 in the previous judgment.
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> 38. Great care needs to be taken with such epithets. They are intended to elucidate the jurisprudential concept of real risk, not to replace it. If a type of car has a defect which causes one vehicle in ten to crash, most people would say that it presents a real risk to anyone who drives it, albeit crashes are not generally or consistently happening. The exegetic language in *Hariri* suggests a higher threshold than the IAT's more cautious phrase in *Iqbal*, "a consistent pattern", which the court in *Hariri* sought to endorse.
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> 39. There is a danger, if *Hariri* is taken too literally, of assimilating risk to probability. A real risk is in language and in law something distinctly less than a probability, and it cannot be elevated by lexicographic stages into something more than it is."

29. This does not mean, then, that the assessment of real risk in these circumstances strays into a requirement of probability. The point is that where risk is said to arise based upon the perception that the appellant falls within a class of persons he will not be able to demonstrate that he faces a real risk unless the evidence shows that the abuse is consistently applied to that class of persons.

30. Mr Henderson submits that the question should be as was posed by the first Tribunal

31. It seems to us that there is in fact no real tension between the approach of the first Tribunal, impliedly accepted by the Court of Appeal, and that Court's approach as set out in Hariri or in Batayav. The issue is whether the evidence establishes a real risk. The appellant does not need to show a certainty or a probability that all failed asylum seekers returned involuntarily will face serious ill-treatment upon return. He needs to show only that there is a consistent pattern of such mistreatment such that anyone returning in those circumstances faces a real risk of coming to harm even though not everyone does. So is there is evidence pointing to a substantial number of cases in the context of general evidence showing that involuntarily returned failed asylum seekers, are at real risk of being subjected to serious ill-treatment, on that account alone? That requires a careful analysis of the evidence as to what has happened to returnees and, of course, of the country information which provides the background.

The existing country guidance:

SM and Others (MDC – internal flight- risk categories) CG [2005] UKIAT 00100

32. The starting point for the first Tribunal, as indeed it is for us, was the country guideline case SM which was heard on 15th February 2005. The IAT in that case considered a wide range of evidence and also heard from the respected country expert, Professor Ranger. The first Tribunal found the evidence established that those identified to the Zimbabwe authorities as persons who had been deported from the United Kingdom would be subject to interrogation upon return. The Tribunal in SM said this:

> "41. The Tribunal accepts from (Professor Ranger's) evidence and from the news reports in Zimbabwe that those deported to Zimbabwe from the United Kingdom will be subject to interrogation on return. In the light of the interest and comment the resumption of returns has raised in the government press in Zimbabwe it seems to us to be inevitable that this will be the case. If it is being asserted by the Zimbabwe government that returns are being used as a cloak for British agents and saboteurs to be smuggled into the country, it is likely that those returns will be carefully monitored whether for that reason or to identify and intimidate opponents to the regime. The reports in the newspapers in Zimbabwe are consistent with there being an atmosphere of suspicion to those returned. The returnee in the New Zimbabwe report was released following a telephone call made to an uncle serving in the army but only after an intimidating interview. We take into account that before returns were suspended there was some evidence that returnees were investigated. We have our doubts about the story of the returnee in the article from January 2002 and his escape out of an airport lavatory window at Harare

and his subsequent travel to South Africa, but in any event we are concerned with returns at the present time. We also approach with caution the reports that a number of recent returnees have never re-appeared once they were taken from the plane by CIO agents and that others have disappeared. No names or details have been provided and if, as Professor Ranger says the returns have been carefully monitored, we would have thought such details would be available.

42. Nonetheless the Tribunal is satisfied in the light of the statements made by the Zimbabwean authorities that returnees are regarded with contempt and suspicion on return and do face a very hostile atmosphere. This by itself does not indicate that all returnees are at real risk of persecution but that returnees are liable to have their background and circumstances carefully scrutinised by the authorities. We are satisfied that those who are suspected of being politically active with the MDC would be at real risk. We agree with Professor Ranger that if the authorities have any reason to believe that someone is politically active the interrogation will be followed up. There is a reasonable degree of likelihood that this will include treatment sufficiently serious to amount to persecution."

The first returnee referred to in paragraph 41 who escaped through the lavatory window has been identified by name by Professor Ranger as Witness 8 whose statement was considered by the first Tribunal and who is returnee 26 in the list of cases we analyse below. His case was considered by Professor Ranger in his first report as was the second individual who was released upon intervention by her uncle, a serving soldier. This individual, identified as "Ratizo" is returnee 31 in our list of returnees.

33. In SM the Tribunal identified the risk categories which are set out at paragraph 51:

a) There does continue to be a real risk of persecution for those who are or are perceived to be politically active in opposition to and for this reason of serious adverse interest to the present regime. This can potentially include the categories identified in paragraph 43 but none of these factors by itself is determinative. Each case must be looked at on its own individual facts. Some categories are more likely to be at risk than others such as MDC activists and campaigners rather than supporters but we do not exclude the possibility that in exceptional cases those with very limited political involvement could in their particular circumstances find themselves at real risk.

b) The risk to political opponents is increased both before and immediately after elections but this fact is of limited importance and is only likely to have any material bearing in borderline cases.

c) There does continue to be a risk for teachers with an actual or perceived political profile of support for the MDC.

d) Records are kept by various groups and authorities including the CIO, local police and Zanu-PF party organisations and the war veterans but the existence of these records does not materially add to the assessment of the risk of persecution in an individual case which depends on the applicant's profile and background. It seems to us unlikely that someone who has been caught up in random and intimidatory violence would without more be regarded as of continuing interest to the authorities. However, the fact that these records exist may indicate that an

applicant found to be at risk is unlikely to be able to relocate in safety. In this context it will also be important to take into account whether the risk is from the authorities or from a local branch of Zanu-PF or locally based war veterans.

e) The current atmosphere of hostility to the return of failed asylum seekers does not of itself put at risk those who would otherwise not be at real risk but does serve to reinforce the fact that asylum claims must be considered with care and where there is any uncertainty, any doubts must be resolved in the applicant's favour.

f) The fact of being a white Zimbabwean does not of itself put an applicant in danger

g) Where an applicant is at risk in his home area, the assessment of internal relocation must take into account the fact that there is a network of information available to the authorities, ZANU PF and war veterans. An applicant who is regarded as an active political opponent in his home area may not to be able to relocate in safety but this is a question of fact to be assessed in the circumstances of each case.

h) The use of grain distribution as a way of taking reprisals against political opponents does not arise in this appeal. We do not rule out the possibility of a case succeeding on this ground alone but the evidence would have to be clear and compelling. In so far as this was an issue in *Ndlovu* [2004] EWCA Civ 1567, the case turned on the findings of fact made by the Adjudicator. The Court of Appeal held that the Tribunal was wrong to find that the Adjudicator had erred in law but also emphasised that the adjudicator's decision did not and could not create a factual precedent of any kind.

i) There is no general risk for failed asylum seekers of a breach of article 3 as a result of the current hostility towards such returnees.

And for the sake of completeness we set out also paragraph 43 of SM, referred to in sub paragraph (a) above:

> "In his submissions Mr Huffer argued that those suspected or perceived of being associated with the opposition have included activists, campaigners, officials and election polling agents, MDC candidates for local and national government, MDC members, former MDC members, MDC supporters, those who voted or believed to have voted for the MDC and those belonging to the MDC, families of the foregoing, employees of the foregoing, those whose actions have given rise to suspicion of support for the opposition such as attending an MDC rally or wearing a T-shirt, attending a demonstration, teachers and other professionals, refusal to attend a ZANU-PF rally or chant a ZANU-PF slogan or not having a ZANU-PF membership card. The Tribunal accept that these categories illustrate those who might be at risk but each case must depend upon its own circumstances. In a number of cases the Tribunal has drawn a distinction between low level and high level political activities. The situation in Zimbabwe is arbitrary and unpredictable and in these circumstances such a distinction is not determinative. The phrase "low level activities" is sometimes used as a way if describing someone whose background and profile is such that it is thought that he would not be of interest to the authorities but someone whose political activities may have been at a low level may have become of interest to the authorities. The current position taken by the Tribunal that each case must be decided on its individual facts should be continued. This approach has been endorsed by the Court of Appeal in *Mhute* [2003] EWCA Civ 1029 and *Ndlovu* [2004] EWCA Civ 1567. The factors identified by Mr Huffer are relevant to the

assessment of risk but cannot be regarded as by themselves determinative in any particular appeal."

The objective country evidence

34. The country situation in Zimbabwe is poor and is deteriorating. This is acknowledged by Mr Kovats who provides this summary in his skeleton argument:

> "The population of Zimbabwe is about 12m: April 2006 Country of Origin Information Report on Zimbabwe ("COIR") paragraph 2.04 [p.147]. About 82% are Shona: COIR paragraph 6.111 [p.274]. The Shona are not homogenous but comprise several clans, of which the Zezuru (President Mugabe's clan) is the second largest: COIR paragraph 6.112 [pp.247-248]. About 20% are Ndebele (aka Matabele): COIR paragraph 6.113-114 [p.248].
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> The economy is in protracted decline: COIR paragraph 3.02 [p.148]. Real wages are falling, including in the government sector: COIR paragraph 3.06 [p.149]; Integrated Regional Information Networks News (IRIN) 27/04/2006 [p.971]. Inflation is over 1,000% per annum: IRIN 08/06/2006 [p.944]; Sunday Times 09/06/2006 [p.1001]. Unemployment is around 80%: IDMC [p.496]; IRIN 27/04/2006 [p.972].
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> About 5m people in Zimbabwe, including nearly 3m (52% [p.756]) in rural areas, are unable to meet their minimum food requirements without aid: COIR paragraphs 5.94, 6.275 [pp.193, 290]; IDMC [p.539]. In 2004/05 the country produced only 600,000 of the 1.8m tonnes of maize required: COIR paragraph 6.278 [p.291]. A shortfall of 1m tonnes is estimated for 2006/07: Solidarity Peace Trust April 2006 [p.756]. There are reports of villagers being reduced to eating wild foods and scavenging: COIR paragraphs 6.281-282 [pp.291-292]. The UN World Food Programme has agreed to feed at least 3m people in Zimbabwe this year: COIR paragraph 6.294 [p.295]. 30% of water systems in rural areas are non-functional: IDMC [p.499]. Most urban water and sewerage systems have broken down: IDMC [p.546].
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> Operation Murambatsvina deprived around 700,000 people of their homes and/or livelihoods and affected, directly or indirectly, some 2.4m people: COIR paragraph 6.302 [p.297]. It has been estimated that nearly 115,000 are living in the open, that a similar number have gone to rural areas, and that about 170,000 have been absorbed by extended families and that a similar number are in churches and other temporary accommodation: IDMC [p.527]. But the numbers are uncertain, not least because there was no comprehensive UN registration of internally displaced persons: IDMC [p.524]; Human Rights Watch December 2005 [p.726]. The motives for Murambatsvina remain unclear: IDMC [pp.496-497, 499, 514-515]. The Attorney General has refused calls for a new voters' roll following Murambatsvina (Zimbabweans can vote only in the constituency in which they are registered): IDMC [p.563].
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> Operation Garikai ("live well") has done little to remedy this: it is unbudgeted and the eligibility criteria favour State employees: COIR paragraphs 6.312-313 [p.300]; IDMC [pp.571, 573]; Solidarity Peace Trust [p.757]. It has been reported that it has become harder for deportees to find shelter in Harare and Bulawayo: COIR paragraph 6.316 [p.301]. As long ago as 2000 the government estimated that there was a shortfall of over 1m housing units: IDMC [p.513].

The average life expectancy in Zimbabwe is 34 for women and 37 for men. This is the lowest in the world: WHO [p.1001] (2002 figures are at COIR paragraph 5.95 [p.193]). Over 24% of the population is HIV+: COIR paragraph 5.112 [p.198]; IDMC [p.496]. Over 3,000 a week are dying of AIDS: COIR paragraphs 5.95, 5.113 [pp.193, 198]. There are 1.3m orphans, 75% as a result of AIDS: IDMC [p.499]. Child mortality increased from 59 to 123 per 1,000 live births between 1989 and 2004, and the maternal mortality ratio nearly doubled between 1999 and 2002: IDMC [p.542]. Prison mortality rates are high, due to lack of money resulting in overcrowding and lack of drugs, leading to diseases such as AIDS and tuberculosis: ZimOnline 07/02/2006 [p.990].

Foreign Policy magazine and the Fund for Peace ranked Zimbabwe fifth out of 148 in its index of failed states, the worst outside a war zone [p.969].

Ordinary soldiers are deserting in increasing numbers, citing low salaries and food shortages, and have been turning to crime: IRIN 06/06/2006 [p.979]; International Crisis Group (ICG) 06/06/2006 [pp.660, 670]. Soldiers have been sent on compulsory leave and barracks have been closed [p.670]. Junior officers are leaving because of poor pay and lack of food: Sunday Times 09/04/2006 [p.1001]. Anti-Mugabe graffiti have appeared in barracks toilets: The Zimbabwean 11/05/2006 [p.1024]. Soldiers have been sabotaging army equipment in disgruntlement: Solidarity Peace Trust April 2006 [p.758]. The police are allegedly now involved in smuggling rings [p.18]. Further, Operation Murambatsvina did not spare the War Veterans, and this marked a turning point in the government's relations with this group: COIR 6.228 [p.276].

Military officers have taken senior positions in many State enterprises: Institute for War and Peace Reporting (IWPR) 31/05/2006 [p.1007]. The MDC say that all basic foods are now under military control [p.1007]. Putting the army in charge of food production (Operation Taguta [p.750]), as well as food distribution (COIR 6.284 [p.292]) may in part be an attempt by the government to strengthen the loyalty of soldiers: Solidarity Peace Trust April 2006 [pp.758-759]. The soldiers' farming practices have reduced the independence of civilian farmers and consumers: Solidarity Peace Trust [p.749, 753, 761-762, 765]. The rural population is unhappy with the soldiers: Solidarity Peace Trust [pp.759, 768].

The judiciary is largely compliant and corrupt, independent judges having been forced out: IWPR 31/05/2006 [p.1009-1011]. Moreover, the government has ignored court orders, eg the Porta Farm evictions: Amnesty International 31/03/2006 [p.627].

Over 3m Zimbabweans live abroad and many of them remit much-needed foreign currency to Zimbabwe: COIR paragraphs 3.08, 6.283 [p.149]. In September 2004 56% of doctors', 32% of nurses' and 92% of pharmacists' posts were vacant: IDMC [p.542]. The Government of Zimbabwe has disenfranchised Zimbabweans living abroad: COIR paragraph 4.20 [p.155]. The Citizenship Act revokes the citizenship of Zimbabweans who fail to return to the country for 5 years, subject to certain exceptions, but there are no reported cases of its being applied: COIR paragraph 5.10 [p.172]."

35. Mr Henderson referred us to a recent Times on Line news report published on 26th June 2006, and in particular to the reference to the "abundant evidence" from the records of Zimbabwe's courts that state agents have carried out torture "on a massive scale". This is because the Zimbabwe Human Rights NGO Forum has

reported over 15,000 human rights violations in the last eight years but very few indeed have made any progress through the court system. It is said that of the 51 that have been concluded the state was held accountable in 89 per cent of cases. The Forum had produced a report which it intended to send to the UN and this report:

> "… said that the low number of court cases was attributable to the fact that merely reporting human rights violations to police carries a high risk of being arrested, beaten up and illegally detained. The country's economic crisis has also cut the rate of court litigation because many ordinary people cannot afford the cost of transport to court or to see lawyers.."

and:

> "Police were the most common perpetrators. "People in custody are likely to be beaten irrespective of their alleged crime", political or criminal, and are commonly subjected to falanga – the excruciatingly painful practice of beating the soles of the feet, which leaves little obvious bruising. Police had "adopted torture as a means to eliciting confessions on a widespread basis"

The evidence of Professor Ranger.

36. We have the benefit of three reports from Professor Ranger. He confirmed in his evidence before the first Tribunal that there was little evidence available as to what had happened to those removed involuntarily to Zimbabwe since returns had been resumed in November 2004. As time has moved on further information has come to light about the fate of returnees and this has led Professor Ranger to change his view. He now concludes that returned failed asylum seekers do indeed face a real risk of being subjected to serious ill-treatment.

37. There is no doubt about the expertise of Professor Ranger or that he is well placed to express an expert view on country conditions in Zimbabwe. He has more than 45 years of familiarity with the country. He has spent two periods teaching at the University of Zimbabwe, most recently between January 1998 and June 2001. He has known Robert Mugabe and other senior leaders of ZANU-PF for forty five years.

38. The first of the Professor's reports before us is dated 28th July 2005 and was before the first Tribunal. Professor Ranger said that the views of the Zimbabwean regime of those who have sought asylum in the United Kingdom could reliably be deduced from ministerial statements and from comments in the state controlled press. He set out the much reported statement by Jonathan Moyo, then Minister of Information, published in the Herald newspaper on 17th December 2004:

> "Threats by the United Kingdom to deport about 10,000 Zimbabweans could be a cover to deploy elements trained in sabotage, intimidation and violence to destabilise the country before and during next March's parliamentary elections … There was a need for the country to be vigilant … There had been, for some time, a number of media reports that as part of Britain's illegal regime change agenda, it had been training some Zimbabweans in acts of sabotage and violence. "

39. Professor Ranger went on to respond to the respondent's assertion that Moyo's statement was contradicted by a statement by the Minister for Justice to the Zimbabwean parliament on 16th December 2004 that "Zimbabwe will unconditionally take back all those returned from the UK". The Minister for Justice was reported to have said that those returned from the United Kingdom "will be welcomed". It was the respondent's position that the latter statement represented the true position because Moyo had attracted censure from President Mugabe who had made a "withering attack" upon Moyo during a Central committee meeting on 1st December 2004. It was reported that Moyo was then de-selected for his parliamentary seat at the direct intervention of Mugabe and removed from ZANU-PF's Central committee.

40. All this is confirmed to be correct by Professor Ranger who said

> "And in fact all these disasters have befallen Moyo, who thereafter sat for Tsholotsho constituency as an independent, who has now been denounced as a traitor, and who has reverted to being an outspoken critic of Mugabe. But the question is whether this repudiation of Moyo amounts to a repudiation of his statement on asylum seekers."

Because the Minister for Justice, Patrick Chinamasa, was disgraced at the same time as Moyo and because there is evidence that President Mugabe was reluctant to discipline Moyo and sought to resist pressure to dismiss him, Professor Ranger's view is that Moyo's comments do continue to represent those of the regime and Moyo's dismissal had nothing to do with any desire of the regime to disassociate itself with his comments upon asylum seekers. Moyo was not sacked from the cabinet until February 2005, some considerable time after his comments reported above.

41. Professor Ranger pointed also to the hostile comments that appeared in the state controlled press in December 2004. The Sunday Mail said that deportees "are enough to cause mayhem in the country". The Herald published a report that attacked asylum seekers as "accomplices in London's campaign of destabilisation against this country over its land policies". A letter published in the Chronicle on 23rd December 2004 said of the deportees "These people are Blair's mercenaries. They will cause havoc and sabotage – mark my words. They are trained to do this and they will do. I urge the government to look out."

42. These views, according to Professor Ranger, are to be read in the context of assertions of "British conspiracy" going back for years. In 2002, for example, it was alleged by the Sunday Mail that thousands of Zimbabweans were undergoing secret military training in the United Kingdom and that Britain was recruiting former soldiers from Zimbabwe to be deployed in a military offensive against Zimbabwe should Britain decide to "execute its plan to topple the government".

43. The Professor was asked by those who commissioned his report to deal specially with the question of the attitude of the CIO towards asylum seekers. The person in charge of the CIO was the Minister of State Security, Didymus Mutasa. He was responsible also for land allocation. Professor Ranger has known Didymus Mutasa, since the 1950's and describes him as a "ruthless and acquisitive politician" who is notorious for using violence against political opponents. The CIO now has

responsibility for food distribution and was involved with Operation Murambatsvina. Mutasa said in November 2002:

> "We would be better off with only six million people, with our own people who support the liberation struggle. We don't want all these extra people."

Professor Ranger, who states that beatings during interrogation are a "fundamental part" of CIO practice and that the CIO was preoccupied with the making of lists, said this:

> "I have personal knowledge through mutual friends that Mutasa believes that many British spies have been infiltrated into the country. He told a friend that many Aids workers were spies. He is just as likely as Moyo was to suspect agents among the asylum deportees and to expect the CIO to "protect" Zimbabwe against them."

Despite this, when considering the nature of the lists complied by the CIO, Professor Ranger refers to lists being made of reporters, students, school teachers, urban and rural MDC activists and suspect civil servants but not those who were known to have been to the United Kingdom, whether to seek asylum or otherwise.

44. Professor Ranger's response to the question posed by those instructing him in July 2005: what conclusions do you currently draw as to how rejected asylum claimants will be treated if expelled to Zimbabwe by the United Kingdom; is as follows:

> "My answer is once again a development from the evidence I gave to the IAT in February. There I pointed to cause for considerable concern but was cautious given the very short period that had elapsed since the suspension had been lifted. Since then there has been evidence of violence in several cases. The objective situation has worsened in many ways. The effect of the clean up operation has been to make urban accommodation scarce and expensive. People going to the rural areas from the towns have been excluded from food relief lists drawn up by headmen. The food shortage is worse than it was. It is now my opinion that there is a substantial risk that anyone removed following an asylum claim will be dealt with violently and oppressively; some will be detained and tortured; others will be released but remain under surveillance and threat. Their families may well be frightened to associate with them. The urban "clean up" and rural food shortages will make it difficult for them to return to their homes or to relocate."

Two things might be noted about that paragraph. The Professor bases his view upon a deterioration in the country situation generally and the fact that there has been "evidence of violence in several cases". This illustrates the importance in this case of undertaking a careful examination of that evidence and reaching some assessment of its reliability. Secondly, the Professor speaks of "substantial risk" but that term, in the context we must consider it, must be used in light of the discussion set out at paragraphs 25-31 above.

45. The second of Professor Ranger's reports is dated 2nd August 2005. It was prepared in response to evidence served in the judicial review proceedings by the respondent in the form of a witness statement of Mr Walsh, who was then Deputy Director, Asylum Policy Co-Ordination. This report deals mainly with the NGOs, which we consider below, but deals also with the compiling of lists. This is a major pre-occupation of the CIO and that there is evidence that people were being

identified and followed up in post-election periods and, as was suggested in SM, returnees *could be* added to such lists.

46. Having been asked to identify any material developments, Professor Ranger produced a third report dated 8th June 2006. He said there was a serious shortfall of food supply aggravated by delays in distribution and the deployment of the military in the distribution process. Army units had "hi-jacked" plots and maize harvests in Matabeleland.

47. Returning to the issue of the compiling of lists, Professor Ranger said that elaborate lists are drawn up to identify MDC supporters and new-comers to the area.

48. He says the political situation remains tense. The government has mobilised the army and the police ready to deal with the demonstrations and challenges promised by the Tsvangarai section of the MDC. The army has recently been awarded a "very substantial" pay rise. The police force is being remodelled with war veterans being promoted to top positions. Recent pay increases for the police were compelled by fears of a strike by police officers. Further repressive legislation was being introduced. The Suppression of Foreign and International Terrorism Bill will allow for a "further crackdown on the opposition and dissenters accused of working with foreigners to destabilise the country" and the Communications Bill will give further powers to intercept all forms of communications.

49. Professor Ranger reports that his correspondents in Zimbabwe have been telling him that in the previous few weeks intimidation of NGOs has intensified and there have been further arrests of human rights workers. He concludes as follows:

> "All this in combination reveals both a political and human rights crisis in Zimbabwe. It is a crisis which gives rise to paranoiac fantasies of terrorist plots and which criminalises anyone connected to Britain. The state has shown itself ready to arrest, beat and torture women, children and students. There are attempts to destroy human rights organisations. I am very much still of the opinions expressed in my previous reports."

50. In cross-examination Professor Ranger accepted that he went too far in those conclusions. The evidence is that there continue to be three flights each week from the United Kingdom to Harare, usually full. This means that something in the region of a thousand people are travelling in and out of the country each week. It will be unambiguously clear to immigration officers and the CIO officers who are based at the airport that those passengers who are citizens of Zimbabwe are "connected to Britain" in the sense that they have an immigration history involving business of one kind or another with Britain. There is no evidence at all that these many people are in any way "criminalised" on that account. This means that whatever does give rise to suspicion or adverse attention at the airport it is not simply the fact of having chosen to visit in Britain or to stay in that country for any particular period of time.

51. The respondent makes clear that there is no suggestion at all that Professor Ranger's reports are drawn otherwise than in good faith but does challenge his objectivity. Mr Kovats submits that the function of a "country expert" is not simply to present the Tribunal with his or her opinion as to country conditions with a selection

of materials that support that opinion. It is to assist the court. That involves presenting an objectively fair selection of the materials available. It should include any apparently reliable material that tends against the expert's own view, demonstrating, as accurately as possible, the range of information available in relation to the up to date position in the country concerned, focusing on the matters in respect of which the expert has been asked to report. While the respondent accepts much of the factual content of Professor Ranger's reports, he submits that the Professor fails to present a balanced view. The Professor believes that it would be unsafe to return Zimbabweans to Zimbabwe. His view is demonstrated by an article he wrote on 18 November 2004 as a trustee of Asylum Welcome (6/1327), criticising the resumption of enforced returns to Zimbabwe. In this article Professor Ranger said this:

> "The new policy makes no pretence that Zimbabwe has become a safer place since 2002. The Government says that there has been no change "in our opposition to human rights abuses in Zimbabwe" and that it will work "to restore democracy so that all Zimbabweans can in time return safely to help build a prosperous and stable Zimbabwe". In the meantime, however, it proposes to send many Zimbabweans back to an unstable Zimbabwe in a state of economic collapse and with continuing human rights abuses. What has changed since 2002 is not Zimbabwe but the British political climate. In 2002 Zimbabwe was much in the news because of the take-over of white-owned land. Even the Conservative Party supported the suspension of removals. Now Zimbabwe has dropped out of the news headlines. Few British politicians care much any longer about what happens to black Zimbabweans. "

52. The respondent submits that the very sincerity of Professor Ranger's belief may have led him to present an unbalanced picture of the evidence available.

53. The respondent identifies two matters of which Professor Ranger accepts he was aware but did not deal with in his report. The first is that President Mugabe has been reported as having made derogatory remarks about those who have come to the United Kingdom only to do menial jobs. He said they should stay to help to rebuild Zimbabwe. The respondent's view is that this indicated that the regime is more concerned to retain labour and to shame people into coming home than to persecute them. The respondent accepts that Professor Ranger may interpret this information differently but argues that any truly objective analysis should have included reference to this.

54. Similarly, the respondent submits it is significant that Professor Ranger did not mention that Didymus Mutasa, State Security Minister and head of the CIO, apparently responding to the Court of Appeal judgment in the present case, when referring to failed asylum seekers told The Herald on 14 April 2006 (4/134):

> "The security services have absolutely nothing against them. If they left this country and did not commit any crime, why should we be interested in them? We will look after them very well here."

He added that they should be contributing to economic development in Zimbabwe instead of wasting time and money in the UK. This, the respondent submits, is further evidence that the Zimbabwean authorities are now primarily concerned to revive the country's economy. Mr Mutasa's remarks are also significant because his rhetoric is usually conspicuously aggressive, e.g. (5/673) "no white farmer is

being invited back" even though commercial farmers are now being invited to apply for 99 year leases in a reversal of the misguided land seizures. It is also directly contrary to his "notorious" November 2002 statement, referred to above, that Zimbabwe "will be better off with only six million people, with our own people who support the liberation struggle. We don't want all these extra people."

55. In cross examination Professor Ranger said he did not mention or deal with Mr Mutasa's remarks because he did not believe them to be true but accepts, with the benefit of hindsight, that it would have been better if he had mentioned these significant statements, even if only to explain why he dismissed them.

56. Professor Ranger's views command respect. His integrity and knowledge of the Zimbabwean regime was unquestioned before the first Tribunal and the Court of Appeal and we do not seek to suggest anything to the contrary. In restricting the scope of his report, as he confirmed to us that he had, to the position of failed asylum seekers returned to Zimbabwe, he has not addressed the apparently significant evidence concerning those who travel freely and unhindered between the United Kingdom and Zimbabwe. His conclusions upon failed asylum seekers are based, at least in part, upon the premise that *all* those who travel from the United Kingdom are suspected of treachery and, (although he resiled from this in his oral evidence) that anyone associated with Britain is "criminalised". Since that does not appear to be the case, we approach with some caution his view that the failed asylum seeker about whom nothing else is known or suspected is equally at risk on that account alone.

Procedures at Harare Airport

57. The first witness who gave evidence to us about procedures at Harare airport was Witness 5. He adopted his written statement dated 29th July 2005. Witness 5 was recognised as a refugee after he came to the United Kingdom in June 1998. He had been a Lieutenant Colonel working with the CIO, attached to the military intelligence branch, known as Branch 3. Between 1991 and May 1998 he was based at the school for military intelligence in Harare but from around 1993 until May 1998 he was Adjutant to the NCOs carrying out day to day security procedures at the airport. This meant that those NCOs were under his command.

58. Witness 5 left Zimbabwe before the new airport terminal had been opened but he says that he knows from those still working at the new airport that procedures have changed only in that security measures have become even more stringent.

59. Dealing first with "ordinary travellers", Witness 5 explained that the CIO would receive the passenger manifest in advance, from which they would identify those travellers they were interested in and these people would be approached after they had passed the immigration desk but before they collected their luggage. Then, at the old airport, there were no real facilities for interrogations to be carried out and so the passenger would be taken away to CIO headquarters.

60. Sometimes an immigration officer would refer a passenger to the CIO. When this happened the person would be questioned at the airport by representatives of the security services present at the airport. If found to be of interest he or she would be

taken either by the CIO to headquarters, by the police to the police station or by the military intelligence branch to the barracks on the outskirts of the city.

61. Witness 5 told us that during the time he was in Zimbabwe they never saw any returned asylum seekers from the United Kingdom but he confirmed what he had said in his statement how other deportees, mainly from South Africa, were dealt with. After the pilot had handed the passport to the immigration officer the deportee would be taken to a separate room until all the other travellers had been processed after which they would be handed over to the CIO.

62. Witness 5 has kept in touch with an old friend from military intelligence in Harare, Major [ ], who is based at the airport today. When they spoke on the telephone in mid 2005 they discussed the proceedings that had been brought in the High Court. In his witness statement Witness 5 said this:

> "Major [ ] told me that all the returned asylum seekers are questioned because they are all considered to be a security risk. It is believed by the security services that the returned asylum seekers have been trained in military procedures and espionage in the UK and are now being sent back to destabilise the country. He told me they are all handed over to the CIO who carry out thorough questioning and then decide what is to be done. Major [ ] went on to tell me that those asylum seekers who are released are nonetheless kept under surveillance."

63. Thus, it is clear that there has always been and continues to be a screening process carried out at the airport. All deportees will be questioned to see if there is any reason to pursue the enquiry further and it is only those in respect of whom something of interest arises from this initial interview, or from intelligence received before arrival, who will be taken away for interrogation. We consider it significant that this witness, as do others, distinguishes between an interview or questioning at the airport and the "interrogation" that is conducted of those taken away from the airport. Witness 5 said that he had never seen anyone being tortured at the airport, although he added that there was limited space at the old airport.

64. The next witness, Witness 6, who has also been granted refugee status in the United Kingdom, was a sergeant or section leader with the military intelligence branch of the CIO based at Harare airport for two and a half years until 1996. His role was to check upon passengers passing through the airport. In the witness statement which he adopted as part of his evidence he began by saying this:

> "I set out below in outline, the procedures that applied (and that, I believe, still apply) when a Zimbabwean citizen is deported back to Zimbabwe from another country. These are standard and longstanding procedures. I am in regular touch with former colleagues who still work at the airport, and I have no reason to believe that these procedures have changed significantly. These procedures would also apply where a person had been identified from the passenger manifest and was of interest."

65. Witness 6 said that the deportee would be interviewed initially at the airport by a team comprising representatives of the military, the police and the CIO. He explained that in fact each is a branch of the CIO but the term "CIO" is used to distinguish the internal security branch, whereas the nature of the other two

relevant branches, the police and military intelligence, is obvious from its name. He continued :

> "In the interview room, each agency would interview the deportee about any issues of concern they might have. For example, the police would interview the deportee about any criminal matters that might be outstanding, the military about whether the deportee was a former soldier and any issues about being absent without leave or having conducted military activities outside Zimbabwe, and the CIO would check for any political activities.
>
> Once it was decided which agency would have custody of the deportee, the deportee would be taken by that agency for interrogation with the benefit of the report of the agency that had led the airport interview."

In his oral evidence this witness made clear, as did Witness 5, that not all deportees were taken away by one of the three agencies for interrogation. He said "It depends how valuable the subject is whether they were taken away". When a person is released that was not the end of it as there would be monitoring in the persons home area.

66. This witness said that there was a significant difference between an interview and an interrogation. He knew what went on at the interrogation stage because a former colleague who currently works in army counter intelligence central administration had seen reports of such interrogations. In his witness statement he said:

> "It should be understood that there is a significant difference between a person being interviewed (eg on arrival at the airport), and a person being interrogated. Within the Zimbabwean intelligence community, the implication of a person having been interrogated (and hence an interrogation report) is that the interrogated person will have been ill-treated."

And in his oral evidence:

> "There is not an interrogation at the airport, just an interview. I took part. That's why I was there, to interview. When the detainee was taken away from the airport he is handed over to somebody else."

67. Witness 6 said that the approach to those being returned from the United Kingdom was based not just upon the initial interview but was intelligence led. People working with the London Embassy were recruited from the Zimbabwean community in the United Kingdom. Intelligence was collected and sent back to Harare:

> "People in Harare are well briefed by people in London so they know who they are interested in. If you do any activities in the UK you put yourself in a situation. This is so we have a record to be used – to be a member of this organisation in London – you must be monitored. I know that because that is what happened when I worked at the airport."

68. Finally, this witness made clear that the sifting nature of the initial interview is genuine and is conducted professionally. Information that might give rise to suspicion is not fabricated in order to justify further enquiry:

> "The questioning at the airport was intelligence led. We knew something about it. Our purpose was to produce a true and good report. We were not trying to cook up a case. We do not cook up intelligence."

69. The other witness from whom we heard worked in air traffic control at Harare airport between 1998 and 2001 but was not directly concerned with passengers passing through the airport. He said that the CIO were present in air traffic control and would sometimes require flights, especially those from the United Kingdom, to be diverted to particular bays so that they could deal more effectively with the passengers. He said that it was "common knowledge" that passengers on flights from the United Kingdom were sometimes detained and sometimes disappeared. He did not know whether these stories he had heard concerned returned asylum seekers or not.

70. Drawing together this part of the evidence, considered in the context of the evidence overall including what we say about the evidence discussed below, we reach the following conclusions. Those being returned involuntarily to Zimbabwe will face a two-stage process. Upon arrival all deportees will be separated from ordinary travellers and will be interviewed. This is a screening or filtering process. It is assisted by having recourse to any intelligence that might be available. It is designed to distinguish between deportees about whom there is nothing else known or suspected to give rise to any interest and those who may be of interest because of a relevant military history, outstanding criminal issues or who may have some form of political profile, at whatever level. A relevant military history will be one in respect of which enquiries reveal aspects to be followed up such as being absent without leave or being involved in military activities outside Zimbabwe

71. Those conducting this initial interview at the airport are likely to prepare a report upon each deportee. If there is nothing to suggest anything in a person's military history that requires further investigation or that there are outstanding criminal matters to be followed up and if there is no reason to suspect any involvement with political activity adverse to the regime the deportee will be allowed to pass through the airport. This process may involve the deportee being detained at the airport for several hours but carries with it no real risk of serious ill-treatment. The report is likely to be available to the CIO officers in the deportee's home area to inform the process of monitoring that is likely to take place thereafter.

72. Where the screening interview does give rise to any suspicion that the deportee has any form of adverse political profile or where it is established that there is a military history requiring further investigation or outstanding criminal matters it is likely that the deportee will be taken from the airport by the CIO, military intelligence or the police, depending upon the nature of the suspicion that has arisen, for the purpose of a rigorous interrogation. In view of what is know from the country evidence about the CIO that does give rise to a real risk that the deportee will be detained for a period of time and will be subjected to serious ill-treatment.

<u>The International Organisation for Migration (IOM)</u>

73. Since 2002 the IOM has been assisting voluntary returns to Zimbabwe by providing a return and reintegration package to those voluntary returnees who wish to benefit from it. The IOM's Chief of Mission, Harare, Mr [ ], has provided some information about these activities (4/116). To date, the IOM has provided reintegration assistance to 117 Zimbabweans. This assistance takes the form of arranging for training, education or the establishment of a small business for those returning to Zimbabwe. Those assisted are all voluntary returnees but include failed asylum seekers. Mr [ ] says:

> "Extensive monitoring and evaluation of returned Zimbabweans who avail themselves of reintegration assistance is conducted throughout the country. With this mechanism in place, staff would be able to pick up any reports of mistreatment of returned failed asylum seekers. In its history of the programme, there was only one incident reported in March 2003, which involved the CIO and a returnee in Bulawayo. The IOM Director General immediately wrote a protest letter to the Zimbabwean government. In the Government of Zimbabwe's response, they stated that the activity had been carried out by the local CIO operatives in Bulawayo acting without approval of the government. They apologised and assured IOM that it would not happen again. There have been no further incidents of harassment to Zimbabwean returnees from the UK. Any future incidents of mistreatment or harassment of returnees would be reported to the British Embassy in Harare."

74. It must be remembered that these returnees, whether they had made an unsuccessful asylum claim in the United Kingdom or not, would have been indistinguishable on return to Harare Airport from the ordinary travellers as the Home Office was not involved in the arrangements for their travel. The respondent has produced a schedule of the comments made by some of these returnees about their experiences at the airport (4/117) and these are consistent with what is known about the unhindered passage through the airport by those regarded to be ordinary travellers.

75. The first Tribunal observed at paragraph 170 of its determination that the respondent might reasonably be expected to have gathered more information about what became of failed asylum seekers removed involuntarily:

> "First, in relation to the evidence we have heard, it is possible that we might have taken a different view if the Government had made any arrangements to ensure so far as possible that those returned voluntarily and those returned involuntarily are not so readily distinguishable on arrival. A part of the risk we have identified arises from the Government's apparent disinterest in the precise way in which passengers documents are dealt with by airline staff. It is also possible that we might have taken a different view if there had been evidence – from the field report visit or otherwise – that substantial numbers of failed asylum seekers, returned involuntarily from the United Kingdom, had passed through Harare Airport without any problems. If the Government is concerned to avoid risk to individuals and in making policy decisions based on fact, it will no doubt carefully monitor returns to any country regarded as dangerous, and will present the resulting facts as evidence in asylum appeals."

76. The respondent has concluded that it is not reasonably practicable to depart from the policy in respect of the way in which travel documents of deportees are held by escorts or airline staff. This policy is applicable to all countries to which failed

asylum seekers are removed, not just Zimbabwe. This means that arrangements will not be made to ensure that voluntary and involuntary returnees are indistinguishable on arrival at Harare airport.

77. The respondent has been able to devise a mechanism capable of meeting the other suggestion of the first Tribunal to monitor those returned. For the reasons set out above the respondent does not consider it appropriate for its Embassy staff to carry out such monitoring. This is why a Memorandum of Understanding has been negotiated with the IOM which has agreed to provide a pilot project offering resettlement packages to those involuntary returnees who wish to accept them. The full details of this scheme can be seen from the draft Memorandum (6/107). This will involve the IOM providing assistance to involuntary returnees which will also enable contact to be maintained for the few months following return.

78. It is argued on behalf of the appellant that these arrangements do nothing to secure the safety of the appellant's return. Mr Henderson argues that the IOM is not an appropriate body to rely upon to report human rights abuses by the Zimbabwean regime. Some have suggested that the relationship the IOM has with the regime is an inappropriate one. There is evidence that the perception amongst the Zimbabwean community is that this is the case. See, for example, the witness statement of Witness 43 (6/1190) who expressed this view after speaking to a number of Zimbabweans during a day long IOM information event in London. A copy of the article she wrote for "the Zimbabwean" published after this event records those views (6/1194).

79. That the IOM has inappropriately close links with the Zimbabwean government is said to be illustrated by the evidence of Witness 44, who is a senior lecturer with the Department of Sociology of City University, Northampton. Witness 44 acted as a consultant to the IOM in respect of a project to conduct research into "the Zimbabwean diaspora in the UK and South Africa" and to produce a report. Witness 44 attended a meeting in January 2005 to discuss the draft of this report. Mr [ ] of IOM, who was speaking by video link from Harare, said that the government of Zimbabwe would be interested in inviting the research team to Zimbabwe to discuss the report and asked that a paragraph referring to human rights abuses be deleted from the report. Witness 44 says that a representative from the Department for International Development (DFID) intervened and accused Mr [ ] of being "a tool of the Government of Zimbabwe". Witness 44 believes this demonstrates reluctance on the part of IOM Harare to entertain criticism of the human rights practices of the Zimbabwean government. This, she concludes, means that the IOM is an inappropriate partner to work with the respondent in monitoring the returnees from the United Kingdom.

80. The respondent has produced a letter from the DFID representative (6/1326) stating that the author, who was also at that meeting, did not share Witness 44's recollection of this. It is said that DFID "has complete confidence in the integrity and impartiality of IOM (Harare) and its desire to provide humanitarian protection to vulnerable people."

81. Mr Henderson referred us to a report from the Southern African Migration Project (6/1328). This report says that the IOM was to assist the Zimbabwean government

with the introduction of computer technology at Harare airport which was designed to "safeguard the country against irregular migration and organised crime". The report continues as follows

> "The Ministry of Home Affairs has long identified improving border management as a top priority and requested the IOM to provide the technical expertise for the landlocked Zimbabwe. In an interview, Chief Immigration Officer Mr Elasto Mugwadi said the process of computerisation would enhance their networking with other stakeholders and see the country's security against undesirable elements enhanced,"

82. Mr Henderson says this shows that the IOM is working inappropriately with the regime to identify people it views as opponents and that this demonstrates why the IOM should not be considered to be an appropriate partner for the United Kingdom government in managing its removals.

83. In order to appreciate the reasons why the IOM should associate itself with such a project it is necessary to look more carefully at what the rest of this report contains. An information officer for the IOM explained that IOM had successfully implemented similar programmes around the world. The new technology would provide better information about who entered and left Zimbabwe and would expedite immigration formalities when arriving and departing from Harare airport. One can readily understand why an organisation such as the IOM whose purpose is to aid resettlement, would see those to be objectives that should be supported. This is particularly so in view of its own experience in Zimbabwe of dealing with returnees and of the government's response on the one occasion it had cause to complain about the treatment of a returnee.

84. We set out this evidence because much was made of it before us. We do not consider these competing views to be of any real significance to our decision. As Mr Walsh has said, the pilot project to provide resettlement packages to involuntarily returned asylum seekers has nothing to do with the assessment of the safety of return to any individual. That assessment is made in advance of removal and does not in any way at all depend upon any monitoring of the returnee after removal. It is important to recognise what this project is and what it is not. It is, as can be seen from the draft memorandum of understanding, a project to assist the reintegration of involuntary returnees from the United Kingdom to Zimbabwe. The purpose of the project is not to monitor the safety of the returnee or to assist with his passage through the airport. The purpose of the monitoring involved in the project is to monitor the *progress of reintegration*: see paragraph 6.4 of the memorandum. This is a point understood and explained in a report prepared by Dr David Cortlett at 6/1214 an academic who otherwise criticises the IOM for "lacking a protection mandate". A similar view was expressed by Dr Norma Kriger (6/1224 at paragraph 11)

85. The IOM operates in difficult conditions and seeks to provide a valuable and much needed service. It has an international presence and has learned how best to deal with different regimes around the world. The evidence indicates that it has established a working relationship with those parts of the Zimbabwean regime with which it must deal. It appears that its pragmatism has allowed it to concentrate on providing its services to those it seeks to assist rather than offering criticisms of the

regime. We find substance in the submission made on behalf of the respondent that there is a difference in philosophy between the IOM and those NGOs which seek to identify and articulate human rights abuses. It is not the role or purpose of the IOM to do so. Mr Walker said in his oral evidence:

> "My perception is that IOM is apolitical and so it does not criticise the government so it can get on and do its work. That is why it is left alone."

86. Our conclusion upon the evidence relating to the IOM is that it is an appropriate organisation for the respondent to be working with in these areas. We accept that the proposed monitoring of returnees under the pilot project described in the draft Memorandum of Understanding is of no direct relevance to the assessment of the risk on return to any particular returnee as the IOM is not in a position to intervene to prevent such abuse should it occur. On the other hand there is some reason to believe that the IOM has established a working relationship with the Zimbabwean government which the regime would not wish to disturb. If a consequence of that is to provide a disincentive, however small, to individual CIO officers acting in an abusive manner to returnees then, clearly, that is to be welcomed.

<u>The NGOs</u>

87. The respondent sought to obtain further information about how failed asylum seekers, involuntarily returned to Zimbabwe, would be treated upon return. This was done by the preparation of what has been described as a "field report". That evidence is before us also and we respectfully adopt the summary of that evidence given by Brooke LJ:

> "*The evidence of the Zimbabwe-based NGOs*
>
> 53. Evidence about the likely fate of those who were returned compulsorily from this country was also available from the sources mentioned in the field report and from four witnesses who gave evidence which supplemented the evidence that had been given by representatives of their organisation to the delegation of which Mr Walker was a member. The evidence of seven of these sources requires particular attention: the evidence from the others was of marginal value.
>
> 54. Source F was a NGO to whom the British Embassy often turned for information about cases like these. Their representatives told Mr Walker that if the authorities were interested in an individual it would be because of their political opinions, and not because they had sought asylum in the United Kingdom. They also said that the fact of being a returned asylum seeker could result in aggressive questioning at the airport in order to ascertain whether they were opposition supporters, but they felt that if they were found not to be they would no longer be of any continued interest to the authorities. They were, however, unable to discount the possibility that they could remain of interest.
>
> 55. It was their view that those who distributed leaflets for the MDC or put up posters and arranged meetings for the MDC ("*the MDC foot soldiers"*) were most at risk of persecution because they were vulnerable, easily picked up and beaten. Such treatment was unlikely to attract adverse comment. In contrast, the higher

profile activists were protected to a degree by their own profile and the outcry that could follow mistreatment.

56. A witness from Source F told the AIT that he agreed with Source D's belief that anyone returning from the UK or the United States would be liable to interrogation on return on suspicion of being a spy or an agent. He believed that the interrogation would include more than being required to answer questions, and was likely to include ill-treatment.

57. Source A was identified as the Human Rights NGO Forum. Their representative told Mr Walker that if there were genuine cases of mistreatment involving failed asylum seekers, this would not occur just because they had sought asylum in the UK but rather because they had political opinions and had been involved in political activities.

58. Zimbabwe Lawyers for Human Rights (Source J) told Mr Walker that returnees from the United Kingdom faced questioning at the airport on return to Harare and that the Government of Zimbabwe might regard the very act of leaving for certain overseas countries, including the UK, as constituting treachery. Their spokesman cited the example of an enforced returnee (who was not in fact a failed asylum seeker) who had been questioned about reports to the effect that Zimbabweans were being trained as spies and insurgents in the UK. He said that the CIO were capable of beating people at the airport, but he did not identify any group as being particularly at risk. He said that he had once been harassed by CIO officers in the toilets at the airport, but he had been freed when he said he was a lawyer. He believed that someone less articulate might not have got away so easily. He did not think that at societal level there would be any problems for returning failed asylum seekers.

59. Source D was a church organisation in Zimbabwe. Their spokesman had not heard of any reports of mistreatment being accorded to returning failed asylum seekers or others returning from the UK. He said that the likelihood that his organisation would hear about such things was restricted by the absence of an independent media. He would not rule out the possibility that individual returnees might be persecuted. On the other hand, he felt that if there were any mistreatment of returnees, that could apply to anyone returning to Zimbabwe from the UK or the USA. He went on to say that anyone returning from the UK would be liable to be interrogated on return on suspicion of being one of "Blair's spies". He felt that people visiting the UK as tourists or on business might face some interrogation about their motives and activities on return. Some business people were reluctant on this account to travel to the UK. He felt that returnees from other countries did not encounter these problems.

60. After he had read the field report, a spokesman for Source D made a witness statement in which he confirmed their view that an asylum seeker removed from the UK was likely to be singled out as liable to suspicion as a spy and he would be interrogated. Someone who had sought asylum from the UK would be viewed as a traitor or enemy of the state. Torture during interrogation by the CIO was usual, as was degrading treatment. There was evidence that MPs had been tortured by the CIO, and he observed how much worse the position of an ordinary person under interrogation on suspicion as a traitor would be.

61. A senior spokesman for a regional human rights NGO was referred to as Source B. He said that he did not believe that returning failed asylum seekers would be

targeted for mistreatment since it would suit the Government to hold such figures up as examples that this country was not as wonderful as others tended to think. He believed that people who were deported for other immigration offences would be unlikely to face difficulties on return. In his experience they usually got a new passport, saved up, and tried again. He said that Source B's activities were such that they engaged with a wide range of NGOs and others in the field of human rights. He believed that they would have heard if there had been systematic mistreatment of returning failed asylum seekers, and he had not.

62. Source H was identified as the Zimbabwe Peace Project. They had not received reports of any mistreatment of failed asylum seekers or other people returned from this country, but they were aware of such allegations in the press, and they were quite able to imagine that such things might be happening. Their spokesman suggested that one reason why failed asylum seekers might be treated differently from other immigration offenders or others who had visited the UK was that it was assumed that they must have made disloyal statements in pursuit of their asylum claims about the situation in Zimbabwe and the Government in particular. As a result, and based on the treatment that others who were of interest to the Government faced (for example, NGO activists), they could imagine that the treatment they might face would include having their luggage tampered with as well as extended questioning by immigration officials and the CIO. Once picked up by the CIO, it was likely that the line of questioning would extend well beyond the issue in hand to general views, connections and background. He imagined that the treatment for those who were returning from the UK could be worse for those from other countries because of the political climate between the two countries. He said that even though the Security Services had access to sophisticated intelligence, they also acted on the basis of suspicion, for example because somebody had been away for a while. He did not believe that failed asylum seekers were, on the whole, likely to face societal difficulties in the area to which they are returned.

63. The spokesman for another organization (Source C) told Mr Walker that if failed asylum seekers who were returned from the UK were identified as such, they could expect to be questioned by Immigration and the CIO and perhaps even be threatened and accused of betrayal before being released. They might be visited subsequently at home but the source was not aware that any had suffered mistreatment at that stage. He felt that it would definitely know if there had been any systematic mistreatment of returning failed asylum seekers.

64. The AIT received a good deal of evidence on the question whether it was likely that any of these NGOs would be unaware of any systematic ill-treatment of returned asylum-seekers. It is unnecessary to refer to this evidence because the Secretary of State does not challenge on this appeal the tribunal's finding that it was not remotely surprising that they had not heard of there being any general risk. The tribunal based this finding on its belief that Operation Murambatsvina, which may have affected up to 1.5 million people, provided much to distract hard-working NGO officials from the possible plight of a small number of claimants returned by the UK Government during the course of a few months. A much respected representative of Source F said that he believed it was a fantasy that the NGOs would be in a position to monitor returns, and Professor Ranger said that this evidence persuaded him that he had been wrong at the time of the SM hearing to believe that the situation would be carefully monitored. One of the reasons why the NGOs would be unlikely to hear about these cases was because the vast majority of the victims of ill-treatment would not wish to approach an NGO for fear of further harassment by the state."

88. As Mr Walker has explained in his statement (4/4), from February 2006 arrangements were put in place to meet with key NGOs and the IOM on a monthly basis to discuss issues relating to asylum seekers. A standard set of seven questions was drawn up for these meetings and two further questions were added in May in response to the work that was going on for the respondent's preparation for this hearing. The information received was recorded on what has the appearance of *pro forma* questionnaire forms and these are to be found in volume 4 of the documentary evidence, commencing at page 10.

89. A great deal of energy has been expended by both parties to either support or undermine this part of the respondent's evidence which, broadly speaking, is to the effect that the NGOs were not aware of a consistent pattern of state sponsored harassment or abuse of failed asylum seekers removed to Zimbabwe from the United Kingdom but would expect to be if it was going on. There is a indication discernable from these responses that the questioning at the airport is designed to identify who is of further interest and that the monitoring that follows takes place for the same reason. The RLC has contacted some of these organisations and individuals with whom the staff of the British Embassy in Harare had dealt. They have produced evidence that some of the individuals were not authorised to speak on behalf of the organisation they work for. Some of these correspondents asked that the responses be withdrawn.

90. The appellant attacks the whole exercise as being misconceived, ill executed and unreliable. Professor Ranger said that he was unimpressed with the way in which the information had been obtained and presented. We are asked to place no reliance upon this part of the evidence at all.

91. We do not consider it helpful to carry out a lengthy forensic analysis into this evidence and the competing submissions. The Embassy was not attempting to conduct an academic research project. It was seeking to obtain and record in an accessible and easily recordable manner the views of those people working for NGOs with whom relationships had been built over a period of time. It is clear to us that the Embassy staff was acting entirely in good faith. While they might reasonably have supposed that the individuals were speaking on behalf of their organisations, even if that were not so, as certainly appears to be the case with at least some of the NGOs, these responses were still the views of individuals who were in a position to express a view on the issues that carried some weight.

92. We accept the submission of Mr Henderson, which may appear to be obvious, that these NGOs would be aware only of episodes of abuse which had come to their attention. It matters not whether this was through press reports, contact with individual returnees themselves or simply because, the NGO community in Harare being, as we heard, a close knit one, through their "networks", were able to capture this information. The consequence of Operation Murambatsvina has created overwhelming demands upon these NGOs. Their resources are limited. It is not at all surprising that the focus of their attention was upon matters other than the fate of 210 asylum seekers returned from the United Kingdom between November 2004 and July 2005. But these organisations had not heard of a pattern of abuse being meted out to returnees. However, that does not establish that such abuse did not occur.

93. Having said that, this evidence forms part of the overall picture and we take it into account. We find that the evidence concerning the NGOs does not take the position very far either way.

Evidence concerning the treatment of individual involuntary returnees.

94. We turn next to consider the important category of the evidence before us of the various accounts of those who were returned involuntarily having made unsuccessful asylum claims in the United Kingdom. It is necessary to conduct a detailed examination of all this evidence. Before doing so we make these observations.

95. It must be remembered that most, if not all, of these returnees who have been refused asylum have been disbelieved not only by the respondent but by an adjudicator or immigration judge as well. The fact that someone has given untruthful evidence in support of their claim or has been found, after a judicial examination of their case, to have exaggerated or embellished their account must be relevant in assessing any subsequent claim of what happened to them on arrival at Harare Airport. Having said that we recognise, of course, that the fact of having given false or embellished evidence in support of an asylum claim does not mean that the claimant is not capable of belief in respect of what he says happened to him on return. We have regard to this as no more than part of the overall picture when assessing the individual accounts in the light of the objective and expert country evidence and in the light of the evidence generally.

96. Some of these accounts are taken from newspaper reports which, for entirely understandable reasons, do not identify the person concerned and in some cases details have been changed precisely to ensure that the subject cannot be identified. This means that the respondent is unable to establish whether or not the details given of some individuals are consistent with what is known at the point of removal. An example of the potential significance of this is that in one of the cases discussed below the partner in the United Kingdom of the person returned relayed an account of the difficulties arising after the escorts handed the returnee over to the authorities in Harare. But the respondent has established that this returnee was in fact an unescorted removal.

97. In the section that follows we examine the evidence available in respect of the accounts of involuntarily returned failed asylum seekers we have been able to identify from the material before us. It will be seen that in a number of these accounts it is claimed that the returnee was subjected to ill-treatment of sufficient severity to amount to a breach of Article 3. This occurred either at the airport, shortly afterwards while still under detention or subsequently, having been released but followed up. There may be some duplication of accounts set out both in the newspaper reports and in the individual case papers. It can be seen that in a number of these cases reasons were identified to excite the interest of the CIO other than the single fact alone that the person they were dealing with was a failed asylum seeker. An obvious example is the case of Returnee 27. She was not ill-treated at the airport. But after it was discovered from a computer check that there

was a warrant outstanding for her she was transferred to prison where the abusive treatment she described was suffered.

98. We consider first those involuntary returnees identified by Ms Sarah Harland of The Zimbabwe Association. In her first witness statement dated 28th July 2005 prepared in relation to the judicial review proceedings (1/145) Ms Harland describes how The Zimbabwe Association made arrangements to monitor 28 involuntary returnees. However, post removal information was received in only 14 cases.

99. In four of the fourteen cases where no information was received Ms Harland says that a high degree of commitment to contacting the Association had been demonstrated before removal and lines of communication had been established with relatives or friends which were expected to function. She concludes from this that the failure to make contact was unlikely to be as a result of apathy and so one explanation is that the returnee had been detained or otherwise come to harm. It might be observed that another explanation might be that there was no adverse treatment experienced to be reported.

100. Ms Harland identifies the fourteen returnees monitored as cases A to O. After the appeal of AA had been remitted by the Court of Appeal for rehearing further enquires were made concerning the returnees. The information obtained is set out in a second witness statement made by Ms Harland on 8th June 2006 (5/1070). There is further evidence concerning some of these cases, to which we refer where relevant. In that second statement Ms Harland gives details of further involuntary returnees, identified as cases T to Y.

101. As the evidence concerning returnees is not limited to that set out by Ms Harland we refer to these individuals by number, but also by letter where they have been identified as such by Ms Harland. We have taken the order of this numbering from a helpful schedule provided by Mr Henderson. The respondent has produced in evidence before us the determinations of the adjudicators who dismissed the appeals of many of these returnees. But, because it is not possible to identify who some of the returnees are, it is also not possible in all cases to identify the relevant determination.

Returnee 1 (R1); Case A

102. In summary, R1 gave an account in support of his asylum claim of being at risk of persecutory ill treatment in Zimbabwe on account of his association with the MDC. He was disbelieved by the adjudicator who did not accept any part of his evidence to be true. He was removed on 13th December 2004. R1 says he was not ill-treated at the airport but was taken from the airport by a group associated with the government, possibly Green Bombers. He was driven to the bush where he was badly beaten and robbed. Since then he has remained in hiding with a half brother in a rural area.

103. The adjudicator says in his determination (3/515) that this was the second time this person had been removed from the United Kingdom. He first arrived as a visitor in May 2001 but was refused leave to enter and was returned to Zimbabwe the same

day. He did not on that occasion make any mention of any difficulties in Zimbabwe. He returned to the United Kingdom on 22nd November 2001. The adjudicator noted also that when R1 sought entry in May 2001 it was as "a family friend". He made no mention that his wife was present in the United Kingdom.

104. R1 was removed from the United Kingdom in December 2004. The delay was because he presented his case to an adjudicator on three occasions, his appeal twice being remitted by the IAT. His wife, who remained in the United Kingdom as a student, said she heard subsequently from a relative who had, coincidentally, been on the same flight to Harare as the one on which the appellant was removed. That relative had been asked by R1 to wait for him at the airport. But after he had been taken from the plane by the escorts who had travelled with him from the United Kingdom he failed to emerge in the arrivals hall. R1's wife heard a few days later that he had been assaulted upon his return. Exhibited to Ms Harland's first statement is a fax R1 sent to her giving further details of his experiences.

105. In this fax (1/159) R1 said that on arrival at Harare airport he was taken by three men to an office where he was supposed to collect his passport. He was driven to a rural area, bound and blindfolded. He was accused of being a spy sent by Tony Blair. His head was dipped in water several times and, after having been subjected to a severe beating, he was left covered with a wet blanket all night, being guarded at gunpoint. He was released after his money was taken from him. He was then in hiding with his cousin.

106. In respect of Case R1 there is more information. His wife has made two statements. She said that both she and her husband were MDC members in Zimbabwe. When she left to come here her husband left their Harare home and went to stay with relatives in the rural area, their son remaining with relatives in Harare so that he could continue to attend school.

107. After hearing of her husband's abduction upon return, R1's wife contacted The Zimbabwe Association. They arranged for R1 to see lawyers in Harare about the mistreatment he had experienced. He said they were of no help, even suggesting that sometimes people cause injuries to themselves.

108. R1's appeal was dismissed following a hearing on 3rd October 2003. The adjudicator described how R1's case was argued before him. R1 said that on account of his involvement with the MDC he had suffered persecutory ill treatment in Zimbabwe. In September 2001 ZANU-PF received information that he held small informal MDC meetings at his home in the rural area and had burst into the house during one of these meetings. R1 had been detained for four days and when he had been released his house had been burnt down. He said his wife had been working as a supply teacher in the United Kingdom and so had been able to send him money so he could come to join her. We note the appellant's wife has not mentioned the destruction of the house or the appellant's detention by ZANU-PF in her own statement. Finally, the adjudicator set out the appellant's evidence of his MDC activities since arriving in the UK. Although living in Walsall he had travelled to London to participate in vigils outside the Zimbabwean Embassy in London and said he had been filmed by Embassy staff.

109. The adjudicator dismissed the appeal because he did not believe any of this evidence to be true, other than accepting that the appellant had demonstrated outside the Embassy in order to bolster his claim. He found that it was not reasonably likely that the appellant would have been identified even if the demonstration was filmed.

110. Thus, the evidence of R1 is that he was a person who was known to be an MDC activist and who, upon that account, attracted such a level of adverse interest that his house was burnt down following his abduction and detention by ZANU-PF. But all of that has been rejected by the adjudicator as being untrue. If the appellant's account were in fact correct it is clear that he would have been of interest because he was a known MDC activist and not simply because he was an involuntary returnee. We cannot however, go behind the findings of the adjudicator who concluded that the evidence of MDC involvement is fabricated. R1 was not believed by the adjudicator. That, taken together with the other matters discussed above, leads us to conclude that R1's account of his experiences at the airport must be approached with some caution.

Returnee 2 (R2); Case B

111. The second individual identified by Ms Harland in her first statement was removed from the United Kingdom at the end of December 2004. Ms Harland spoke to him on the telephone a few days later and R2 said he had passed through Immigration Control at the airport without difficulty but was then detained by the CIO over a three hour period. His documents were examined carefully and his luggage searched. He was released after a substantial bribe was paid by a relative. He gave the CIO an old address and told Ms Harland that he planned to leave Zimbabwe once more. In her recent witness statement Ms Harland says that her subsequent enquiries suggested that he had in fact now left Zimbabwe.

Returnee 3 (R3); Case C

112. R3 claimed asylum on arrival in the United Kingdom on 10th February 2002 having travelled by direct flight from Zimbabwe using his own passport. His claim was based upon his account of being subjected to persecutory ill-treatment at the hands of ZANU-PF and the war veterans because of his support for the MDC. The adjudicator, in dismissing his appeal against refusal of that claim, was prepared to accept that he might have been a "low level" supporter of the MDC but found that the core of his account was untrue, being no more than "substantial exaggeration" (determination 3/499). That the adjudicator found that R3 had a propensity to exaggerate his experiences is relevant to our assessment of his account of how he was treated upon his return to Zimbabwe.

113. R3 was also removed in December 2004. The Zimbabwe Association later heard from a relative of R3's that he had passed through the airport without difficulty and returned home but a few days later was attacked and beaten so badly that he required hospital treatment. R3's family has refused to provide any further information and so it is not known who was responsible.

114. Witness 1, of Source F, an NGO operating in Harare, says in his statement dated 3rd October 2005 (3/802) that his organisation has examined hospital documentation confirming that R3 was treated for injuries and that

> " (R3) was also personally examined by the Medical Director of (the NGO) [Witness 20], who concluded that his case was genuine. [Witness 20] is an internationally respected figure in the treatment of torture."

115. The overall effect of this evidence is, therefore, that R3 experienced no problems at all in passing through the airport but some days later, on return to his home area he was attacked by unknown people who did not seek to assert any official status. We are told by Witness 1 that Witness 20, who is a medical doctor, considered R3's case to be "genuine". But since no evidence from Witness 20 has been put before us that is unhelpful. We do not know if his "case" was that he had been attacked because he had been returned to the United Kingdom after having made an unsuccessful asylum claim or for reasons entirely unconnected with that. It seems to us that if the motivation for his attack was his asylum claim it is likely that some reference would have been made to this in the form of allegations of treachery or disloyalty as is said to have occurred where others have been interrogated on return.

Returnee 4 (R4); Case D

116. R4 arrived in the United Kingdom as a visitor in January 2003 and was granted leave to enter for six months. He remained after his leave expired and claimed asylum only after he was detained by police in respect of an alleged motoring offence on 14th March 2004. His claim was based upon his account of being an active MDC member in Zimbabwe, who had been elected as Youth Secretary of his branch of the party, He claimed to have been detained and tortured on five occasions before leaving Zimbabwe to seek safety in the United Kingdom.

117. The adjudicator dismissed his appeal against the refusal of his asylum claim because he found most of his account to be untrue (determination 3/467). The adjudicator found that he may have been a supporter of the MDC. But he was not a member of the party, let alone an office holder.

118. R4 was removed on 1st January 2005. Ms Harland describes in her first statement how R4 spoke on the telephone to a member of The Zimbabwe Association and said that on arrival at the airport he had been "intensively questioned" about his activities in the United Kingdom. He persuaded the CIO that he was an overstayer and not an asylum seeker and was released after he had given them an out of date address. He then left Zimbabwe for Botswana where he has remained.

119. In her second statement Ms Harland sets out an altogether different account. R4 had been spoken to again by a member of The Zimbabwe Association who had been detained together with R4 before he was removed. We do not know if that person has now been granted leave to remain or whether he too faces removal to Zimbabwe if removals are resumed. That might be a relevant factor in considering the objectivity of his approach to gathering this evidence. It is now said that R4 was beaten by the CIO during the intensive questioning at the airport. R4 had now left

Botswana and returned to Zimbabwe because his family had been threatened by the authorities who were looking for R4 and who had beaten his brother. He returned "to ease the pressure on the family". It is said that shortly after R4 returned to Zimbabwe his home was raided while he himself was not at home and as a result he has gone into hiding.

120. There are a number of difficulties about this account. If R4 had been beaten at the airport it is not easy to understand why he should not have given some account of this when he telephoned the Zimbabwe Association in the United Kingdom after his removal. He was, after all, not then in Zimbabwe but in Botswana. Further, it is difficult to understand how returning to Zimbabwe would "ease the pressure on his family". It is not being suggested that he gave himself up to those who he said were responsible for the harassment of his family in order to discover his whereabouts. Further still, if R4 had now gone into hiding it is difficult to see how the position of his family was in any way improved as against the situation when he was safely in Botswana.

121. We should make clear that in reaching these conclusions we have borne in mind the evidence which we have considered concerning the reasons why some might not report experiences of ill-treatment.

122. The first account given by R4 is consistent with the evidence we have received concerning procedures at the airport. This, taken together with the fact that the appellant's account of being in need of international protection was rejected, leads us to conclude that the second account given is not one upon which we feel able to rely. We see no reason to reject the first account given by R4. We conclude, therefore, that R4 was subjected to intensive questioning at the airport but, having satisfied the officer that there was no reason to believe him to be of further interest, he was allowed to leave the airport to return home.

Returnee 5 (R5); Case E

123. R5 claimed asylum two days after having been granted leave to enter the United Kingdom as a visitor in November 2001. His claim was based upon his account of being persecuted in Zimbabwe because of his association with the MDC. The adjudicator dismissed his appeal against the refusal of his application (3/532) because she did not believe any part of the appellant's account to be true.

124. R5 was removed on 6th May 2005. The Zimbabwe Association has been told by relatives of R5 who remain in the United Kingdom that they have spoken to him. He said that on arrival at Harare Airport he had been handed over to the CIO in handcuffs and ill-treated to such an extent that he could barely walk. He has now gone into hiding in Zimbabwe.

125. In her more recent statement Ms Harland says that R5's family has now agreed to provide some further information. In June or July 2005 R5 went to South Africa but was returned by the authorities to Zimbabwe. There is no account of any difficulties arising from that return.

Returnee 6 (R6); Case F

126. The adjudicator who dismissed R6's appeal accepted that he was a supporter of the MDC and was involved with a Christian charity as a driver but did not find credible his account of attracting persecutory ill-treatment as a consequence of this (determination 3/560). The adjudicator found that R6 had exaggerated his account and that he would be of no interest on return on account of what was found to be his very limited involvement with these organisations.

127. After R6 was removed in June 2005, The Zimbabwe Association was told by R6's cousin in the United Kingdom that R6 had been questioned at the airport but released without incident after his address had been recorded. He was subsequently visited by the police who required him to report to the police station. When he attended as required he was "aggressively interrogated" by the CIO and required to give the addresses of four members of his family. He was released with an obligation to return for further questioning by the CIO in a few days later but he left Zimbabwe and went to South Africa.

128. Ms Harland telephoned R6 in South Africa and he told her that he had been accused of being "a spy for Blair". The police appeared to know a good deal about him and the history of his family. He believed that being questioned by the CIO was likely to carry with it the risk of serious ill-treatment.

129. R6 has now returned to the United Kingdom and his renewed asylum claim is being considered by the respondent. R6 was the subject of an article in The Observer newspaper of 10th July 2005 (1/527). In the article his name has been changed, presumably to protect his identity, to "Zuka Kalinga" It is, frankly, difficult to reconcile the account given in the article of his experiences in Zimbabwe before he came to claim asylum in the United Kingdom with that he gave in evidence before the adjudicator.

130. Although it is claimed that he left Zimbabwe for South Africa because he feared that future interrogations would lead to ill-treatment, the evidence is that he had no difficulties at the airport and, although there was a follow up to his arrival in that he was questioned aggressively by the CIO he was not physically harmed in any way. The assertions in the witness statement he has made for these proceedings (5/826) that the CIO have returned to his home asking after him and threatening the lives of relatives if they did not disclose his whereabouts must be viewed in the light of the fact that he has been found by the adjudicator to have given exaggerated accounts of his experiences in Zimbabwe in pursuing his original asylum claim.

Returnee 33 (R33)

131. We consider this account next because it seems probable that it is the same person as R6 whose account we have just considered. Information concerning R33 is to be found in the Observer International news report at 1/527 which itself is a report of the article published in the Observer newspaper on Sunday 10th July 2005.

132. R33 left Zimbabwe and came to the United Kingdom in 2003 where he claimed asylum because he said he had suffered persecution at the hands of the authorities because of his support for and activities on behalf of the MDC. He said he was also targeted because he worked for a Christian charity working to help widows of men murdered by the agents of the regime. The offices of this charity regularly attracted adverse attention and it was after a raid during which he was knocked unconscious that R33 decided to leave Zimbabwe.

133. The news report does not deal with the reasons why the asylum claim was unsuccessful. R33 was detained for removal and was returned to Zimbabwe but there is no indication of the date of either event. It is said that on arrival at Harare airport he was interrogated by officials but there is no suggestion that he was physically ill-treated. He was allowed to leave the airport and he returned home to Bulawayo where he was required to report to the police station. When interrogated at the police station he was asked about his father who was "murdered by Mugabe' troops" in 1982. There is no suggestion that R33 was physically ill-treated during this interrogation either, although it was conducted in a hostile and threatening manner.

134. Not wishing to return again to the police station R33 went to South Africa where he is now living in hiding.

Returnee 7 (R7); Case G

135. R7 applied for asylum on her arrival in the United Kingdom in December 2002. She gave an account of being persecuted and ill-treated by ZANU-PF because she and her boyfriend were active MDC members. When her boyfriend went missing people from ZANU-PF abducted her in an attempt to discover his whereabouts but did her no real harm and she was released the next day. After this she went to South Africa and with the help of the MDC office there arranged to come to the United Kingdom.

136. The adjudicator dismissed her appeal because, although he accepted that she was a member of the MDC, he did not find her evidence concerning the difficulties experienced as a consequence to be credible. He found that she had "told deliberate untruths".

137. R7 was removed on 9th December 2004. She subsequently told the lawyers who had assisted her in the United Kingdom that she had been questioned at the airport for about five hours but released upon the intervention of relatives who had come to the airport to meet her. Having returned to her home in Bulawayo she was under constant surveillance by local ZANU-PF members who questioned her about where she had been and were verbally abusive towards her. She was accused of being a sell-out and of being a British spy.

138. In her recent statement Ms Harland says that R7's family are refusing to facilitate any further contact with R7. Thus, there is no evidence that this returnee came to harm on account of it being known that she was an involuntary returnee.

139. It will have been noted that the evidence concerning R7 discussed so far does not involve any claim that she was ill-treated on return. In the "schedule of enforced removal cases" submitted by Mr Henderson it is said that R7 was "detained and beaten on arrival" at Harare airport. This information is taken from the witness statement of Mr Walsh (1/269) who records that such an allegation was reported in Hansard on 27th June 2005. It is extraordinary, if this beating in fact took place, that there is no mention at all about it in the first report of R7's experiences on return to Harare contained in Ms Harland's first statement (1/154) or in her second statement dated 8th June 2006 (5/1077).

Returnee 8 (R8); Case H

140. Having overstayed his leave as a working holidaymaker R8 claimed asylum after he was arrested in August 2002 for causing a breach of the peace. He said he had been repeatedly attacked and persecuted by ZANU-PF members because of his membership of and activities in support of the MDC. The adjudicator dismissed his appeal against refusal of the application for asylum because she did not believe any part of his account to be true (determination 3/590).

141. R8 was removed on 9th December 2004. In her first statement Ms Harland says that information was received from relatives that after being removed to Zimbabwe he went missing and when he reappeared several days later "his missing days were not explained ". In her recent statement Ms Harland described a conversation she had with R8's sister in the United Kingdom after the Court of Appeal had remitted this appeal. She said that R8 had left Zimbabwe in August 2005 but had returned and had experienced further, but unexplained, problems as a result of which his family had sent him away again and so it appears he has once again left Zimbabwe.

142. Thus there had been no specific assertion that R8 had been subjected to any ill-treatment upon return to Zimbabwe. It seems that The Zimbabwe Association were unwilling to leave it at this. In her second statement Ms Harland says that she called the appellant's sister in the UK again recently "to see if she would simply indicate whether or not R8 was ill-treated upon arrival". This time R8's sister "confirmed that he had been ill-treated while detained for a number of days (she did not say how many) on his arrival at Harare Airport and also said that he was still out of the country".

143. It can be seen that the persistence of The Zimbabwe Association eventually secured an indication in the vaguest terms that some form of ill-treatment had been inflicted. As R8 is no longer in Zimbabwe it is difficult to understand why, if this were true, his sister in the United Kingdom should be unwilling to provide more information than she did. It may well be that what was said was not unconnected with the persistence of the enquiry by The Zimbabwe Association.

144. We are not satisfied that the first response, that while there was a report of unexplained "missing days" there was no assertion of ill-treatment, can be brushed aside so easily.

Returnee 9 (R9); Case J

145. R9 was removed in December 2004 after which she made contact with friends with whom she had been at the detention centre in the United Kingdom. Ms Harland obtained from them R9's telephone number in Zimbabwe and spoke to her. Ms Harland said in her first statement:

> "She told me that she was alright. However, it was obvious that she did not want to speak in any detail over the telephone, and was fearful of saying anything that might be overheard."

Although this was Ms Harland's interpretation of the conversation, the only information that she obtained from R9 was that she "was alright". There was, then, no evidence that R9 experienced any difficulty in getting through the airport or that anyone has sought to harass her in any way subsequently.

146. In her recent statement Ms Harland describes having exchanged text messages with R9 more recently and she interprets the absence of any complaint of ill-treatment or other difficulties as evidence of the climate of fear existing in Zimbabwe. Ms Harland is, of course perfectly entitled to express that view but the fact is that this account does not provide any support for the assertion that those returned involuntarily are thereby at risk on that account alone.

Returnee 10 (R10); Case K

147. R10 was removed in December 2004 or January 2005. The Zimbabwe Association heard subsequently from R10's cousin that R10 had been questioned at the airport on arrival by the CIO for two hours and was allowed to leave after explaining that he was HIV positive and had gone to the United Kingdom only to access medical treatment. There is no suggestion that he was subjected to ill-treatment at any time or that anyone expressed any interest in him after he went home. Ms Harland says in her second statement that she contacted R10's family recently but "they will not co-operate with us".

Returnee 11 (R11); Case L

148. In her first statement Ms Harland says that R11, who was removed in March 2005, returned safely, this having been confirmed by relatives. She went on to say:

> "They have since said that (R11) was in fact detained on arrival for several nights and has since left Zimbabwe."

149. In her more recent statement Ms Harland says that she has heard from R11's aunt in the United Kingdom that she has in turn heard from R11's wife that he had left Zimbabwe and was now in Sudan but a request for contact details was refused. R11's aunt and his wife refused also to confirm whether L was ill-treated during his detention.

150. When examined, it can be seen that this is another example of the persistence of the enquiry pursued by The Zimbabwe Association securing an amended account.

The initial report was that R11 had “returned safely”. Put another way, there is no evidence to suggest that R11 suffered any mistreatment upon return to Zimbabwe.

Returnee 12 (R12); Case M

151. All that is known about R12, who was removed in May 2005, is that The Zimbabwe Association heard that he had arrived back in Zimbabwe but no more. His wife remains in the United Kingdom.

Returnee 13 (R13); Case N

152. R13’s aunt in the United Kingdom has told The Zimbabwe Association that following R13’s escorted return to Zimbabwe she was questioned at the airport and is now “in hiding” in Zimbabwe. There has been no account of detention or ill-treatment at the airport or any problems encountered subsequently. In her recent statement Ms Harland says that neither R13 nor R14, who share the same aunt in the United Kingdom, was physically ill-treated on return. This was because they have a relative working in a managerial role at the airport who had links to ZANU-PF and who was able to intervene on their behalf, having been warned in advance of their arrival.

153. Because of her family links with ZANU-PF R13 was able to enrol on a training course as a nurse, although she was required, following her passage through the airport, to report with her passport to the Immigration Department.

Returnee 14 (R14); Case O

154. R14 was also removed in May 2005. Her removal from the United Kingdom was escorted to Nairobi from where she was allowed to complete the onward journey without escorts. She was questioned at Harare Airport but was released upon the intervention of the relative who worked at the airport. She gave an old home address to the CIO but has remained in hiding because people came looking for her at that address. Ms Harland has discovered from her more recent enquiries that R14 then went to South Africa where she obtained a false identity after which she returned to Zimbabwe where she has re-established herself using this false identity. She has not reported any other difficulties.

Returnees 15, 16, 17 and 18 (R15, R16, R17, R18); Cases P, Q, R and S.

155. In her second statement Ms Harland ascribes these letters of identification to the four returnees she had expected to contact The Zimbabwe Association but did not. The only information available to Ms Harland is that relatives of R15 have not heard from her following removal and so she is referred to by Ms Harland as having “disappeared”.

156. We do not agree that such a conclusion is the inevitable or justifiable consequence of the information available.

Returnee 19 (R19); Case T

157. R19 and the remaining cases referred to by Ms Harland in her more recent statement, are returnees about whom The Zimbabwe Association became aware only after AA's case came before the Court of Appeal. R19's claim was based upon his account of being at risk in Zimbabwe because he had no political associations and had declined to support ZANU-PF. Because of this he was suspected of supporting the MDC. The adjudicator dismissed R19's appeal because he did not find credible the appellant's account of his difficulties in Zimbabwe and did not accept that he had been detained in Harare as he had claimed.

158. A Reverend [ ] informed The Zimbabwe Association that she was told by a member of her congregation in the United Kingdom that R19 had experienced problems in Zimbabwe following his forced removal from the United Kingdom. The nature of those problems is not known because R19 refused to discuss them when speaking on the telephone. Ms Harland received the same response when she telephoned T on his mobile phone.

159. This evidence is extremely vague and is of little assistance. We have no statement or letter from either Rev. [ ] or the member of the congregation who provided this information. There is no indication at all of the nature of the "problems" and so we do not know if those were said to be in some way related to R19's return or whether they related to the difficult general country conditions which certainly do give rise to problems for very many people in Zimbabwe.

Returnee 20 (R20); Case U

160. R20, who was removed on 30th April 2005, was put in contact with Ms Harland by a friend who remained in the United Kingdom. He said that he had been detained at the airport and held for three months during which time he was ill-treated. It was agreed that Ms Harland would put him in touch with a human rights NGO with a view to obtaining further details.

161. At page 6/1187 is a medical report prepared by Witness 20 who examined R20 on 7th June 2006. Witness 20 concludes that scars found on his body *could be* consistent with R20's account of being assaulted during his detention but:

> "Because of the length of time (nine months) between injury and examination, it cannot be stated with certainty that these scars are a direct result of his assault."

Witness 20 recorded also that:

> "On the first examination he admitted to auditory hallucinations, and a constant feeling of persecution, in that people are following him all the time, and that he cannot remain in one place for more than one night.
>
> In view of his extreme anxiety he was commenced upon anti-psychotic treatment, and placed in a place of safety, and after five days his anxiety levels had decreased, but he still displayed signs of paranoia. He was reviewed by a specialist psychiatrist.

> The clinical diagnosis of his psychiatric state remains a differential diagnosis until he has settled on his treatment, but is highly probable to be that of a reactive psychosis, secondary to his prolonged detention and torture."

162. R20 has refused to speak to the British authorities unless they promised to arrange his departure from Zimbabwe which the respondent cannot agree to. Although Witness 20 cannot confirm that the scars were caused by torture and although the account was given by a person being treated for a mental condition involving persecutory feelings arising from psychosis this is, clearly, evidence that supports the assertion that some people are detained and mistreated by the CIO upon return to Zimbabwe.

163. As can be seen from the determination of the IAT dismissing his appeal against the adjudicator's dismissal of his appeal, R20's claim to have been abducted and beaten in Zimbabwe on account of his activities for the MDC was found not to be a truthful one by the adjudicator, although there was no finding of fact rejecting his claim to be a supporter of the MDC (determination 6/1129). Interestingly, the IAT recorded at paragraph 12 of its determination:

> "When pressed by the Tribunal as to what was his submission (the appellant's representative) said, and we consider that he was right to say, that he was not suggesting that there was a risk to all failed asylum seekers which would be sufficient to justify a favourable finding under the Refugee Convention or in relation to Article 3 of the Human Rights Convention. He was saying that the appellant would be viewed with heightened suspicion because of his membership of the MDC and because of his previous activities."

That was in December 2003.

Returnee 21 (R21); Case V

164. The Zimbabwe Association was told by R21's partner in the United Kingdom that he was removed forcibly from the United Kingdom at the end of 2004. It is known from relatives that went to meet him at the airport that he never emerged. R21 contacted his partner in 2006 to tell her that he had been detained at the airport and held for six months during which time he had been ill-treated. He is now in South Africa but as R21's partner has changed her mind about assisting The Zimbabwe Association no further information is available.

165. This is difficult to reconcile with the respondent's information concerning this claimant. At 6/1148 is a letter from the relevant Home Office minister confirming that R21 made a voluntary return with the assistance of the Assisted Voluntary Returns Programme.

166. The adjudicator who dismissed R21's appeal found that he was "a low level party member (of MDC) and not a prominent activist" (determination 6/1138) and found also that he had "embellished and exaggerated his story." This propensity to embellishment and exaggeration, taken together with the incorrect characterisation of the nature of his return reported by his partner and the absence of any explanation why, now that R21 is no longer in Zimbabwe, the appellant's partner refuses still to provide any further details leads us to conclude that we are unable

to rely upon this account as evidence of an episode of mistreatment of an involuntary returnee.

Returnee 22 (R22); Case W

167. R22's friend who remains in the UK told The Zimbabwe Association that following his removal to Zimbabwe in January 2005 R22 was detained on arrival at Harare Airport and was not released until some weeks later. He was treated so badly during this detention that upon his release he could not walk. He was required to report to police weekly but he went missing in July 2005 and has not been heard of since.

168. The adjudicator had dismissed his appeal against refusal of his asylum claim saying (determination 6/1149):

> "The appellant claims persecution by the state in the sense that he was detained by police for no good reason and beaten by ZANU-PF youths who act with the tacit approval of the authorities. However, I have rejected all of the appellant's evidence that is relevant to his claim as being untruthful and fabricated."

169. Thus this account adds to the overall picture but must be viewed in the context of a very brief assertion from someone who has given false evidence in support of his asylum claim which is relayed to The Zimbabwe Association by an unknown person whose own nationality and immigration status is also unknown. For the friend to be in a position to pass on this information there must have been some form of communication between them. It is extraordinary, given that a decision must have been made to enter into some form of contact in order to divulge this account of abuse, that further details of this dreadful experience were not made available. For example, one might reasonably expect the informant to have been told, or to have enquired, of the nature of the injuries sustained, who was responsible for the ill-treatment and what was being alleged against R22. This was, after all, not one of the cases in which it was decided to make no report to anyone at all in order to avoid a risk of attracting further difficulties.

Returnees 23 and 24 (R23 and R24); Cases X and Y

170. R23 and R24 are brothers. It is not clear from Ms Harland's second statement, in which they are first mentioned, whether their return to Zimbabwe was a voluntary or an involuntary return. Relatives in the United Kingdom have told The Zimbabwe Association that on return to Harare Airport they were both detained for a few days during which they were questioned before being handed over to police in their local area. Ms Harland says that the relative did not know whether or not they had been ill-treated during this detention because she did not feel able to ask about this when speaking to them on the telephone. R23 and R24, presumably, did not describe being ill-treated but they did say during the telephone conversation that they had been required to report regularly, had been placed under surveillance and had been given warnings.

171. The brothers said also that they were subsequently detained and taken to Chikurubi Prison but were released upon payment of a substantial bribe after which

they both went to South Africa. Because they left Zimbabwe, their uncle, who had raised money for the bribe by selling cattle, had been placed under a weekly reporting obligation.

172. It seems to us that if the brothers felt able to discuss on the telephone the initial detention at the airport, the giving of warnings and the surveillance and reporting as well as the subsequent detention in prison and the payment of a large bribe it is not reasonably likely that they would have felt unable to make some reference to ill-treatment in detention had it occurred.

Returnee 25 (R25); Witness 7

173. This witness gave oral evidence before the first Tribunal but not before us. His undated witness statement is at 3/627. R25 was an active member of the MDC in Zimbabwe, having joined in January 2000. He helped to organise rallies and with the distribution of MDC literature. His problems began in March 2002 when, having been assaulted and injured by ZANU-PF members who attacked an MDC meeting, he was arrested by police and taken to Harare Central Police Station where he was released ten hours later having been fined for engaging in political violence. In August 2002 his home was attacked by a ZANU-PF mob after which he decided to leave Zimbabwe and come to the United Kingdom.

174. R25 first arrived in the United Kingdom on 1st October 2002 and sought entry as a visitor. He was not granted leave but was given temporary admission but he did not report back as required.

175. R25 did not claim asylum. After he heard that removals to Zimbabwe had been resumed in November 2004 he thought this indicated that the situation must have improved so he decided to return. He went to the Zimbabwe Embassy but they would not provide him with a travel document because he did not have a passport. They suggested he approach the police but when the appellant went to Charing Cross police station he was arrested and taken to Harmondsworth where he was detained for removal.

176. R25 was returned to Zimbabwe on 2nd December 2004. At Harare airport he was escorted from the plane by a member of the aircrew who had handed him over to people in plain clothes together with the envelope containing his documents. The appellant says they were clearly expecting him. R25 was taken to an office where four men in plain clothes identified themselves as from the Criminal Investigation Department. He was accused of being a British agent and of working for the MDC. He was kicked and punched. His nose was bleeding.

177. R25 describes how, some hours later, he was blindfolded and taken by truck to a building about forty five minutes drive away where he was stripped naked and left without food or water for about a week. He was subjected to beatings and humiliated in various ways. After this he remained in detention but was allowed his clothes and given food and water. On 21st December 2004 he was spoken to by people who included two of those who had dealt with him at the airport. He was again accused of being a spy and was beaten with batons and kicked when he fell

to the ground. He was hit in the face with a rifle butt as a result of which he lost some front teeth.

178. R25 was released on 23rd December 2004 and his parents took him to get treatment for his injuries.

179. Despite this experience, R25 describes remaining active on behalf of the MDC although his activities were at a lower and less frequent level than before. On 16th March 2005 R25 was arrested at home and was told that his activities had been monitored. He was taken from the police station to a farm in Bindura where, together with about sixty other MDC detainees he was made to work. He remained there until 20th April 2005 when he was released but was instructed to report to the police station on a weekly basis but when the demolitions began this was changed to a daily reporting obligation. As soon as arrangements could be made R25 returned to the United Kingdom, arriving in July 2005.

180. The RLC, who are assisting him in respect of his asylum claim, have commissioned a medical report (3/637) which supports R25's account of the ill-treatment to which he was subjected.

181. It can be seen that R25's history would be likely to excite interest. He is known to be an MDC activist and has a criminal conviction recorded against him. He approached the Embassy in London who, for reasons that are not known, decided to refuse his request for travel documents.

Returnee 26 (R26); Witness 8

182. This returnee gave evidence before the first Tribunal in October 2005 but not before us. His witness statement is at 3/837. R26 was an MDC activist who came to the United Kingdom to claim asylum but when this was refused he was removed to Zimbabwe on 17th January 2001. This was an escorted removal and R26 was handcuffed when he was handed over to the authorities at Harare Airport.

183. R26 gave a detailed account of his treatment upon return to Zimbabwe:

> "After the escorts left me with the CIO's they initially asked me why I had gone to the UK. At first I said that I had gone to visit. Then one of the CIO's looked at my passport which they had been given by the escorts. The CIO then asked me why it had taken the UK so long to return me to Zimbabwe as my passport showed that I had been refused entry on 19.02.01. When I did not reply one of CIO's went through a small pouch bag that I had with me and found in the bag documents that indicated that I had claimed asylum in the UK. In the bag there was an IND document, an IS96, and copies of UK newspaper articles about the detention of Zimbabwean asylum seekers, including myself, and our attempts to resist return to Zimbabwe.
>
> The CIO's then started to mock me. They seemed already aware of the incidents described in the newspaper articles. They were saying that they knew political activists were fleeing the country to report lies abroad about the situation in Zimbabwe….. They said that they had sources in the UK that informed them about the activities of people like me in the UK and the chaos we were causing. They said that now I would be punished. The CIO's seemed to know about me and the others

who had tried to resist return to Zimbabwe. They said a number of times that they were expecting me. I do not know if they meant me personally or just people like me who had claimed asylum and then tried to resist return to Zimbabwe."

184. R26 described being beaten during this interrogation, which lasted for more than an hour. He was then taken to the police station where he was to be held pending his transfer to Chikurubi prison. Before that could happen he was able to escape through a small toilet window and then he made his way back to the United Kingdom where he renewed his asylum claim. This time he was recognised to be a refugee and has been afforded that status. At page 3/847 is a copy of the article published in the Observer newspaper on 13th January 2002 concerning R25's experiences at Harare Airport.

185. Whether or not this is the same case considered at paragraph 41 of SM we also have our doubts about this account of an escape from a toilet window. In any event, what distinguishes this account from that of the unexceptional forcibly returned failed asylum seeker is that the CIO found in his possession press reports naming this returnee as playing a significant part in a campaign of resistance to removal to Zimbabwe. It seems probable that in those circumstances the CIO would have regarded this returnee as personally associated with whatever criticism of the Zimbabwean regime was contained in those articles which would seem to us to be more than sufficient for him to be regarded not as simply a failed asylum seeker but someone with an adverse political profile to be investigated further.

Returnee 27 (R27)

186. R27 claimed asylum after her application for further leave to remain as a student was refused in 2003. Her claim was based upon her membership of and activities on behalf of the MDC and that of relatives in Zimbabwe. Local ZANU-PF youths believed, incorrectly, that her son's sports scholarship in Denmark had been financed by the MDC. R27 described how she had been abducted and beaten by ZAN-PF members and her house burnt down. An adjudicator dismissed her appeal against refusal of her claim because he found her claim to have been fabricated and she was refused permission to appeal to the IAT.

187. On 11th May 2005 R27 was detained when reporting as usual at Luton police station and she was removed to Zimbabwe on 18th May 2005. Her passport was given to the airline staff who refused R27's request made immediately before disembarkation that the passport be returned to her. The envelope containing the passport was handed to a security officer waiting at the door of the plane and R27 was taken to the immigration office where CIO officers were called.

188. R27 says that the CIO officers checked her name on a computer and discovered that there was a warrant out for her arrest, this having been issued in respect of her alleged fundraising for the MDC.

189. She was then transferred to Goromonzi Prison, a detention facility operated by the CIO, where she was detained until 31st July 2005 when she was able to escape with the help of an officer who knew that R27's brother was a police officer who

had been this officer's superior officer in the past. She then returned to the United Kingdom and again claimed asylum.

190. During her detention R27 describes being subjected to consistent ill-treatment whilst being interrogated. She was raped on her first night in the prison. She was beaten, held tightly around the neck and shaken and on two occasions hung upside down with her head in a bucket of water while electric shocks were applied. There are two medical reports that support her account of being subjected to this abusive treatment, the first from the Helen Bamber Foundation (5/890) and the second from the Medical Foundation (5/899).

191. The asylum claim made by R27 upon her return to the United Kingdom remains outstanding.

192. It appears that it was the discovery of the outstanding arrest warrant that led to R27 being transferred to prison where she was subjected to the abusive treatment that she describes.

Returnees 28 and 29 (R28 and R29)

193. At 5/931 is a statement from Witness 32. He is someone known to Ms Harland of The Zimbabwe Association but little else is know about him. In his statement he says that he has two friends, R28 and R29, who were detained in the United Kingdom for the purpose of removal to Zimbabwe after both had applied unsuccessfully for asylum. They both decided to co-operate with arrangements for removal and so their return was not escorted.

194. Witness 32, who has spoken to both on the telephone since their removal, says that they were both detained on arrival at Harare airport and held for about a week by the CIO at Goromoinzi and he says that both were tortured during this detention. Both have scars or black marks from electric shock treatment. They were then released without any reporting or other conditions and they went to stay with a cousin.

195. Witness 32 wanted to obtain a letter from R28 and R29 to assist in these proceedings. Having consulted with Ms Harland it was agreed that a trusted associate who was to travel to Zimbabwe should meet with them and bring the letters back with her. R28 and R29 were told of these arrangements by telephone and were given the address to which the letters should be delivered.

196. Witness 32 says that on the day that they were due to meet the person concerned they were stopped by CIO officers who told them that the telephone call had been monitored and so the CIO officers were aware of the plan to deliver the letters to be taken back to the UK. R28 and R29 were searched but, fortunately, they did not have the letters on them as they had been left for safety at a friends address and were to be picked upon on their way to the meeting.

197. What is not disclosed by these two accounts is the nature of the asylum claim made by R28 and R29. Thus we do not know whether there was some feature other than the fact that these two returnees had been removed as failed asylum

seekers that might have made them of interest to the authorities in Harare. What we do know is that these two returnees discussed with Witness 32 the possibility of their returning to the United Kingdom and that it was thought helpful to have a record of being subjected to ill-treatment on return. Witness 32 said, at paragraph 17 of his witness statement:

> "When I spoke to them, I thought that doing this would assist them, either by claiming asylum again at some point in the future, or in some other way. I just thought that, if people outside Zimbabwe knew about what was actually happening – and in particular what had happened to (R28 and R29) – then they would be in a stronger position in the long run."

Returnee 30 (R30); Vincent.

198. Details of what happened to R30 are provided by the Times newspaper, 5th July 2005 (1/184). Having suffered persecutory ill-treatment on account of his work for the MDC in Zimbabwe the charity for whom he worked provided the resources to finance his journey to the United Kingdom. The article gives no details of what happened in respect of his asylum claim but says he was returned to Zimbabwe in June 2005. As this person is included in the schedule of involuntary returnees submitted by Mr Henderson it is said that his return was a forced one.

199. The article says that upon arrival at Harare airport R30 was arrested and detained for three days during which time he was beaten. Upon his release he went to Bulawayo where police were waiting for him. It is said that "two periods of brutal detention followed and his relatives were threatened and so he escaped to South Africa".

200. R30 was detained by police in South Africa who were intending to deport him back to Zimbabwe. We do not know what became of him.

Returnee 31 (R31); Ratidzo

201. This individual is not a failed asylum seeker but we consider the account because it is relied upon by the appellant.

202. At 1/429 is a news report from "New Zimbabwe" published on 2nd March 2005. This has the appearance of an internet news report.

203. Ratidzo (not her real name) is said to be one of three deportees put on a flight to Zimbabwe although the date of the flight is not identified. She was being removed after her application to extend her leave as a student was unsuccessful. There is no indication in this report that she made an asylum claim in the United Kingdom.

204. The report says that on arrival at Harare Airport Ratidzo and the two others were taken to recently constructed CIO interview rooms where two officers conducted a hostile interview to establish what she had been doing in the United Kingdom. She was struck once across the mouth when she asked why they would not believe she was just a student. The report continues:

> "Ratidzo said her interrogation continued for about three hours. And only stopped when she remembered that she had an uncle serving in the Zimbabwean national army. "I told them about him and asked that they make a phone call so they could confirm my story. They did and my uncle asked them to let me go, promising that he would keep me in check. …..
> …..
>
> As I left the building I could still hear the shouts and groans from the other two deportees."

205. The treatment to which this witness claims to have been subjected did not amount to serious ill-treatment such as to engage article 3. The way in which this article is written demonstrates that its purpose is not to set out an objectively balanced assessment of the account but is clearly intended to fulfil a journalistic point. It is not possible to identify the true identity of this person and so the respondent has no opportunity of establishing that such a person was removed at all.

Returnee 32 (R32); Usher

206. Information concerning this returnee is from The Times newspaper published on 4th July 2005 (1/523). There is insufficient information to ascertain the background to this case. The report states only that R32 fled to Britain in November 2002 after police in Bulawayo tortured him in an attempt to discover the whereabouts of his uncle who was an MDC activist. It is said that R32 was given exceptional leave to remain but at the end of April 2005 "without warning or explanation" he was detained and taken to Harmondsworth where he was held until being removed to Zimbabwe nine days later.

207. On arrival at Harare airport his escorts handed him over to the immigration authorities who assaulted him before calling CIO officers who conducted an interrogation over a two day period during which R32 was beaten. He was then taken to Harare Central Prison where, over a period of three weeks he was subjected to electric shocks and was beaten on the soles of his feet.

208. It is said that R32 managed to escape at a court hearing because an official mistakenly thought he had been granted bail. Since then he lived in hiding in the bush until he was taken in by an old school friend.

209. The fact that this returnee found himself involved in court hearings indicates that there were outstanding and unresolved criminal matters concerning him. There is no evidence at all to suggest that involuntary returnees are produced at court hearings for any other reason.

<u>Involuntary returnees identified by the respondent</u>

210. In the next category of involuntary returnees about whom information is available to us are the two persons who gave details of their experiences upon being returned to Zimbabwe to staff at the British Embassy in Harare. Entry Clearance Officers were asked to identify potential interviewees from those who had come to apply for visas. Clearly, this evidence has to be approached with some caution because Mr Henderson argues, entirely properly, that such persons may be tempted to say

what they believed, correctly or otherwise, the Embassy wanted to hear in the hope that it might assist their visa applications.

211. This exercise identified the following two persons who had been the subject of an involuntary return from the United Kingdom to Zimbabwe.

Returnee 34 (R34)

212. R34 has signed an affidavit, a copy of which is to be found at 4/65. He had travelled to the United Kingdom to claim asylum on the basis of difficulties from ZANU-PF members and war veterans on account of his active support for the MDC. That claim was refused in May 2005. There is no mention of an appeal to an immigration judge. R34 was detained for removal.

213. On arrival at Harare airport R34 was asked whether he had claimed asylum in the United Kingdom and why he had arrived without a passport. He was also asked why he had joined the MDC, which surprised R34 as he had not said that he had. This interview lasted two hours after which the "Residence Officer" said he was not satisfied with the answers given and R34 was handed over to two other men who took him to the Central Police Station where he was told that they knew he was a deportee and suspected that he had claimed asylum. He was asked about what he had been doing in the United Kingdom. R34 maintained his account and was released later that day and his documents were returned to him. He said he had remained handcuffed throughout but had not been physically mistreated and there was no follow up of any kind after he left the police station.

Returnee 35 (R35)

214. R35 has also provided an affidavit in which he describes how he entered the United Kingdom as a visitor but overstayed that leave in order to access medical treatment which would not be available in Zimbabwe. In February 2005 he was arrested when found to be in possession of a forged passport and then detained for the purpose of removal. He was put onto a British Airways flight to Harare and on arrival a member of the air crew handed his genuine Zimbabwean passport to the immigration official thereby identifying him as an involuntary returnee.

215. R35 was questioned for about an hour by plain clothes officers he assumed to be from the CIO. He was allowed to leave. He was not ill-treated in any way. Some weeks later three men came to his home but these were from the UN and were undertaking research on people who had been removed to Zimbabwe from the United Kingdom. R35 declined to help them.

<u>Voluntary departure cases</u>

216. In the schedule of removal cases submitted by Mr Henderson he includes also reference to five individuals in respect of whom there are reports of ill-treatment following a voluntary return to Harare airport. As he has raised these accounts we consider them as well.

Returnee 36 (R36); Case Z

217. In her second statement (5/1087) Ms Harland says this information comes from Z's sister. Z, who had retired from the Zimbabwean army on health grounds, had come to the United Kingdom as a visitor but overstayed his leave. He returned voluntarily to Zimbabwe to see his son who had fallen ill. Z's sister said that on arrival he was detained and tortured. He was accused of being a spy. He then went into hiding but has since been admitted to hospital because of illness.

218. As Z was not forcibly returned and it was not suggested to him that he was a failed asylum seeker we do not know what it was about this individual that attracted attention. It is not suggested that the mere fact of being a person who had travelled from the United Kingdom was the cause of his difficulties.

Returnee 37 (R37); Case A1

219. R37 is said to be the sister of R36. All that is known is what is said by Ms Harland in her second statement. After having been found working illegally in the United Kingdom A1 made a voluntary return to Zimbabwe. Ms Harland says:

> "Her troubles with the authorities started on her arrival back in Zimbabwe, when she was severely mistreated. She has been in hiding since her release from detention. My information comes from the same sister in the UK as for Case Z."

220. We do not have any details of the nature of the alleged mistreatment, for how long she was detained or where or by whom. We do not know whether any reason was given for holding her. We have almost no information concerning her background.

Returnee 38 (R38); Case B1

221. Again, the only information we have is from Ms Harland's second statement. It is said that R38 returned to Zimbabwe voluntarily after his asylum claim was refused. On arrival at Harare airport he was detained by the CIO for a few days during which time he was "ill-treated by the CIO and robbed of money he had brought with him from the UK". After his release his home was raided on more than one occasion but he was somewhere else. Ms Harland says that the information has been provided by B1's sister who has now "changed her mind about co-operating with ZA as she says it may make B1's situation worse".

222. There has been no attempt to provide Ms Harland with even the most basic details of this alleged mistreatment and so we have no means of assessing its seriousness or the credibility of this account.

Returnee 39

223. There is rather more information about this individual who returned to Harare airport on an emergency travel document in October 2003. He had gone to the embassy himself to obtain that document. R39 had been a teacher in Zimbabwe and said he had been active in student politics in opposition to the government. He played a part in the formation of the MDC and was active in support of this organisation. He remained politically active during his career as a teacher,

speaking at MDC rallies. He came to the United Kingdom in 2001 after experiencing arrests and ill-treatment at the hands of the police and others. He was granted leave to enter as a visitor for three weeks. He applied for asylum some time later, in August 2003 but returned to Zimbabwe in October 2003 to visit his sick mother.

224. R39 said he was detained on arrival by the CIO who accused him of being a spy and of having undergone military training in the United Kingdom with a view to carrying out violent acts in Zimbabwe. He said that he later confirmed to the CIO, under torture, that he had indeed sought to join the British army while in the United Kingdom. Further detention followed during which he was subjected to severe ill-treatment.

225. It can be seen that the circumstances of this individual can be distinguished readily from those of an unexceptional failed asylum seeker. R39 describes in a witness statement how when he was interrogated by the CIO he was told that they were aware he was a "known activist" and a founding member of the MDC. They had records of his activities while he was working as a teacher. They had "reliable information" that R39 was involved in MDC activities in London.

226. The experiences of this returnee do not support the assertion that a person is at risk of ill-treatment upon return simply on account of being an involuntarily returned failed asylum seeker.

Returnee 40

227. Finally, Mr Henderson's schedule refers to R40 whose asylum appeal was allowed in 2003 by a determination which appears at 5/910. R40 first came to the United Kingdom in 2001, having left Zimbabwe to escape from the difficulties he had experienced on account of his activities in support of the MDC. After his appeal against refusal of his asylum claim was dismissed he returned voluntarily to Zimbabwe in December 2001. He did not experience any problems passing through the airport and returning home but five days later was abducted by youths from ZANU-PF and was beaten badly during the three hours he was detained. He returned to the United Kingdom, arriving on 28th January 2002.

228. The adjudicator found that the appellant was indeed a supporter of the MDC but had not had time to become involved with the MDC following his return. The adjudicator found that his parents were MDC activists as well. Thus, this is an individual who, having passed through the airport at Harare without difficulty faced ill-treatment at the hands of ZANU-PF youths after he had returned to his home area where he was known to be a supporter of the MDC and of a family who were MDC activists. It was because of this political profile that he attracted adverse attention, not because he had made an unsuccessful claim for asylum in the United Kingdom. It is because the adjudicator accepted all this that his appeal was allowed.

<u>Conclusions upon the individual accounts of failed asylum seekers returned involuntarily</u>

229. We find that the individual accounts of those who have been involuntarily returned to Zimbabwe, considered together and evaluated with care in the context of the evidence overall, do not establish or demonstrate a consistent pattern of such returnees being subjected to ill-treatment upon being involuntarily returned simply on account of being regarded as someone who has made an unsuccessful asylum claim in the United Kingdom. At its highest this evidence can only demonstrate that a very small minority of the 210 failed asylum seekers returned involuntarily may have been subjected to ill-treatment. Put another way, this does not point to a substantial number of cases in the context of the available evidence being subjected to ill-treatment simply on account of a person being identified as an involuntarily returned failed asylum seeker.

230. An examination of those accounts that survive scrutiny in any form at all reveals that there is only a very small handful of cases in which it is said that there was no reason other than the mere fact of an involuntary return and the perception on the part of the authorities of being a failed asylum seeker that gave rise to these difficulties. Of those, some were bare assertions of that being the case with no real detail of the nature or severity of the ill-treatment or the circumstances in which it was inflicted. In our judgement, and for the reasons we have set out, little weight can be given to such accounts. We have explained why we approach the accounts with caution and why these accounts cannot be relied upon to demonstrate that returnees face a real risk of being subjected to serious ill-treatment on account only of being involuntarily returned failed asylum seekers.

231. This is in accordance with the evidence of procedures at the airport which suggests that while all deportees will be questioned, often in a hostile fashion, it is only in those cases where some further suspicion arises, above and beyond the asylum claim in the United Kingdom, that the deportee is moved on to the next stage of the process which involves interrogation which carries with it a real risk of serious ill-treatment.

232. In reaching these conclusions we have had regard to the submission advanced on the appellant's behalf that one reason why there are so few reports of mistreatment is because those who have suffered at the hands of the authorities have a disincentive to make any complaint for fear of bringing upon themselves and their families retaliatory action from the CIO or others.

233. There is a good deal of evidence which can be considered to support that submission. First, The Zimbabwe Association have repeatedly made this point in seeking to explain why no more information can be obtained than has been from those it has monitored at the time of removal. Ms Harland says at paragraph 15 of her statement (1/145):

> "Our experience has been that, regardless of the care that we take, removees and their relatives in Zimbabwe and the UK are fearful of communicating with us in the UK, directly or indirectly. They feel that any publicising of the removee's case – to anyone – may endanger them."

234. In her second statement (1/161) Ms Harland said:

> "Over the years the ZA has observed that a surprising number of asylum seekers with whom we have come into contact, either have no knowledge of human rights organisations in Zimbabwe, or no trust in them."

It has to be said that this is difficult to reconcile with what is said in the Times Online news report to which our attention has been drawn. This says that Zimbabwe Human Rights NGO Forum has reported 15,000 alleged human rights abuses over the last eight years.

235. On the other hand, there is evidence from the Source F, a founding member of the Zimbabwe Human Rights Forum, that appears to contradict the news report (1/195):

> "In addition [Source F] is aware that Zimbabweans who have been mistreated by the state and its organs are likely to be extremely reluctant to contact the NGOs for assistance. The reason for this is that Zimbabweans are well aware that:
> (a) the act of making contact with an NGO will likely, if it comes to the regime's attention, itself attract reprisal;
> (b) many NGOs, notably those involved in the protection and promotion of human rights, are under constant surveillance by the Zimbabwean Central Intelligence Organisation (CIO);
> (c) there is a risk that the NGOs, like other elements of Zimbabwean society, have been infiltrated by CIO agents. It is a risk that ordinary Zimbabweans are only too acutely aware of, and the present campaign of repression under Operation Murambatsvina can only heighten paranoia in this regard."

236. Further support still for this argument is to be found in the statement of Witness 52, who is a well known politician in the United Kingdom (1/198). Witness 52 has a longstanding interest in Zimbabwean affairs and has visited Zimbabwe, in a private capacity, twice since 2003, the last visit being in June 2005. At paragraph 19 of her statement she says this:

> "I also believe, again based on the statements and behaviour of the Zimbabweans I met, that failed asylum seekers returned to Zimbabwe would be very reluctant to report in Zimbabwe harm caused to them by the regime on their return to Zimbabwe."

237. It is also the view of another country expert, Dr J. McGregor (1/249), that there are good reasons why Zimbabweans might consider it unsafe to report any difficulties to an NGO. There have been "well documented politicized raids" on NGOs by the police and other state agents who have removed records. Dr McGregor says also that the NGOs ate "totally overwhelmed with the demands of monitoring and following up on Operation Murambatsvina, which is currently taking up all their time and resources".

238. For these reasons we accept that there is evidence that ordinary Zimbabweans may well be reluctant or unwilling to seek help from an NGO if subjected to abusive mistreatment by the state or its agents. This does not mean, of course, that any inference of ill-treatment can be drawn from the absence of a report, simply that a careful approach needs to be taken to the statistical analysis of the numbers of complaints in the context of the number of returnees.

239. It is of relevance also to note that a significant number of returnees took the trouble to pass on to The Zimbabwe Association the information that they had passed through the airport *without* experiencing any difficulties other than being delayed for interview at the airport.

Involuntary returnees who have not made asylum claims

240. There is nothing to indicate that the authorities at Harare Airport have any means of distinguishing between deportees who have made unsuccessful asylum claims and those who have not claimed asylum but who are being removed because they have no leave to remain in the United Kingdom. The evidence suggests that all deportees are likely to face questioning as to what they have been doing in the United Kingdom. This is likely to include an enquiry as to whether or not they claimed asylum in the United Kingdom.

241. This means that "immigration deportees" will also face the initial screening interview on arrival at Harare Airport. They will then be allowed on their way unless that interview gives rise to suspicions of an adverse political profile, some additional feature to a military history that demands further investigation or any outstanding criminal issues. If such suspicions arise there is a real likelihood that they also will be taken from the airport for more rigorous interrogation and so will be in the same position as failed asylum seekers who find them selves subjected to this second stage of the process.

Voluntary returnees

242. "Voluntary returnees" include those who are returning to Zimbabwe because they have no leave to remain in the United Kingdom or whose leave has expired. This category includes also those who face the prospect of a compulsory return either because an asylum claim has been refused or because they have no leave to remain in the United Kingdom but whose return to Zimbabwe is not arranged by the Home Office after enforcement action has been commenced. This includes also those who return with the assistance of IOM. The option of such a voluntary return remains open even after all appeal rights have been exhausted and this voluntary return option lapses only when a person is detained for the purposes of removal. When that happens a person cannot make a voluntary return even if he agrees to travel. This is because the respondent will not allow the person detained to have possession of their travel documents which will be handed over by the airline staff to the authorities at Harare airport.

243. The evidence regarding voluntary returnees is clear. There continue to be three flights a week from the United Kingdom to Harare Airport. These are generally fully booked with ordinary travellers, very many of whom will be citizens of Zimbabwe, who pass freely and without difficulty in and out of Zimbabwe. Anyone who is indistinguishable from the ordinary traveller will not have any difficulty in passing through the airport. A person who has made an unsuccessful claim for asylum but who makes a voluntary return, with or without the assistance of an IOM reintegration package, will be indistinguishable from the ordinary traveller.

Summary of conclusions:

244. A person who is returned involuntarily to Zimbabwe having made an unsuccessful asylum claim in the United Kingdom does not face on return a real risk of being subjected to persecution or serious ill-treatment on that account alone. That is so whether or not the removal is escorted. Each case must be considered on its own facts. We reaffirm the country guidance in SM and Others (MDC – internal flight-risk categories) CG [2005]UKIAT 00100. The evidence before us demonstrates that those at risk upon return to Zimbabwe continue to fall into the risk categories identified and set out in SM. This is subject to what we say about those whose military history discloses issues that will lead to further investigation by the security services upon return to Harare Airport and those in respect of whom there are outstanding and unresolved criminal issues.

245. There continue to be three flights a week from the United Kingdom to Harare Airport. These are generally fully booked with ordinary travellers who pass freely and without difficulty in and out of Zimbabwe. Anyone who is indistinguishable from the ordinary traveller will not have any difficulty in passing through the airport. A person who has made an unsuccessful claim for asylum but who makes a voluntary return, with or without the assistance of an IOM reintegration package, will be indistinguishable from the ordinary traveller unless there is reason to believe that he will be identified on return as falling within one of the risk categories we have identified.

246. A person who has made an unsuccessful asylum claim and has exhausted his rights of appeal will still be able to arrange a voluntary return until he is detained for the purpose of removal. After he has been detained for removal his travel documents will be held by the airline staff even if the person being removed is co-operative and compliant.

247. All those returned involuntarily to Zimbabwe will be identified as deportees as the respondent has no plans to change the method of removal. This will mean that the returnee will either be escorted, in which case the escort will hand the passport over to the authorities at Harare Airport or, if not escorted, the travel documents will be retained by airline staff who will hand them over to the authorities at Harare Airport. Although the airline staff has discretion with regard to the travel documents the evidence does not indicate that in any significant number of cases the deportee is allowed possession of the documents before disembarking.

248. All persons identified as deportees will be diverted for questioning by CIO officers who are required to produce a report in respect of all persons who have been forcibly removed to Zimbabwe from the United Kingdom, whether escorted on the plane or not. There is no indication that the authorities in Zimbabwe have any means to distinguish between deportees who have made an unsuccessful asylum claim in the United Kingdom and those who have been removed simply because they have no leave to remain.

249. The purpose of the initial interview is to establish whether the deportee is of any interest to the CIO or the security services. The deportee will be of interest if

questioning reveals that the deportee has a political profile considered adverse to the Zimbabwean regime. Further interrogation away from the airport may also follow if enquiries reveal aspects of a military history to be followed up such as being absent without leave or being involved in military activities outside Zimbabwe. Also, the CIO will refer to the police any issues of outstanding criminal matters such as arrest warrants. There is no evidence that the fact alone of a past criminal conviction, as opposed to an unresolved allegation of criminal activity or an outstanding arrest warrant, will give rise to such an interest. There is also no evidence that the simple fact that a returnee has in the past served in the Zimbabwean army will prevent the passage of a returnee through the airport after this first stage enquiry.

250. If such a political or relevant military profile is suspected, or if there are outstanding criminal matters to be resolved, the deportee will be taken away by the relevant branch of the CIO for interrogation. The evidence does not suggest that the CIO has any interest in manufacturing or fabricating evidence to create suspicion that is otherwise absent.

251. This second stage interrogation carries with it a real risk of serious mistreatment sufficient to constitute a breach of article 3. If the reason for suspicion is that the deportee has a political profile considered to be adverse to the Zimbabwean regime that is likely to be sufficient to give rise to a real risk of persecutory ill-treatment for a reason that is recognised by the Refugee Convention. That will not necessarily be the case where the only matter of interest is a relevant military history or outstanding criminal issues. Each case must be considered on its particular facts.

252. A deportee from the United Kingdom who, having been subjected to the first stage interview at the airport, is allowed to pass through the airport is likely to be the subject of some monitoring in his home area by the local police or the CIO. This monitoring may take the form of being required to report to the local police station for questioning or may be significantly lower key such that the subject may not even be aware of it. If nothing untoward is discovered the authorities will lose interest and the monitoring will cease. It may take some considerable time, certainly a period of months, before the monitoring ceases.

253. The objective evidence does suggest that the police and the CIO are capable of acting in a seriously abusive manner towards those they perceive to be dissident or in some way an enemy of the state but the evidence does not support the assertion that there is a real risk of persecutory ill-treatment for those who are being monitored solely because of their return from the United Kingdom.

254. The general country conditions are extremely difficult. There is some evidence that newcomers to an area, and not necessarily just newcomers from abroad, are watched and might attract some interest. That evidence does not establish a real risk that persecutory ill-treatment will follow as a result. There is no evidence of societal disapproval of those who have been abroad, whether to claim asylum or not. The returnee may or may not have a home to which he can return and relatives to whom he can turn for support. Very many Zimbabweans, perhaps most, have to deal as best they can with food shortages and other difficulties

arising from the collapsed economy. Those difficulties will not generally be sufficiently severe to enable an appellant to rely upon article 3 to resist removal.

255. A failed asylum seeker can chose to return to Zimbabwe voluntarily, with or without the assistance of IOM and where he will face no real risk of harm because he will be indistinguishable from the ordinary traveller. It might be argued that a person may face a real risk of persecutory ill-treatment on an involuntary return to Zimbabwe because of what might emerge from the interview that would take place following an involuntary return but would not following a voluntary return. In those circumstances he will not be able to succeed in an asylum appeal unless he can demonstrate that a similar risk exists should he agree to return voluntarily. This was considered by the Court of Appeal in this case who said at paragraph 99 that:

> "…a person who can voluntarily return in safety to the country of his nationality is not a refugee, notwithstanding that on a forced return he would be at risk. Such a person is not outside his home State owing to a well-founded fear of persecution. Neither s 84(1)(g) of the Act of 2002 nor Article 33 of the Convention can begin to demonstrate the contrary, since neither enlarges the "refugee" definition; and a safe voluntary returnee is outside the definition."

256. The Court of Appeal did not deal with the question of whether a person who can voluntarily return in safety can rely upon article 3 to resist an involuntary return. It is not necessary, in order to decide this appeal, for us to address that either. It may be that such a person cannot succeed under article 3. He has chosen in those circumstances to expose himself to a claimed risk unnecessarily. It would be his decision to do so that would expose him to that risk and not the act of the United Kingdom in returning him compulsorily as a consequence of his refusal to return voluntarily. In any event, a refusal to exercise a voluntary return option, in the knowledge that the only alternative is a forced return, may be cogent evidence that the returnee himself is satisfied that no such real risk exists on a compulsory return.

Decision upon AA's appeal

257. The immigration judge rejected as untrue much of the appellant's account, and in particular found that he had not been involved with the MDC at all. The immigration judge also made the following findings of fact, which have not been challenged:

a) It was "entirely plausible" that the appellant was arrested on a charge of violent behaviour and held on remand for six months before being released without being prosecuted further. This was because the appellant displayed in his evidence a familiarity with such matters as arrest, charge and imprisonment on remand;
b) The homes of his siblings have been demolished but the appellant's wife and child now live with his father who retains his rural home where he keeps cattle although it has suffered some damage. His wife's father also has a rural home where the appellant could reside;
c) The appellant has a genuinely held fear of facing persecution and abuse upon return solely as a failed asylum seeker.

258. We have found that the appellant's genuinely held fear of been subjected to ill-treatment simply because he would be identifiable as a failed asylum seeker not to be objectively well founded. He is not a refugee simply because of that misplaced subjective fear: R v SSHD ex parte Sivakumuran [1988] 1 All ER 193 per Lord Goff of Chieveley:

> "For the true object of the Convention is not just to assuage fear, however reasonably and plausibly entertained, but to provide a safe haven for those unfortunate people whose fear of persecution is in reality well-founded."

259. We are satisfied that if the appellant is subjected to an involuntary return to Zimbabwe there is no reasonable likelihood that he will be considered to be someone who should be interrogated further on account of his previous arrest and detention. The immigration judge found that this was a formal arrest by police and, although no court proceedings followed, he was released after being held in official detention for six months. There was no prosecution and it is clear that he was released because the authorities had no further interest in him. This is an experience that has been shared by many people in Zimbabwe. We have heard evidence of computer checks being carried out at the airport that revealed outstanding arrest warrants. There is no reason to suppose that such a computer check would reveal an arrest that was not followed by a prosecution. Even if the security staff at the airport were somehow aware of this incident it would not give rise to any suspicion that there were unresolved and outstanding criminal issues.

260. That being the case we find there to be no reasonable likelihood that the appellant would be prevented from passing through the airport after the initial screening interview. He would then be able to return unhindered to live at one of the two rural homes available to him and his family. It is reasonably likely that his arrival would give rise to some interest and he might be subject to monitoring for a period of time in his home area. In view of the findings of fact made by the immigration judge that would not give rise to anything being discovered that would cause any difficulties for the appellant.

261. This means that the appellant has failed to discharge the burden of demonstrating that there is a real risk that he would face persecution for a reason recognised by the Refugee Convention or that he would be subjected to ill-treatment such as to infringe any rights protected by ECHR.

262. For the avoidance of any possible doubt the appellant does not succeed on the basis of general country conditions either. Mr Henderson did not seek to advance such an argument. This is so whether the position of the appellant on return is considered on the basis of someone returning to his home area as a failed asylum seeker or simply on the basis of returning at all. Conditions are extremely difficult and resources, including food supplies and accommodation, are scarce. But, assertions that newcomers are excluded are speculative and not made out. This appellant has accommodation and a family network of support available to him on return. This appellant has a rural home to which he can return and relatives to whom he can turn for support. He will share in the experiences of very many Zimbabweans in relation to food shortages and other difficulties arising from the

collapsed economy. Those difficulties are not sufficiently severe to enable the appellant to rely upon article 3 to resist removal.

263. For these reasons we substitute a fresh decision to dismiss the appeal on asylum and human rights grounds.

Summary of Decision.

264. The appeal is dismissed on asylum grounds.

265. The appeal is dismissed on human rights grounds.

Signed

Date

Senior Immigration Judge Southern.

APPENDIX

List of Objective Evidence Considered by the Panel of the Tribunal

1. Expert reports of Professor T. Ranger dated 28/07/2005, 2/08/2005 and 8/06/2006
2. Expert report of Dr J. McGregor dated 2/08/2005
3. Commentary upon April 2005 C.I.P.U. Report by Dr McGregor
4. Expert report by Dr David Cortlett dated 26/06/2006
5. Expert Report by Dr N. Kriger dated 26/06/06
6. C.I.P.U. Report April 2005
7. C.O.I.R. April 2006.
8. F.C.O. Report 2005 (Extract)
9. Extracts from Hansard - Parliamentary comment upon returns to Zimbabwe
10. Correspondence from UNHCR, 2005
11. Letter Amnesty International to Rt Hon Charles Clarke MP July 2005
12. Amnesty International Report 10/05/2005
13. Collection of 31 news reports December 2004 to July 2005
14. Report of Joint Home Office and Foreign and Commonwealth Office Delegation to Zimbabwe – September 2005
15. C.I.P.U Report October 2005
16. HRW Report 11/09/2005
17. International Crisis Group Report 17/08/2005
18. Home Office OGN August 2005
19. Collection of 19 news reports February - September 2005
20. Newspaper articles concerning Returnee 26
21. Collection of papers prepared by British Embassy staff in Harare following contact with anonomised NGOs
22. Zimbabwean news reports April- May 2006

23. Harare NGO Forum Reports February to April 2006.

24. Report of Internal Displacement Monitoring Centre 5/05/2006

25. Amnesty International / Zimbabwean Lawyers for Human Rights report 31/3/2006

26. Amnesty International Report 2006

27. International Crisis Group Report 6/06/2006

28. HRW Report December 2005

29. HRW Reports 9/02/2006, 18/1/2006

30. HRW statement 20/11 – 02/12/2005

31. Solidarity Peace Trust Report April 2006

32. BBC News Reports 8/12/2005, 18/04/2006 and 31/05/2006

33. Amnesty International press release 31/05/2006

34. Amnesty International statement 20/11/2003

35. IRIN news reports 7/06/2006,19/05/2006, 27/04/2006, 25/04/2006 and 8/06/2006, 6/04/2006, 5/04/2006, 28/11/2005, 7/06/2006, 5/04/2006, 6/04/2006, 23/03/2006, 14/06/2006, 16/06/2006, 21/06/2006, 26/06/2006

36. Civic Action Support Group Report 10/02/2006

37. Zim On line reports 18/05/2006, 19/04/2006, 19/04/2006, 20/03/2006, 15/03/2006, 7/02/2006, 6/12/2005, 5/11/2005, 2/06/2006, 22/05/2006, 25/04/2006, 6/04/2006, 1/04/2006

38. Voice of America news reports 15/05/2006, 8/05/2006, 14/11/2005, 23/06/2006

39. Zimbabwean Lawyers for Human Rights news reports 10/05/2006, 6/05/2006, 3/05/2006, 15/02/2006

40. SW Radio Africa (UK) reports 22/03/2006, 6/06/2006, 2/06/2006, 15/06/2006(2), 26/06/2006

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