



OPERATIONAL GUIDANCE NOTE

ZIMBABWE

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1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Zimbabwe and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseowners and caseworkers must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service Zimbabwe Country of Origin Information published on the Horizon intranet site. The material is also published externally on the Home Office internet site at:

http://www.homeoffice.gov.uk/rds/country_reports.html

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instructions on Article 8 ECHR. If, following consideration, a claim is to be refused, caseowners and caseworkers should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

Source documents

- 1.4** A full list of source documents cited in footnotes is at the end of this note.

2. Country assessment

- 2.1** The Republic of Zimbabwe gained independence from Britain in April 1980. For seven years following independence Robert Mugabe ruled the country as an executive Prime Minister. In 1987, following tensions within Zimbabwe, the Mugabe led Zimbabwe African National Union entered into a union with Zimbabwe African People's Union, creating the Zimbabwe African National Union – Popular Front (ZANU-PF) and Mugabe was made executive President.¹
- 2.2** Despite holding periodic elections, no credible opposition to ZANU-PF emerged until the creation of the Movement for Democratic Change (MDC) in September 1999, led by the former head of the Zimbabwe Congress of Trade Unions (ZCTU), Morgan Tsvangirai.²
- 2.3** The most recent parliamentary elections, in March 2005, saw Mugabe's ZANU-PF returned to power with an increased majority, giving them the two thirds majority they need to change the constitution. Contrary to expectations, the run-up to the 2005 poll was relatively peaceful, but there were accusations of vote-rigging, the use of food to buy votes and widespread intimidation. Following their third successive defeat at the March 2005 parliamentary elections, earlier tensions in the leadership of the MDC regarding how the party should challenge President Mugabe and ZANU-PF's hold on power came to the fore and the MDC split into two rival factions led by Morgan Tsvangirai and Arthur Mutambara.³
- 2.4** Zimbabwe's human rights record since 1999 has been vigorously criticised by the international community including the European Union, the Commonwealth, the United Nations, and the Africa Commission for Human and Peoples' Rights, as well as by the United States and other countries. The security forces are used to suppress political opposition, independent media is stifled, and legislation limiting freedom of political association, education and discussion has been introduced. ZANU-PF organised youth and war veteran groups have been used to intimidate the opposition. ZANU-PF officials have been accused by the MDC and civil society organisations of withholding food from localities which support the opposition. In May 2005, the Government embarked on a crackdown against informal sector trade and housing ("Operation Murambatsvina"). This resulted in 700,000 people being made homeless (according to UN estimates). "Operation Garikai" ("Live Well"), launched the following July and intended to re-house the displaced has been crippled through lack of resources and very few have been provided with adequate housing as a consequence.⁴
- 2.5** There was a dramatic increase in political violence and repression in March and April 2007 with hundreds of activists arrested and detained without charge following protests that began in Harare on 11 March. Many were assaulted by security forces, suffering serious injuries including gunshot wounds and broken limbs, and one was killed. Morgan Tsvangirai and Arthur Mutambara were arrested on 11 March and were reportedly beaten while in police custody whilst MDC MP Nelson Chamisa claimed that he was beaten at Harare airport when trying to leave the country. The Government claimed the attacks were a reaction to MDC violence and on 13 March Morgan Tsvangirai and around 50 other anti-government activists appeared in a Harare court charged with inciting violence.⁵
- 2.6** Although the constitution provides for an independent judiciary, judges, magistrates and lawyers have faced intense pressure from the executive. They have been threatened,

¹ Home Office COI Service Zimbabwe Country of Origin Information Report 2007 (Background Information: History & Annex A) & Foreign and Commonwealth Office (FCO) Country Profile 2007: Zimbabwe

² COIS Zimbabwe Country Report 2007 (Background Information: History, Annex A & Annex B)

³ COIS Zimbabwe Country Report 2007 (Background Information: Electoral History & Recent Developments, Annex A, & Annex B) & FCO Country Profile 2007: Zimbabwe

⁴ FCO Country Profile 2007: Zimbabwe

⁵ COIS Zimbabwe Country Report 2007 (Background Information: Recent Developments), British Broadcasting Corporation (BBC) News 'Crackdown on Zimbabwean activists' dated 20 March 2007, IRIN: Zimbabwe 'More arrests, tension rises' dated 12 March 2007 & IRIN: Zimbabwe 'Opposition leaders picked up by police' dated 28 March 2007

intimidated, harassed and arrested, and encountered persistent refusal on the part of the executive to abide by judicial decisions.⁶

- 2.7** In 2000, the Government initiated a programme of redistributing farmland owned by white farmers. This often involved violent invasions of farms by so called 'war veterans' resulting in the ejection, injury, and sometimes death of commercial farmers and farm workers. In August 2005, the House of Commons estimated that the Zimbabwe Government's land reform programme had dispossessed some 4,000 out of 4,500 white commercial farmers since 2002.⁷
- 2.8** Zimbabwe is in a protracted state of economic decline, with unemployment reportedly at over 80% and annual inflation running at over 4,530%. Shortages of staple foods are a persistent problem. Deteriorating economic conditions have led to a significant increase in crime, including violent crime. A nationwide fuel shortage makes internal travel difficult and unreliable, and severely restricts the response capability of police and other emergency services. Once a net exporter of food, poor implementation of land reform and erratic weather have resulted in acute food shortages since 2001.⁸

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Zimbabwe. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instructions on Assessing the Claim).
- 3.3** If the claimant does not qualify for asylum, consideration must be given to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Caseowners and caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the Asylum Instructions on Assessing the Claim)
- 3.5** All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/>

⁶ COIS Zimbabwe Country Report 2007 (Human Rights: Judiciary) & U.S. Department of State Country Report on Human Rights Practices (USSD) 2006: Zimbabwe (Introduction & Section 1)

⁷ COIS Zimbabwe Country Report 2007 (Background Information: Land Reform)

⁸ COIS Zimbabwe Country Report 2007 (Background Information: Economy) & IRIN 'More arrests, tension rises' dated 12 March 2007; Financial Gazette 'Inflation Surges to 4,530%' 13 June 2007

3.6 Members / supporters of the MDC

- 3.6.1** Claimants may claim asylum based on fear of violence at the hands of state agents or quasi state agents because of involvement with the opposition Movement for Democratic Change (MDC) or their relationship to someone who is so involved.
- 3.6.2 *Treatment.*** Since the party was formed in 1999, many MDC activists have been subjected to restrictions on their freedom of expression, political intimidation, assault, arbitrary arrest and detention, imprisonment, torture, kidnapping, rape and murder. This treatment has mostly been perpetrated by the Government, the security forces, ZANU-PF activists and youth and war veterans groups. Historically, such treatment has escalated around the time of general, presidential and by-elections, although the expected violence did not materialise in the run-up to the latest parliamentary elections in 2005, perhaps because ZANU-PF calculated that opposition supporters were already sufficiently cowed by years of intimidation.⁹
- 3.6.3** There was, however, a dramatic increase in political violence and repression in March and April 2007 with hundreds of activists arrested and detained without charge following protests that began in Harare on 11 March. Many were assaulted by security forces, suffering serious injuries including gunshot wounds and broken limbs, and one was killed. Morgan Tsvangirai and Arthur Mutambara were arrested on 11 March and were reportedly beaten while in police custody whilst MDC MP Nelson Chamisa claimed that he was beaten at Harare airport when trying to leave the country. The Government claimed the attacks were a reaction to MDC violence and on 13 March Morgan Tsvangirai and around 50 other anti-government activists appeared in a Harare court charged with inciting violence.¹⁰
- 3.6.4** The families and those associated with MDC activists and politicians have been subjected to intimidation or violence as a result of their relationship. This intimidation ranges from name-calling to physical violence. There is no evidence that some relationships are more vulnerable than others.¹¹
- 3.6.5 *Sufficiency of protection.*** As this category of claimants' fear is of ill-treatment or persecution by the state authorities or groups that are associated with and act with the acquiescence or encouragement of the state, they cannot apply to the state for protection.
- 3.6.6 *Internal relocation.*** Where the ill-treatment or persecution feared is at the hands of the state itself and the threat is credible, relocation to a different part of the country to escape this threat is not feasible.
- 3.6.7** Where the threat is from local ZANU-PF activists or locally based war veterans so that the claimant is at risk in their home area, the question of whether internal relocation is a reasonable option must in each case be considered on its merits taking into account the fact that there is a network of information available to ZANU-PF and war veterans.
- 3.6.8 *Case law.***

SM and others (MDC- internal flight- risk categories) Zimbabwe CG [2005] UKIAT 00100 Notified 11/05/05. The Tribunal found that there is 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. However each case must be looked at on its own individual facts. Some categories are more likely to be at risk than others, for example MDC activists and campaigners are more likely to be at risk than supporters, but the Tribunal did not exclude the possibility that in exceptional cases those with very limited political involvement could in their particular circumstances find themselves at real risk.

⁹ COIS Zimbabwe Country Report 2007 (Background Information: Electoral History & Human Rights: Political Affiliation) & FCO Country Profile 2007: Zimbabwe

¹⁰ COIS Zimbabwe Country Report 2007 (Background Information: Recent Developments), BBC News 'Crackdown on Zimbabwean activists' dated 20 March 2007, IRIN: Zimbabwe 'More arrests, tension rises' dated 12 March 2007 & IRIN: Zimbabwe 'Opposition leaders picked up by police' dated 28 March 2007

¹¹ Email from British High Commission Harare dated 4 July 2005.

The Tribunal accepted that local police, ZANU-PF party organisations and war veterans maintain records, or 'lists' of MDC supporters, and that these are exchanged between different areas. Therefore, a claimant who has established that they are a political activist to the extent that they have come to the serious adverse attention of the authorities, the war veterans or ZANU-PF so that they are at risk in their home area may not be able safely to relocate to another part of Zimbabwe, although this is a question of fact to be assessed in the circumstances of each case. However, a claimant who has simply been caught up in random violence where his identity is unlikely to have been noted and recorded is unlikely to be of ongoing interest to the authorities, so that (if a real risk of persecution is established) internal relocation would be available.

AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061. Promulgated 2/8/06. The Tribunal reaffirmed the risk to MDC members/supporters in SM (above).

- 3.6.9 Conclusion.** Each case must be decided on its individual facts to determine whether a particular applicant is at risk, and, if they are, whether internal relocation is available. MDC activists who are able to establish that their political activities will mean that they are of serious adverse interest to the present regime in Zimbabwe will have a well-founded fear of persecution. It is unlikely that they will be able to relocate internally, and therefore it is likely that a grant of asylum will be appropriate.
- 3.6.10** Not all MDC activists, supporters or members will be able to show that they are known to the authorities or ZANU-PF activists or war veterans. For example, taking part in mass demonstrations, or being assaulted in random violence associated with the demonstration, is unlikely to result in an ongoing interest. It is therefore unlikely that such individuals would be able to demonstrate a well-founded fear of persecution, and even if they could do so in their home area, internal relocation may be available. Where this is a feasible option for the individual and would not be unreasonable, such a claim will not warrant a grant of asylum or Humanitarian Protection.
- 3.6.11** However, where a low level activist, supporter or member is able credibly to show that their activities have resulted in them personally coming to the serious adverse attention of the authorities, ZANU-PF etc., they may be able to demonstrate a well-founded fear of persecution. Such a person would not be able to rely on the protection of the state and it is unlikely that that they would be able to relocate internally, therefore it is likely that a grant of asylum will be appropriate.
- 3.6.12** Where a family member of an MDC activist establishes that he or she is likely to suffer serious harm because the authorities perceive him or her to hold the same opposing political views due to an association with the activist, and internal relocation is not an option (the same considerations with respect to internal relocation apply as to activists themselves) a grant of asylum may be appropriate on grounds of imputed political opinion. Current caselaw also establishes that family members may constitute a particular social group so may be able to establish a Convention reason on that basis. Family members of MDC activists who are able to establish that they are targeted because they are a family member of an activist, may be able to establish a Convention reason where the primary target, the MDC activist, has a well founded fear of persecution for a Convention reason. However, each case must be assessed on its individual merits and family members will not be able to establish a Convention reason if the primary persecution is not for a Convention reason. If there is a real risk of further serious attacks and no Convention reason can be identified, caseowners and caseworkers should consider whether the claimant is likely to face a real risk of serious harm on return, in which case a grant of Humanitarian Protection may be appropriate. All cases involving family members of MDC activists should be referred to a Senior Caseworker.

3.7 Teachers

- 3.7.1** Claimants may claim fear of discrimination or violence due to actual or imputed political sympathy with the opposition and the implication that professional position will be used to influence students.

3.7.2 Treatment. Teachers have, since the foundation of the MDC, been targeted because of their real or imputed support for the MDC. There have in that time been credible reports that teachers have been murdered, raped, abducted, assaulted, forced from or suspended from their posts, unlawfully detained, and forced to take part in ZANU-PF activities.¹²

3.7.3 In 2005 and 2006, the police and the Central Intelligence Organisation (CIO) continued to harass, intimidate and assault teachers who were perceived to be opposition supporters. In September 2005, two CIO personnel reportedly kidnapped a high school teacher in Gweru, and interrogated and tortured him for teaching opposition views to his students. Unlike in previous years, however, in 2005 there were no reports of schoolteachers whose contracts of employment were cancelled because they supported the MDC.¹³ There were also reports that following the commencement of planned strike action on 21 February 2007, armed police details stormed Shiriyedenga, Ruvheneko and Chembira schools in the high-density suburb of Glen Norah, allegedly assaulting teachers and forcing some of them to eat chalk. However, the teaching unions agreed to call off the strike two days later after the government agreed pay increases that took the average salary over the Poverty Datum Line.¹⁴

3.7.4 Sufficiency of protection. As this category of claimants' fear is of ill-treatment or persecution by the state authorities or groups that are associated with and act with the acquiescence or encouragement of the state, they cannot apply to the state for protection.

3.7.5 Internal relocation. Where the ill-treatment or persecution feared is at the hands of state agents, relocation to a different part of the country to escape this threat is not feasible.

3.7.6 Where the threat is from local ZANU-PF activists or locally based war veterans, so that the claimant is at risk in his home area, the question of whether internal relocation is a reasonable option must in each case be considered on its merits, taking account of the fact that there is a network of information available to the ZANU-PF and war veterans.

3.7.7 Caselaw.

SM and others (MDC- internal flight- risk categories) Zimbabwe CG [2005] UKIAT 00100 Notified 11/05/05. The Tribunal found that there continues to be a risk for teachers with an actual or perceived political profile of support for the MDC.

The Tribunal accepted that local police, ZANU-PF party organisations and war veterans do maintain records, or 'lists' of MDC supporters, and that these are exchanged between different areas. Therefore, a claimant who has established that they are a political activist to the extent that they have come to the serious adverse attention of the authorities, the war veterans or ZANU-PF so that they are at risk in their home area may not be able safely to relocate to another part of Zimbabwe, although this is a question of fact to be assessed in the circumstances of each case.

AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061. Promulgated 2/8/06. The Tribunal reaffirmed the risk to teachers in SM (above).

3.7.8 Conclusion. Each case must be decided on its individual facts. Being a teacher will not of itself give rise to a well-founded fear of persecution - the key issue is whether the claimant has been or is perceived to have been engaged in political activity so as to be of serious adverse interest to the authorities. The level of activity required to bring a teacher to the serious adverse attention of the Zimbabwean authorities is likely to be lower than that for activists in some other walks of life. Teachers are particularly vulnerable because their

¹² COIS Zimbabwe Country Report 2007 (Human Rights: Teachers) & USSD 2006: Zimbabwe (Sections 1 & 2)

¹³ COIS Zimbabwe Country Report 2007 (Human Rights: Teachers) & USSD 2006: Zimbabwe (Sections 1 & 2)

¹⁴ COIS Zimbabwe Country Report 2007 (Human Rights: Teachers)

activities are open to greater scrutiny than those in less public positions, and because the authorities and associated groups are wary of the influence they could have on their students.

3.7.9 Therefore, a teacher who is able to establish credibly that they have come to the adverse attention of the Zimbabwean authorities as a result of their political activities will have a well-founded fear or persecution and will not be able to rely on the protection of the state. It is unlikely that such a person would be able to relocate safely, therefore a grant of asylum is likely to be appropriate.

3.8 Gay men/Lesbians

3.8.1 As an overt practising gay man or lesbian in Zimbabwe, individuals claim they have faced and would on return face societal discrimination. Alternatively, individuals who discovered their sexuality while in the United Kingdom claim they would face societal discrimination on return to Zimbabwe. Both categories claim that the authorities within Zimbabwe would not provide them with protection against societal discrimination.

3.8.2 *Treatment.* Under Zimbabwean law, sexual acts between men are illegal. In July 2006, amendments to the Criminal Law (Codification and Reform) Act of 2004 expanded the scope of sexual acts to include any act involving physical contact between males that would be regarded by a reasonable person as an indecent act. Zimbabwean law also criminalises 'unnatural' sexual acts between two persons which in theory could be applied to two women though in practice never has.¹⁵

3.8.3 The Zimbabwean Government has a long history of homophobia, with President Robert Mugabe having in the past referred to gays as 'less than pigs and dogs'. During 2006, President Mugabe was again reported to have used discriminatory and homophobic language when he referred to homosexuality as a 'white disease'. In September 2006, the Government reportedly banned the attendance of gays and lesbians at a United Nations workshop on human rights.¹⁶

3.8.4 By 2004, gay issues appeared to have slid down the Government's agenda as it faced serious economic and political problems. Intolerance at official level mellowed into indifference and the random arrests of gay men and lesbians appeared to have ceased. The police's last raid of the Gays and Lesbians Association of Zimbabwe (GALZ) office was in 1996. In August 2006, however, unidentified men approached the GALZ exhibit at the Zimbabwe International Book Fair and stated that GALZ was not allowed to be there. They then threatened GALZ staff, seized literature from the GALZ stand, and forcibly removed the GALZ members from the event. Police officers and security guards working at the event stood by and watched without intervening. A nearly identical incident occurred at the same book fair in 2005. GALZ staff members believed these actions were part of an ongoing government campaign of discrimination and harassment against gay men and lesbians. No action was taken against those who threatened the GALZ staff members in 2005 or 2006.¹⁷

3.8.5 *Sufficiency of protection.* It is very unlikely that a gay man or a lesbian will be able to establish that any treatment they might face on return to Zimbabwe would amount to persecution or ill-treatment to Article 3 standards and therefore the question of sufficiency of protection does not arise.

3.8.6 *Internal relocation.* It is very unlikely that a gay man or a lesbian would be able to establish that they had a well-founded fear of the state authorities. However, if such a fear were established, relocation to a different part of the country to escape this threat would not be feasible.

¹⁵ COIS Zimbabwe Country Report 2007 (Human Rights: Lesbian, Gay, Bisexual and Transgender Persons)

¹⁶ COIS Zimbabwe Country Report 2007 (Human Rights: Lesbian, Gay, Bisexual and Transgender Persons)

¹⁷ COIS Zimbabwe Country Report 2007 (Human Rights: Lesbian, Gay, Bisexual and Transgender Persons)

3.8.7 Where the claimed threat is from non-state agents, it is very unlikely that a gay/lesbian claimant will be able to establish that any treatment they might face on return to Zimbabwe would amount to persecution or ill-treatment to Article 3 standards and therefore the question of internal relocation does not arise. However, any risk that does exist is likely to be a localised one due to the animosity of neighbours or family. Such a risk could be avoided by relocating elsewhere in Zimbabwe and it would be reasonable to expect someone who did face such a risk to relocate internally.

3.8.8 Caselaw.

JD (Homosexual – MDC supporter – internal relocation) Zimbabwe [2004] UKIAT 00259: found that although there was societal discrimination against homosexuals there was no evidence of persecution on these grounds or ill-treatment reaching Article 3 standards. Furthermore, internal relocation was possible, even to another part of the applicant's home city.

Z A M [2002] EWCA Civ 952: found that each case had to be examined on its own merits although generally a claim based purely on homosexuality is unlikely to breach Articles 3 or 8. The mere existence of discriminatory legislation is insufficient to make out the case – consideration must be given to the possibility of prosecution.

3.8.9 Conclusion. The Immigration Appeal Tribunal determination listed above found that the Government's anti-homosexual position "...appears to be largely rhetorical and hostility waxes and wanes depending on other political imperatives. There is no compelling evidence that the Government attempts to put its rhetoric into effect. Meanwhile, the general attitude of homophobia has resulted in little concrete evidence of violence, or even harassment."

3.8.10 There is therefore no evidence that the law against sodomy would be enforced, but even if it were, caseworkers should note that in **Z A M [2002] EWCA Civ 952**, the Court of Appeal found that removal of a person to a country which has a law prohibiting particular types of sexual conduct in private amongst adults will, in itself, not breach Article 3 or Article 8.

3.8.11 Societal hostility to gay men and lesbians undoubtedly exists in Zimbabwe, but there is no evidence that this manifests itself in systematic violence against them. Where they do encounter local hostility they should be able to avoid this by moving elsewhere in Zimbabwe and it would not in most cases be unduly harsh to expect them to do so. It is therefore extremely unlikely that a gay man or lesbian will be able to establish a claim to asylum or Humanitarian Protection on the basis solely of their sexuality.

3.9 Members of the British armed forces

3.9.1 Claimants in this category state that they or a member of their family has been a member of, or applied to and been rejected by, the British armed forces and as a result will be persecuted on return to Zimbabwe because of the Zimbabwean Government's hostility to the UK.

3.9.2 Treatment. In 2003, a Zimbabwean serving in the British armed forces was killed on active service in Iraq. The family of Private Christopher Muzvuru was denied permission to return his body to Zimbabwe for burial, the government controlled Zimbabwean press describing him as a mercenary and a sell-out. The family was reportedly visited by the Zimbabwean secret service and feared for their lives. There were reported to be about 200 Zimbabweans serving in the British armed forces at that time.¹⁸ Since then, three Zimbabwean members or former members of the British armed forces have approached the British Embassy in Harare claiming to have been subject to threats or ill-treatment.¹⁹

3.9.3 Sufficiency of protection. As this category of claimants' fear is of ill-treatment or persecution by the state authorities, they cannot apply to these authorities for protection.

¹⁸ The Washington Times 'Zimbabwean gets no respect from Mugabe'

¹⁹ FCO email

3.9.4 Internal relocation. As the ill-treatment or persecution feared is at the hands of state authorities, relocation to a different part of the country to escape this threat is not feasible.

3.9.5 Caselaw.

AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061 reaffirmed the risk categories in SM and others (MDC- internal flight- risk categories) Zimbabwe CG [2005] UKIAT 00100 and in addition identified two further risk categories, one being those whose military history discloses issues, including military activity outside Zimbabwe, that will lead to further investigation by the security services upon return to Harare Airport.

3.9.6 Conclusion. The small number of Zimbabweans in the UK forces suggests that claims on this basis should be few. Where a claim is substantially based upon service in the British armed forces the case should be referred to a Senior Caseworker. It is possible that a claimant who is able to establish their membership of the British armed forces, and that this has come to the attention of the Zimbabwean authorities, may have a well-founded fear of ill-treatment that could amount to persecution or inhuman or degrading treatment. In such cases, given the hostility of the Zimbabwean authorities to the United Kingdom, such treatment is likely to be for reason of an imputed political position of opposition to the Zimbabwean authorities, in which case a grant of asylum would be appropriate. There is no evidence that merely seeking to join the British armed forces would place a person at risk upon return to Zimbabwe. These claims should be determined on their merits with particular consideration given to the credibility of the claim. This would include an examination of who in Zimbabwe had threatened the applicant and how they had become aware of their involvement. Nor is there evidence that relatives of members of the British armed forces have experienced treatment that would amount to persecution or inhuman or degrading treatment and therefore a grant of asylum or Humanitarian Protection in these cases will not generally be appropriate. However, each case should be considered on its individual merits.

3.10 General country situation

3.10.1 Some claimants may state that the general humanitarian situation in Zimbabwe, especially as a consequence of 'Operation Murambatsvina', is so poor that it would be a breach of Article 3 of ECHR to return them to Zimbabwe.

3.10.2 Treatment. Zimbabwe is in a protracted state of economic decline, with unemployment reportedly at over 80% and annual inflation running at over 4,530%. Shortages of staple foods are a persistent problem. Deteriorating economic conditions have led to a significant increase in crime, including violent crime. A nationwide fuel shortage makes internal travel difficult and unreliable, and severely restricts the response capability of police and other emergency services. Once a net exporter of food, poor implementation of land reform and erratic weather have resulted in acute food shortages since 2001.²⁰

3.10.3 On 19 May 2005, the Government of Zimbabwe began a campaign to clear 'illegal' homes and businesses from mainly urban areas. Many thousands of homes and businesses were demolished, either by the police or by the occupants themselves on the instructions of the police. Dubbed "Operation Murambatsvina" (meaning, "drive out rubbish"), the Government claimed the demolitions were necessary to clean up Zimbabwe's urban areas and crack down on the black economy, saying that activities such as the illegal trade in foreign currency and scarce foodstuffs was damaging the legitimate economy.²¹

3.10.4 According to the United Nations estimates, 700,000 people, nearly 6 percent of the total population have lost their homes, livelihood, or both as the result of the Operation

²⁰ COIS Zimbabwe Country Report 2007 (Background Information: Economy) & IRIN 'More arrests, tension rises' dated 12 March 2007; Financial Gazette 'Inflation Surges to 4,530%' 13 June 2007

²¹ COIS Zimbabwe Country Report 2007 (Human Rights: Operation Murambatsvina)

Murambatsvina evictions, while 2.4 million people, some 18 percent of the population have been either directly or indirectly affected. Operation Murambatsvina has been seen as an act of retribution against opposition supporters in urban MDC dominated areas such as Harare and Bulawayo, however, traditionally government supporting areas were also affected to a lesser extent.²²

3.10.5 Following in the wake of Operation Murambatsvina, the Government announced that under 'Operation Garikai' (meaning "live well" in Shona) it would provide 300,000 new homes by the end of 2005. However, there has been slow progress in building and providing these homes and the few that have been built have reportedly been allocated to those with links to the ZANU-PF party. By May 2006, almost a year after Operation Murambatsvina, tens of thousands of those evicted were reportedly still living in makeshift homes at various locations across the country, with many in need of food, water, and other forms of assistance. Many have also been affected by continued evictions as the police and government agents have continued to round up squatters and those considered to be 'disorderly elements'. In May 2006, it was reported that a fresh clean up operation codenamed 'Round-up' netted an estimated ten thousand vagrants and street children who were moved from Harare to rural farms without adequate assistance.²³

3.10.6 *Sufficiency of protection.* In light of the nature of this category of claims, the availability of sufficient protection from the state authorities is not relevant.

3.10.7 *Internal relocation.* The nature of this category of claim means the availability of an internal relocation option is not relevant.

3.10.8 *Caselaw AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061* The Tribunal found that conditions in Zimbabwe are extremely difficult and resources, including food supplies and accommodation, are scarce. But assertions that newcomers, whether returning failed asylum seekers or just someone returning to an area, would be denied access to these were not made out. The appellant had accommodation and a family network of support available to him on return. He would share in the experiences of very many Zimbabweans in relation to food shortages and other difficulties arising from the collapsed economy. Those difficulties were not sufficiently severe to enable the claimant to rely on Article 3 ECHR to resist removal.

3.10.9 *Conclusion.* General country conditions are poor. Food is scarce and accommodation difficult to find. Generally, poverty and lack of resources will not amount to a breach of Article 3 ECHR, however, each case should be considered on its individual merits taking into account factors including the age and state of health of the claimant. Where the conditions on return will be so extreme that they may amount to inhuman treatment (taking the claimant's individual characteristics into account), the claimant may be eligible for a grant of Discretionary Leave. All such cases should be referred to a Senior Caseworker.

3.11 Prison conditions

3.11.1 Claimants may claim that they cannot return to Zimbabwe due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Zimbabwe are so poor as to amount to torture or inhuman treatment or punishment.

3.11.2 The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

3.11.3 *Consideration.* Prison conditions remained harsh and life threatening in 2006.

²² COIS Zimbabwe Country Report 2007 (Human Rights: Operation Murambatsvina)

²³ COIS Zimbabwe Country Report 2007 (Human Rights: Operation Murambatsvina)

Overcrowding remained a problem during the year and the Government's 42 prisons, designed for a capacity of 16,000 prisoners, held approximately 25,000 according to media reports. Harsh prison conditions and a high incidence of HIV/AIDS were widely acknowledged to have contributed to a large number of deaths in prison during 2006. The Institute of Correctional and Securities Studies, a local NGO, estimated that 52 percent of the country's prisoners were HIV positive.²⁴

- 3.11.4** Juveniles were not held separately from adults during 2006 and an estimated 200 children were living in the country's prison system with their detained mothers. Pre-trial detainees generally were held in group cells until their bail hearings. Once charged, if detainees were refused bail, they were held in a separate remand prison.²⁵
- 3.11.5** In August 2006, the Institute for War and Peace Reporting (IWPR) reported that torture in prisons was common. The law provides that international human rights monitors have the right to visit prisons, but government procedures and requirements made it very difficult to do so during 2006. Permission was required from the commissioner of prisons and the Minister of Justice, which sometimes was not granted or took a month or longer to obtain. However, the Government granted local NGOs access on a number of occasions during the year.²⁶
- 3.11.6 *Conclusion.*** Whilst prison conditions in Zimbabwe are poor with overcrowding, poor sanitation and HIV/AIDS being particular problems, conditions are unlikely to reach the Article 3 threshold. Therefore, even where claimants can demonstrate a real risk of imprisonment on return to Zimbabwe, a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.
- 4.2** With particular reference to Zimbabwe, the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.
- 4.3 **Minors claiming in their own right****
- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception and care arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception and care arrangements in place.
- 4.3.2** Minors claiming in their own right without a family to return to, or where there are no

²⁴ COIS Zimbabwe Country Report 2007 (Human Rights: Prison Conditions)

²⁵ COIS Zimbabwe Country Report 2007 (Human Rights: Prison Conditions) & USSD 2006: Zimbabwe (Section 1)

²⁶ COIS Zimbabwe Country Report 2007 (Human Rights: Prison Conditions)

adequate reception and care arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.4 Medical treatment

- 4.4.1** Claimants may claim they cannot return to Zimbabwe due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.
- 4.4.2** In December 2005, the World Health Organisation (WHO) noted that Zimbabwe's health care delivery system, once considered as a model for the region, had collapsed due to under-funding, lack of foreign exchange for importing drugs, and attrition of qualified staff. At the primary level, utilisation of services have declined, due to a lack of essential drug supplies, staff shortages, low quality of services, poor maintenance of health facilities and an inability of patients to pay user fees for care.²⁷
- 4.4.3** Zimbabwe has ten provincial hospitals; the two most important hospitals being Parirenatwa Hospital in Harare (900 beds) and Mpilo Central Hospital in Bulawayo (600 beds). Medical facilities, particularly outside of Harare and Bulawayo are limited and the level of care available at Parirenatwa Hospital is rudimentary, with medicines and medical equipment such as thermometers and wheelchairs in short supply. Although the Government still provides free healthcare to low-income earners, patients are required to pay for medication, the costs of which have risen quickly in recent years. In addition, many drugs are not available now that the Ministry of Health and Child Welfare is required to make payments in advance for most products.²⁸
- 4.4.4** In July 2006, Human Rights Watch noted that: Zimbabwe has one of the highest HIV prevalence rates in the world, with 20% of those aged 15-49 living with HIV or AIDS. An estimated 1.6 million Zimbabweans out of a total population of 12.9 million are living with HIV and AIDS. According to 2005 National Estimates from the Ministry of Health and Child Welfare, 115,000 of the people living with HIV/AIDS are children under the age of 15. In 2005, 169,000 Zimbabweans died of AIDS. The availability of medical care provided by the Government and NGOs for people living with HIV/AIDS has increased in the past few years due to efforts to scale up access to treatment. Voluntary Counselling and Testing (VCT) programs are also expanding and administered free of charge or for a small nominal fee. The provision of Anti-Retroviral drugs (ARVs) does not begin to meet the needs of the population, however, and the Government's stated aim of providing ARVs to 300,000 people by 2010 had reportedly reached only 23,000 people by July 2006. A number of NGOs continue to work towards improving treatment for HIV/AIDS in Zimbabwe, including Medicins Sans Frontieres and the Catholic Mission in Harare.²⁹
- 4.4.5** Where a caseowner or caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation

²⁷ COIS Zimbabwe Country Report 2007 (Human Rights: Medical Issues)

²⁸ COIS Zimbabwe Country Report 2007 (Human Rights: Medical Issues)

²⁹ COIS Zimbabwe Country Report 2007 (Human Rights: Medical Issues)

on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

- 5.2** On 2 August 2006 the Asylum and Immigration Tribunal promulgated its determination in the country guidance case of AA (**AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061**) . The basis of the appeal was that failed asylum seekers are as such at real risk of mistreatment on return to Zimbabwe.
- 5.3** **Case law. AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061** 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. A deportee from the United Kingdom who, having been subject to a first stage interview at the airport, is allowed to pass through the airport is likely to be the subject of some monitoring in his own 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.
- 5.4** The appellant sought and received permission to appeal this determination. On 26 September 2006, in response to comments by Mr Justice Burton in the High Court, the Home Office undertook not to enforce the return of failed asylum seekers to Zimbabwe pending the outcome of the appeal against AA. On 6 March 2007 the Court of Appeal decided that the AIT needs to look again at particular evidence from two witnesses in relation to the safety of return and remitted the case of AA back to the AIT on limited grounds. The AIT has now identified a different Zimbabwean country guidance case, 'HS', which will consider afresh the current situation in Zimbabwe as well as the issues about the return of failed asylum seekers. The Home Office therefore continues to defer the enforced return of failed asylum seekers to Zimbabwe until the AIT has determined HS.
- 5.5** In the meantime, caseworkers and caseowners should continue to consider claims on their merits and grant asylum if the applicant establishes a well-founded fear of persecution and is not excluded from protection. Consideration of Humanitarian Protection or Discretionary Leave should be carried out in accordance with normal policy.
- 5.6** Zimbabwean nationals may return voluntarily to any region of Zimbabwe at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Zimbabwe. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. The AIT determination in AA did not find voluntary returnees to be at risk when going back to Zimbabwe. Zimbabwean nationals wishing to avail themselves of this opportunity for assisted return to Zimbabwe should be put in contact with the IOM offices in London on 0800 783 2332 or www.iomlondon.org.

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