



# OPERATIONAL GUIDANCE NOTE

## ZIMBABWE

CONTENTS	
<b>1. Introduction</b>	<b>1.1 – 1.3</b>
<b>2. Country assessment</b>	<b>2.1 – 2.2</b>
<a href="#">Actors of protection</a>	2.3
<a href="#">Internal relocation</a>	2.4
<a href="#">Country guidance caselaw</a>	2.5
<b>3. Main categories of claims</b>	<b>3.1 – 3.4</b>
<a href="#">MDC supporters, human rights defenders and other perceived opponents of ZANU-PF</a>	3.6
<a href="#">Teachers</a>	3.7
<a href="#">Gay men, lesbians, bisexual and transgender persons</a>	3.8
<a href="#">General humanitarian situation</a>	3.9
<a href="#">Prison Conditions</a>	3.10
<b>4. Discretionary Leave</b>	<b>4.1 – 4.2</b>
<a href="#">Minors claiming in their own right</a>	4.3
<a href="#">Medical treatment</a>	4.4
<b>5. Returns</b>	<b>5.1 – 5.3</b>

## 1. Introduction

- 1.1** This document provides UK Border Agency caseowners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Zimbabwe, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Caseowners must not base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseowners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the UK Border Agency website at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. Where a claim for asylum or Humanitarian Protection is being considered, case owners must consider any elements of Article 8 of the ECHR in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules. Where a person is being considered for deportation, case owners must consider any elements of Article 8 of the ECHR in line with the provisions of Part 13 of the Immigration Rules. Case owners must also consider if the applicant qualifies for Discretionary Leave in accordance with the published policy.
- 1.4** If, following consideration, a claim is to be refused, case owners 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.

## **2. Country assessment**

- 2.1** Caseowners should refer the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

- 2.2** An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://fcohrdreport.readandcomment.com/read-and-download-the-report/>

## **2.3 Actors of protection**

- 2.3.1** Case owners must refer to section 7 of the Asylum Instruction - [Considering the asylum claim and assessing credibility](#). To qualify for asylum, an individual must have a fear of persecution for a Convention reason and be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to seek protection in their country of origin or habitual residence. Case owners must take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

## **Overview**

- 2.3.2** In its 2012 World Report, Human Rights Watch stated that “State security agents, police, and ZANU-PF supporters have been implicated in beatings, arbitrary arrests, and harassment of members of the MDC, cabinet ministers, human rights activists,

and journalists, deepening the pervasive climate of fear in the country”.<sup>1</sup> In September 2012, Amnesty International reported that “There have been consistent reports of human rights violations by security forces against perceived political opponents and members of the public. Similarly the police have been accused of handing criminals over to Chipangano gang members who have subjected them to torture before they were taken back into custody and charged”.<sup>2</sup> In January 2013, Human Rights Watch noted the need for legal and institutional reforms ahead of Zimbabwe’s elections as the Government has “failed to reform key state institutions responsible for the administration of justice, which remain highly politicized and extremely partisan towards ZANU-PF”.<sup>3</sup> The Institute for Security Studies also noted that “Zimbabwe’s security sector is seen as ‘both lock, and the key, to the success or failure of the GNU’. The ‘securocrats’ are perceived to hold de facto veto power over the transition regardless of the production of a new democratic constitution and conduct of credible elections. The politicisation of the securocrats and the militarisation of politics remain a major challenge”.<sup>4</sup>

## Police

- 2.3.3** The police force is an armed, quasi-military organisation modelled more along the lines of a military gendarmerie than a civilian police force. It has approximately 20,000 full-time members and is deployed throughout the country. Its presence is most evident in cities and towns, but thinly spread in rural areas.<sup>5</sup>
- 2.3.4** The US State Department report for 2011 reported that the police were ill equipped, underpaid, and poorly trained, particularly at the lower levels. Although prison authorities had sufficient fuel, police did not, and the lack of fuel and other resources further reduced police effectiveness. Poor working conditions, low salaries, and high rates of dismissal in the Zimbabwe Republic Police (ZRP) resulted in corruption and high turnover. De facto assurances of impunity and a culture of disregard for human rights contributed to police use of excessive force in apprehending and detaining criminal suspects. ZRP leadership loyal to ZANU-PF stifled, derailed, or did not authorize the efforts of those police who sought to investigate political violence. For example, police were reluctant or refused to record reports of politically motivated violence or property destruction perpetrated by ZANU-PF-aligned individuals against political opponents.<sup>6</sup>
- 2.3.5** The US State Department also reported that corruption occurred at every level of the police force but took different forms depending on position, rank, or location. At the lower levels, corrupt officers extorted nominal to exorbitant fines from the public for varying claimed offenses to augment their low salaries. Armed police routinely erected roadblocks, claiming to be looking for criminals, smuggled goods, and food. In many cases police arbitrarily seized goods for their own consumption or extracted

<sup>1</sup> Human Rights Watch, World Report 2012, <http://www.hrw.org/world-report-2012/world-report-2012-zimbabwe-0>

<sup>2</sup> Amnesty International, Zimbabwe: Members of the public at risk as police crack down on gang suspects, 14 September 2012 <http://www.amnesty.org/en/for-media/press-releases/zimbabwe-members-public-risk-police-crack-down-gang-suspects-2012-09-14>

<sup>3</sup> Human Rights Watch, Race Against Time: The Need for Legal and Institutional Reforms Ahead of Zimbabwe’s Elections, 10 January 2013, Summary <http://www.hrw.org/reports/2013/01/10/race-against-time>

<sup>4</sup> Institute for Security Studies, Peace and Security Council Report No 41, 3 December 2012 [http://www.issafrica.org/uploads/Dec\\_12ENG.pdf](http://www.issafrica.org/uploads/Dec_12ENG.pdf)

<sup>5</sup> Jane’s Sentinel Security Assessment: Southern Africa Security and Foreign Forces, updated 12 October 2011. [www.janes.com](http://www.janes.com) (subscription source)

<sup>6</sup> US State Department, Country Reports on Human Rights Practices for 2011: Zimbabwe 24 May 2012, section 1d [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

bribes from commuters.<sup>7</sup> However, numerous reports of corrupt police officials being investigated and arrested for criminal activity appeared throughout the year.<sup>8</sup>

**2.3.6** The continued politicisation of the ZRP's upper echelons, mostly composed of war veterans loyal to ZANU-PF, made it difficult for lower ranking police to remain politically impartial or to show support for non-ZANU-PF parties. Police and army personnel suspected of being sympathetic to the MDC or other political parties were threatened with demotion, suspension, incarceration, or transfer to remote areas. Most low-ranking personnel lived in ZRP-provided housing, which allowed the monitoring of their votes during election years in certain districts.<sup>9</sup> The International Crisis Group reported in November 2011 that "the police appear unwilling or unable to provide effective deterrence or remedy" in relation to the issues of violence and repression.<sup>10</sup>

## Central Intelligence Organisation (CIO)

**2.3.7** The Central Intelligence Organisation (CIO), under the Ministry of State for National Security, is responsible for internal and external security.<sup>11</sup> The CIO reports directly to the office of the president.<sup>12</sup> Experts say the most powerful arm of Zimbabwe's security apparatus is the CIO and it is deeply feared by Zimbabweans inside and outside the country. There is no public record of the CIO's size, but it is thought to have thousands of operatives. Many Zimbabweans think the organisation has a network of informers that extends into the Zimbabwean diaspora. Organisations such as Human Rights Watch have documented systematic acts of violence and intimidation committed by the CIO and the police against opposition members or individuals suspected of allegiance to the opposition.<sup>13</sup>

## Military

**2.3.8** The Zimbabwe National Army and Air Force, under the Ministry of Defence, are responsible for external security, but the government sometimes used them for domestic operations.<sup>14</sup>

**2.3.9** The military has been unambiguous in its support of ZANU-PF. Zimbabwe Defence Forces Chief of Staff, Major-General Martin Chedondo, reportedly told about 3,000 soldiers of 2 Brigade during a training exercise in 2012 that they should accept no political party but ZANU-PF. The formation of the unity government saw ZANU-PF retain control of the security apparatus, including the army, air force, police and the Central Intelligence Organisation (CIO). The unity government agreement included

<sup>7</sup> US State Department, Country Report on Human Rights Practices for 2011: Zimbabwe 24 May 2012, section 4 [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>8</sup> US State Department, Country Report on Human Rights Practices for 2011: Zimbabwe 24 May 2012, section 1d [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>9</sup> US State Department, Country Report on Human Rights Practices for 2011: Zimbabwe 24 May 2012, section 1d [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>10</sup> International Crisis Group, Resistance and Denial: Zimbabwe's Stalled Reform Agenda, 16 Nov 2011 <http://www.crisisgroup.org/~media/Files/africa/southern-africa/zimbabwe/B82%20Resistance%20and%20Denial%20-%20Zimbabwes%20Stalled%20Reform%20Agenda.pdf>

<sup>11</sup> US State Department, Country Report on Human Rights Practices for 2011: Zimbabwe 24 May 2012, section 1d [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>12</sup> IRIN, ZIMBABWE: Security sector reform key to peaceful elections 1 October 2012 <http://www.irinnews.org/Report/96421/ZIMBABWE-Security-sector-reform-key-to-peaceful-elections>

<sup>13</sup> Washington Post. Zimbabwe's security sector. 28 March 2008. <http://www.washingtonpost.com/wp-dyn/content/article/2008/03/28/AR2008032802339.html>

<sup>14</sup> US State Department, Country Report on Human Rights Practices for 2011: Zimbabwe 24 May 2012, section 1d [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

proposals for security sector reform, but little headway has been made. According to the Global Political Agreement, “state organs and institutions do not belong to any political party and should be impartial in the discharge of their duties... there [shall] be inclusion in the training curriculum of members of the uniformed forces of the subjects on human rights, international humanitarian law and statute law so that there is greater understanding and full appreciation of their roles and duties in a multi-party democratic system.”<sup>15</sup>

**2.3.10** Lindiwe Zulu, international relations advisor to South Africa’s President Jacob Zuma and member of the SADC team facilitating the implementation of the unity government agreement, has called for “security sector realignment... It must be implemented before elections,” she said. But Zimbabwe’s security minister Sydney Sekeramayi has rejected out of hand any reforms of the security apparatus, telling local media “[Security sector reform] is a project by the country’s enemies who want to weaken the state... This is a mere project to destabilise the country and it is not acceptable.” Douglas Mwonzora, a spokesman for Tsvangirai’s MDC told IRIN, “The security sector reforms that we seek are aimed at the reformation of the security services that will eliminate bias, unprofessionalism and partisanship. It would entail reorientation and re-education on their constitutional obligations.” The reforms would ensure the military is not used as “a private militia” by ZANU-PF, he said.<sup>16</sup>

## War Veterans

**2.3.11** The Zimbabwe National Liberation War Veterans' Association (ZNLWA) emerged as a major pro-government pressure group in the 1990s, leading the occupation of white-owned farms in early 2000 and some forming pro-ZANU-PF militias to attack MDC supporters during the 2000 election campaign. War veterans have been able to act with impunity as the police have refused to restrain their activities. Indeed, the police, Zimbabwe Defence Force (ZDF) and Central Intelligence Organisation (CIO) are all run by veterans of the liberation war and genuine war veterans are technically stipended reserve force members of the ZDF, numbering about 55,000.<sup>17</sup> Jane’s Sentinel Security Assessments have also noted that: “Some 55,000 registered war veterans from the liberation war have also been included in the reserve force [of the army] and receive a gratuity (increasingly sporadically) from the Ministry of Defence for being technically available for duty.”<sup>18</sup>

## ZANU-PF youth militia/gangs

**2.3.12** The National Youth Service programme was established in 2001 and is ostensibly a post-school ideological and vocational training scheme for those who are seeking to enter further education or government service. While initial proposals were for a compulsory programme for all Zimbabwean youth, experience over the first four years demonstrated capacity at five residential camps for just 6,000 youths per year, or about two per cent of each age group. Critics of the scheme say that the training camps are effectively ZANU-PF indoctrination facilities aiming to co-opt a

<sup>15</sup> IRIN. ZIMBABWE: Security sector reform key to peaceful elections 1 October 2012

<http://www.irinnews.org/Report/96421/ZIMBABWE-Security-sector-reform-key-to-peaceful-elections>

<sup>16</sup> IRIN.. ZIMBABWE: Security sector reform key to peaceful elections 1 October 2012

<http://www.irinnews.org/Report/96421/ZIMBABWE-Security-sector-reform-key-to-peaceful-elections>

<sup>17</sup> Jane’s Sentinel Security Assessment: Southern Africa Internal Affairs. Executive Summary 7 January 2008. [www.janes.com](http://www.janes.com) (subscription source)

<sup>18</sup> Jane’s Sentinel Security Assessment: Southern Africa Armed Forces, updated 15 March 2012 [www.janes.com](http://www.janes.com) (subscription source)



new generation of supporters for the ruling party and its third phase of the 'liberation struggle', replacing Zimbabwe African National Liberation Army (ZANLA) veterans lost to age and illness. It has previously been alleged that cadres, nicknamed Green Bombers or ZANU-PF Youth Militia, are trained in intimidation techniques. Training is certainly paramilitary in style, with uniforms and weapons handling.<sup>19</sup>

**2.3.13** Freedom House noted in Freedom in the World 2010 that: "ZANU-PF militias operate as de facto enforcers of government policy and have committed assault, torture, rape, extralegal evictions, and extralegal executions without fear of punishment. In March 2011, HRW accused the government of willfully failing to investigate and prosecute political violence perpetrated during the 2008 elections, and alleged that this failure was fueling further acts of violence. In September, in a rare exception to the prevailing impunity, a court sentenced ZANU-PF militia commander Gilbert Mavhenyengwa to 20 years in prison for the 2008 rape of the wife of an MDC supporter."<sup>20</sup>

**2.3.14** In March 2012 it was reported that a total of nearly 6,000 youths from ZANU-PF's militia squads, who had been paid for unspecified jobs since 2008, were recently removed from the government payroll following a government ordered audit which showed many of the youths had been hired "irregularly" and had no qualifications. It was said that the youths were listed as "ward officers" but the Public Service Minister is reported as saying that she did not know what they actually did. The Minister of Youth and Indigenisation told a parliamentary portfolio committee in 2011 that the "ward officers" coordinate government activities in wards. But Zimbabweans know the youth militia as the violent "green bombers" responsible for assaulting MDC supporters. Nearly 7,000 were recruited by the Mugabe regime just weeks before the 2008 presidential election runoff. The youths were implicated in the violent campaign against the MDC and any perceived enemies of ZANU-PF, committing brutal acts of assault, torture and murder.<sup>21</sup>

**2.3.15** SW Radio Africa reported in March 2012 that the violent gang of ZANU-PF youths known as Chipangano had reportedly taken over many council properties in Harare and were now collecting huge sums of money illegally from vendors and minibus drivers. It was said that the gang started a few years ago as young hired guns that did the dirty work for politicians in Mbare during elections. But with impunity and support from police and top party officials, they ventured into illegal businesses like collecting fees from kombi drivers and market vendors in Harare.<sup>22</sup> In April 2012 it was reported that Chipangano has terrorised residents of Mbare suburb in Harare and has reportedly started campaigning for the party, forcing innocent civilians to reveal their personal details and ordering them to vote for Robert Mugabe in the next election.<sup>23</sup> However in October 2012 it was being reported that ZANU-PF had disbanded Chipangano although some members were said to still be continuing to extort money from kombi crews.<sup>24</sup> It should be noted however that after weighing

<sup>19</sup> Jane's Sentinel Security Assessment: Southern Africa Security and Foreign Forces, updated 12 October 2011 [www.janes.com](http://www.janes.com) (subscription source), updated 15 March 2012

<sup>20</sup> Freedom House. Freedom in the World 2012. <http://www.freedomhouse.org/report/freedom-world/2012/zimbabwe>

<sup>21</sup> SW Radio Africa. ZANU PF youth militia removed from government payroll 26 March 2012 <http://www.swradioafrica.com/2012/03/26/zanu-pf-youth-militia-removed-from-government-payroll/>

<sup>22</sup> SW Radio Africa. ZPF's violent Chipangano gang running "parallel Council" in Harare 28 March 2012 <http://www.swradioafrica.com/2012/03/28/zpfs-violent-chipangano-gang-running-parallel-council-in-harare/>

<sup>23</sup> SW Radio Africa. Violent Chipangano Gang Campaigning for Zanu-PF 13 April 2012 <http://www.swradioafrica.com/2012/04/13/violent-chipangano-gang-campaigning-for-zanu-pf/>

<sup>24</sup> The Zimbabwean. We have disbanded Chipangano: Midzi. 10 October 2012. <http://www.thezimbabwean.co.uk/news/zimbabwe/61436/we-have-disbanded-chipangano-midzi.html>

the totality of the available evidence the Upper Tribunal, in the country guidance case of [CM](#) (see caselaw section below) concluded that there is not enough evidence to show that Chipangano is controlled by ZANU-PF; that there is scant evidence that Chipangano has any significant range or influence in low or medium density suburbs of Harare outside of Mbare; that their forays into the centre of the city are infrequent; and that the available evidence has shown that Chipangano's motivations have now evolved into the economic rather than political sphere. (para 198 of determination).

## Judiciary

**2.3.16** The constitution provides for an independent judiciary, but the judiciary is reported to lack independence and is under intense pressure to conform to government policies. The 2011 US State Department report said that the government repeatedly refused to abide by judicial decisions and routinely delayed payment of court costs or judgments awarded against it in civil cases. Judicial corruption was widespread.<sup>25</sup>

**2.3.17** Magistrates heard the vast majority of cases. In June 2010 the Judicial Services Act (JSA) went into effect. The JSA transfers authority over judicial magistrates and their support staffs from the Public Service Commission to the Judicial Services Commission (JSC), provides that the JSC determine remuneration and other conditions of service for magistrates, and provides for greater independence of magistrates. Legal experts claimed that defendants in politically sensitive cases were more likely to receive a fair hearing in magistrates' courts than in higher courts, where justices were more likely to make political decisions. In practice, however, the JSA's impact was limited during the year, particularly in rural areas. ZANU-PF sympathisers continued to successfully use threats and intimidation to force magistrates, particularly rural magistrates, to rule in the government's favour. Some urban-based junior magistrates, however, demonstrated a greater degree of independence and granted MDC and civil society activists bail against the government's wishes. Other judicial officers not covered by the JSA, such as prosecutors and private attorneys, also faced political pressure in politically charged cases, including harassment and intimidation.<sup>26</sup>

## Human Rights Commission

**2.3.18** On 15 October 2012 the government finally gazetted the Zimbabwe Human Rights Commission Bill that will give the nine member commission powers to investigate rights violations in the country. However, and more controversially, the Bill prevents the commissioners' from dealing with any political violence before 2008. A clause in the Bill allows Human Rights Commissioners only to look at rights abuses after they were sworn into office on 13th February 2009. 'The passage of the Bill in parliament was delayed due to opposition from MDC-T legislators who felt it didn't address the contentious issues of killings, torture, and politically motivated violence preceding the 2008 presidential run-off election.'<sup>27</sup>

<sup>25</sup> US State Department, Country Report on Human Rights Practices for 2011: Zimbabwe 24 May 2012, section 1e [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>26</sup> US State Department, Country Report on Human Rights Practices for 2011: Zimbabwe 24 May 2012, section 1e [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>27</sup> SW Radio Africa, Zimbabwe Human Rights Commission Bill signed into law, 15 October 2012, <http://www.swradioafrica.com/2012/10/15/zimbabwe-human-rights-commission-bill-signed-into-law/>

## 2.4 Internal relocation.

- 2.4.1** Case owners must refer to the Asylum Instruction on [Internal Relocation](#) and in the case of a female applicant, the Asylum Instruction on [Gender Issues in the Asylum Claim](#), for guidance on the circumstances in which internal relocation would be a 'reasonable' option, so as to apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account. Case owners must refer to the Gender Issues in the asylum claim where this is applicable. The fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 2.4.2** Careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.
- 2.4.3** Case owners must refer to the country guidance case of [CM \(EM country guidance: disclosure\) Zimbabwe CG \[2013\] UKUT 00059\(IAC\)](#) – see caselaw section below – in which the Upper Tribunal re-stated the country guidance in [EM & others](#) with regard to the differing risks in different parts of the country and the viability of internal relocation to a part of the country where the claimant would not be at risk.
- 2.4.4** Case owners must ensure that they obtain the latest information about the situation in Zimbabwe, remembering that the question is simply whether taking all relevant material into account, internal relocation would both avoid the risk and would not be unduly harsh.

## 2.5 Caselaw

[CM \(EM country guidance: disclosure\) Zimbabwe CG \[2013\] UKUT 00059\(IAC\) \(31 January 2013\)](#). In this country guidance case the Upper Tribunal found:

- (1) There is no general duty of disclosure on the Secretary of State in asylum appeals generally or Country Guidance cases in particular. The extent of the Secretary of State's obligation is set out in [R v SSHD ex p Kerrouche No 1 \[1997\] Imm AR 610](#), as explained in [R \(ota Cindo\) v IAT \[2002\] EWHC 246 \(Admin\)](#); namely, that she must not knowingly mislead a court or tribunal by omission of material that was known or ought to have been known to her.
- (2) The Country Guidance given by the Tribunal in [EM and Others \(Returnees\) Zimbabwe CG \[2011\] UKUT 98 \(IAC\)](#) on the position in Zimbabwe as at the end of January 2011 was not vitiated in any respect by the use made of



anonymous evidence from certain sources in the Secretary of State's Fact Finding Mission report of 2010. The Tribunal was entitled to find that there had been a durable change since [RN \(Returnees\) Zimbabwe CG \[2008\] UKAIT 00083](#). The Country Guidance in [EM](#) does not require to be amended, as regards the position at that time, in the light of-

- (a) the disclosure by the Secretary of State of any of the materials subsequently disclosed in response to the orders of the Court of Appeal and related directions of the Tribunal in the current proceedings; or
  - (b) any fresh material adduced by the parties in those proceedings that might have a bearing on the position at that time.
- (3) The only change to the [EM](#) Country Guidance that it is necessary to make as regards the position as at the end of January 2011 arises from the judgments in [RT \(Zimbabwe\) \[2012\] UKSC 38](#). The [EM](#) Country Guidance is, accordingly, re-stated as follows (with the change underlined in paragraph (5) below):
- (1) As a general matter, there is significantly less politically motivated violence in Zimbabwe, compared with the situation considered by the AIT in [RN](#). In particular, the evidence does not show that, as a general matter, the return of a failed asylum seeker from the United Kingdom, having no significant MDC profile, would result in that person facing a real risk of having to demonstrate loyalty to the ZANU-PF.
  - (2) The position is, however, likely to be otherwise in the case of a person without ZANU-PF connections, returning from the United Kingdom after a significant absence to a rural area of Zimbabwe, other than Matabeleland North or Matabeleland South. Such a person may well find it difficult to avoid adverse attention, amounting to serious ill-treatment, from ZANU-PF authority figures and those they control. The adverse attention may well involve a requirement to demonstrate loyalty to ZANU-PF, with the prospect of serious harm in the event of failure. Persons who have shown themselves not to be favourably disposed to ZANU-PF are entitled to international protection, whether or not they could and would do whatever might be necessary to demonstrate such loyalty ([RT \(Zimbabwe\)](#)).
  - (3) The situation is not uniform across the relevant rural areas and there may be reasons why a particular individual, although at first sight appearing to fall within the category described in the preceding paragraph, in reality does not do so. For example, the evidence might disclose that, in the home village, ZANU-PF power structures or other means of coercion are weak or absent.
  - (4) In general, a returnee from the United Kingdom to rural Matabeleland North or Matabeleland South is highly unlikely to face significant difficulty from ZANU-PF elements, including the security forces, even if the returnee is a MDC member or supporter. A person may, however, be able to show that his or her village or area is one that, unusually, is under the sway of a ZANU-PF chief, or the like.
  - (5) A returnee to Harare will in general face no significant difficulties, if

going to a low-density or medium-density area. Whilst the socio-economic situation in high-density areas is more challenging, in general a person without ZANU-PF connections will not face significant problems there (including a “loyalty test”), unless he or she has a significant MDC profile, which might cause him or her to feature on a list of those targeted for harassment, or would otherwise engage in political activities likely to attract the adverse attention of ZANU-PF, or would be reasonably likely to engage in such activities, but for a fear of thereby coming to the adverse attention of ZANU-PF.

- (6) A returnee to Bulawayo will in general not suffer the adverse attention of ZANU-PF, including the security forces, even if he or she has a significant MDC profile.
- (7) The issue of what is a person’s home for the purposes of internal relocation is to be decided as a matter of fact and is not necessarily to be determined by reference to the place a person from Zimbabwe regards as his or her rural homeland. As a general matter, it is unlikely that a person with a well-founded fear of persecution in a major urban centre such as Harare will have a viable internal relocation alternative to a rural area in the Eastern provinces. Relocation to Matabeleland (including Bulawayo) may be negated by discrimination, where the returnee is Shona.
- (8) Internal relocation from a rural area to Harare or (subject to what we [the Tribunal] have just said) Bulawayo is, in general, more realistic; but the socio-economic circumstances in which persons are reasonably likely to find themselves will need to be considered, in order to determine whether it would be unreasonable or unduly harsh to expect them to relocate.
- (9) The economy of Zimbabwe has markedly improved since the period considered in [RN](#). The replacement of the Zimbabwean currency by the US dollar and the South African rand has ended the recent hyperinflation. The availability of food and other goods in shops has likewise improved, as has the availability of utilities in Harare. Although these improvements are not being felt by everyone, with 15% of the population still requiring food aid, there has not been any deterioration in the humanitarian situation since late 2008. Zimbabwe has a large informal economy, ranging from street traders to home-based enterprises, which (depending on the circumstances) returnees may be expected to enter.
- (10) As was the position in [RN](#), those who are or have been teachers require to have their cases determined on the basis that this fact places them in an enhanced or heightened risk category, the significance of which will need to be assessed on an individual basis.
- (11) In certain cases, persons found to be seriously lacking in credibility may properly be found as a result to have failed to show a reasonable likelihood (a) that they would not, in fact, be regarded, on return, as aligned with ZANU-PF and/or (b) that they would be returning to a socio-economic milieu in which problems with ZANU-PF will arise. This important point was identified in [RN](#) ... and remains valid.

- (4) In the course of deciding CM's appeal, the present Tribunal has made an assessment of certain general matters regarding Zimbabwe as at October 2012. As a result, the following country information may be of assistance to decision-makers and judges. It is, however, not Country Guidance within the scope of Practice Direction 12 and is based on evidence which neither party claimed to be comprehensive:
- (a) The picture presented by the fresh evidence as to the general position of politically motivated violence in Zimbabwe as at October 2012 does not differ in any material respect from the Country Guidance in [EM](#).
  - (b) Elections are due to be held in 2013; but it is unclear when.
  - (c) In the light of the evidence regarding the activities of Chipangano, judicial-fact finders may need to pay particular regard to whether a person, who is reasonably likely to go to Mbare or a neighbouring high density area of Harare, will come to the adverse attention of that group; in particular, if he or she is reasonably likely to have to find employment of a kind that Chipangano seeks to control or otherwise exploit for economic, rather than political, reasons.
  - (d) The fresh evidence regarding the position at the point of return does not indicate any increase in risk since the Country Guidance was given in [HS \(returning asylum seekers\) Zimbabwe CG \[2007\] UKAIT 00094](#). On the contrary, the available evidence as to the treatment of those who have been returned to Harare Airport since 2007 and the absence of any reliable evidence of risk there means that there is no justification for extending the scope of who might be regarded by the CIO as an MDC activist.

**Note:** Case owners should note that the above determination may be subject to appeal, however as stated by the Court of Appeal in [SG\(Iraq\) \[2012\] EWCA Civ 940](#), country guidance determinations of the Upper Tribunal remain authoritative unless and until they are set aside on appeal or replaced by a subsequent country guidance determination. Case owners must therefore follow the above guidance pending the outcome of any appeal. A claimant affected by, but not party to, a country guidance determination which is under appeal to the Court of Appeal is not entitled to an automatic stay of removal pending the outcome of the appeal. It is in the court's discretion to grant a stay, but the court should not stay removal pending the decision of the Court of Appeal unless the claimant had adduced a clear and coherent body of evidence that the findings of the tribunal were in error.

**Supreme Court. RT (Zimbabwe) & others v Secretary of State for the Home Department [2012] UKSC 38 (25 July 2012)** The Supreme Court ruled that the rationale of the decision in [HJ \(Iran\)](#) applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

The judgment is based on the situation in Zimbabwe as disclosed by [RN \(Returnees\) Zimbabwe CG \[2008\] UKAIT 00083](#) which was at that time exceptional and the country guidance held that generally those who were unable to demonstrate their loyalty to the regime were at risk of persecution. Thus, those with no political beliefs could not be required to profess their loyalty to the regime to avoid persecution and were entitled to refugee status.

As the appellate court, the Supreme Court was concerned only with the question of whether the Tribunal determinations under appeal had correctly applied the law and country guidance at the time that the determinations were promulgated. The Supreme Court was therefore required to consider [RN](#) because it was the country guidance case in force at the time that the determinations under appeal were promulgated by the Tribunal. The Supreme Court heard no evidence as to what the current country situation in Zimbabwe was as at the date of hearing. Consequently, the statement of Lord Dyson that the cases under consideration by the Supreme Court fell to be decided in light of the “latest country guidance for Zimbabwe” was no more than a reference to the requirement mentioned above and, following the quashing of [EM and Others](#), a statement of fact as to the then most recently promulgated country guidance case. The case should not be read as authority for the proposition that [RN](#) reflects the current country situation in Zimbabwe.

**[LZ \(homosexuals\) Zimbabwe CG \[2011\] UKUT 487 \(IAC\) \(26 January 2012\)](#)**

The Tribunal found:

- (i) There has been much public expression of extreme homophobia at the highest levels in recent years.
- (ii) Male homosexual behaviour is criminalised, but prosecutions are very rare. Lesbianism is not criminalised.
- (iii) Some homosexuals suffer discrimination, harassment and blackmail from the general public and the police. Attempted extortion, false complaints and unjustified detentions are not so prevalent as to pose a general risk. There are no records of any murders with a homophobic element. “Corrective rape” is rare, and does not represent a general risk.
- (iv) There is a “gay scene,” within limitations.
- (v) Lesbians, living on their own or together, may face greater difficulties than gay men.
- (vi) GALZ (Gays and Lesbians of Zimbabwe) takes a realistic view: Zimbabwe is “not the worst place in the world to be gay or lesbian even though the President, government officials and church leaders have whipped up a climate of hysterical homophobia.”
- (vii) Applying [HJ & HT \[2010\] UKSC 31, \[2010\] Imm AR 729](#), there is no general risk to gays or lesbians. Personal circumstances place some gays and lesbians at risk. Although not decisive on its own, being openly gay may increase risk. A positive HIV/AIDS diagnosis may be a risk factor. Connections with the elite do not increase risk.
- (viii) The police and other state agents do not provide protection.
- (ix) A homosexual at risk in his or her community can move elsewhere, either in the same city or to another part of the country. He or she might choose to relocate to where there is greater tolerance, such as Bulawayo, but the choice of a new area is not restricted. The option is excluded only if personal circumstances present risk throughout the country.

**EM and Others (Returnees) Zimbabwe CG [2011] UKUT 98(IAC) (14 March 2011).**

An appeal against the decision in this country guidance case was allowed by consent in the Court of Appeal on 13 June 2012 and the case was remitted for further hearing to the Upper Tribunal.

The Upper Tribunal handed down its further determination on 31 January 2013 in the case of [CM \(EM country guidance; disclosure\) Zimbabwe CG \[2013\] UKUT 00059\(IAC\)](#) (see above) and re-stated the country guidance in [EM](#) with an amendment to account of [RT \(Zimbabwe\) \[2012\] UKSC 38](#)

**RS and Others (Zimbabwe – AIDS) Zimbabwe CG [2010] UKUT 363 (IAC) (14 October 2010)**

The Tribunal considered the availability of treatment for HIV/AIDS and found that:

- (i) A significant number of people are receiving treatment for HIV/AIDS in Zimbabwe, and hence a Zimbabwean returnee will not succeed in a claim for international protection on the basis of a diagnosis of HIV/AIDS unless their case crosses the threshold identified in [N v United Kingdom](#).
- (ii) Though there is some evidence of discrimination in access to AIDS medication and food in Zimbabwe, it is not such as to show a real risk of such discrimination.
- (iii) The return to Zimbabwe of a Zimbabwean diagnosed with HIV/AIDS does not place the United Kingdom in breach of its obligations under the Disability Discrimination Act.

**RN (Returnees) Zimbabwe CG [2008] UKAIT 00083 (19 November 2008)**

1. Those at risk on return to Zimbabwe on account of imputed political opinion are no longer restricted to those who are perceived to be members or supporters of the MDC but include anyone who is unable to demonstrate support for or loyalty to the regime or ZANU-PF. To that extent the country guidance in [HS](#) is no longer to be followed. But a bare assertion that such is the case will not suffice, especially in the case of an appellant who has been found not credible in his account of experiences in Zimbabwe.
2. There is clear evidence that teachers in Zimbabwe have, once again, become targets for persecution. As many teachers have fled to avoid retribution, the fact of being a teacher or having been a teacher in the past again is capable of raising an enhanced risk, whether or not a person was a polling officer, because when encountered it will not be known what a particular teacher did or did not do in another area.
3. It is the CIO, and not the undisciplined militias, that remain responsible for monitoring returns to Harare airport. In respect of those returning to the airport there is no evidence that the state authorities have abandoned any attempt to distinguish between those actively involved in support of the MDC or otherwise of adverse interest and those who simply have not demonstrated positive support for or loyalty to ZANU-PF. There is no reason to depart from the assessment made in [HS](#) of those who would be identified at the airport of being of sufficient interest to merit further interrogation and so to be at real risk of harm



such as to infringe either Convention.

4. Although a power sharing agreement has been signed between Mr Mugabe on behalf of ZANU-PF and Mr Tsvangirai on behalf of the MDC, the evidence presented does not demonstrate that the agreement as such has removed the real risk of serious harm we have identified for anyone now returned to Zimbabwe who is not able to demonstrate allegiance to or association with the Zimbabwean regime.
5. General country conditions and living conditions for many Zimbabwean nationals have continued to deteriorate since the summer of 2007. Some may be subjected to a complete deprivation of the basic necessities of life, for example access to food aid, shelter and safe water, the cumulative effect of which is capable of enabling a claim to succeed under article 3 of the ECHR. But that will not always be the case and each claim must be determined upon its own facts.

**[HS \(returning asylum seekers\) Zimbabwe CG \[2007\] UKAIT 00094\(29 November 2007\)](#)**

1. Failed asylum seekers do not, as such, face a risk of being subjected, on return to Zimbabwe, to persecution or serious ill-treatment. That will be the case whether the return is voluntary or involuntary, escorted or not.
2. The findings in respect of risk categories in [SM and Others \(MDC – internal flight- risk categories\) CG \[2005\] UKIAT 00100](#), as adopted, affirmed and supplemented in [AA \(Risk for involuntary returnees\) Zimbabwe CG \[2006\] UKAIT 00061](#) are adopted and reaffirmed. The Tribunal identifies one further risk category, being those seen to be active in association with human rights or civil society organisations where evidence suggests that the particular organisation has been identified by the authorities as a critic or opponent of the Zimbabwean regime.
3. The process of screening returning passengers is an intelligence led process and the CIO will generally have identified from the passenger manifest in advance, based upon such intelligence, those passengers in whom there is any possible interest. The fact of having made an asylum claim abroad is not something that in itself will give rise to adverse interest on return.
4. The Tribunal adopts and reaffirms the findings in AA in respect of the general absence of real risk associated with any monitoring of returnees that might take place after such persons have passed through the airport and returned to their home area or re-established themselves in a new area.
5. Country conditions have continued to deteriorate but are not generally such as to bring about an infringement of Convention rights for returnees or to require the grant of humanitarian protection.

**[AA \(Risk for involuntary returnees\) Zimbabwe CG \[2006\] UKAIT 00061 \(1 August 2006\)](#)**

1. 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.
2. [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.

3. 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.
4. 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.

**SM, TM, MH (MDC - Internal flight - Risk categories) Zimbabwe CG [2005] UKIAT 00100 (11 May 2005)**

A summary of the country guidance given in this case is set out in Paragraph 51 of the determination as follows:

- (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 [of the determination] 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 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.
- (j) This determination is to be treated as updating and superseding all previous country guidance cases most of which were decided in 2002. The following cases are therefore no longer to be regarded as providing country guidance: [LS \(Persecution - CIO\) Zimbabwe \[2002\] UKIAT 03342](#), [LM \(MDC\) Zimbabwe \[2002\] UKIAT 03916](#), [BN \(MDC\) Zimbabwe \[2002\] UKIAT 05518](#), [BS \(Liberty Party - CIO airport\) Zimbabwe \[2002\] UKIAT 06461](#), [AB \(Persecution - CIO\) Zimbabwe \[2002\] UKIAT 03598](#) and [FN \(Risk -relocation -MDC\) \[2003\] UKIAT 00163](#). The Tribunal will now turn to the facts in the three individual appeals.

### **3. Main categories of claims**

- 3.1** This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Zimbabwe. 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. 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.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant 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 the Court of Appeal's judgment 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 Instruction '[Considering the asylum claim and assessing credibility](#)').

- 3.3** For any asylum cases which involve children either as dependents or as the main applicants, case owners must have due regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. The UK Border Agency instruction '[Every Child Matters: Change for Children](#)' sets out the key principles to take into account in all Agency activities.
- 3.4** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant does not qualify for asylum, or Humanitarian Protection, consideration must be given to any claim as to whether he/she qualifies for leave to remain on the basis of their family or private life. Case owners must also consider if the applicant qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

#### Consideration of Articles 15(a) and (b) of the Directive/Articles 2 and 3 ECHR

- 3.4.1** . An assessment of protection needs under Article 15(c) of the Directive should only be required if an applicant does not qualify for refugee protection, and is ineligible for subsidiary protection under Articles 15(a) and (b) of the Directive (which broadly reflect Articles 2 and 3 of the ECHR). Case owners are reminded that an applicant who fears a return to a situation of generalised violence may be entitled to a grant of asylum where a connection is made to a Refugee Convention reason or to a grant of Humanitarian Protection because the Article 3 threshold has been met.

#### Other severe humanitarian conditions and general levels of violence

- 3.4.2** There may come a point at which the general conditions in the country – for example, absence of water, food or basic shelter – are unacceptable to the point that return in itself could, in extreme cases, constitute inhuman and degrading treatment. Decision makers need to consider how conditions in the country and locality of return, as evidenced in the available country of origin information, would impact upon the individual if they were returned. Factors to be taken into account would include age, gender, health, effects on children, other family circumstances, and available support structures. It should be noted that if the State is withholding these resources it could constitute persecution for a Convention reason and a breach of Article 3 of the ECHR.
- 3.4.3** As a result of the [Sufi & Elmi v UK](#) judgment in the European Court of Human Rights (ECtHR), where a humanitarian crisis is predominantly due to the direct and indirect actions of the parties to a conflict, regard should be had to an applicant's ability to provide for his or her most basic needs, such as food, hygiene and shelter and his or her vulnerability to ill-treatment. Applicants meeting either of these tests would qualify for Humanitarian Protection.

### **3.5 Credibility**

- 3.5.1** This guidance is not designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see Section 4 – Making the Decision in the Asylum Instruction [Considering the asylum claim and assessing credibility](#). Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched

to a previous visa application, details should already be in the UK Border Agency file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

### **3.6 MDC supporters, human rights defenders and other perceived opponents of ZANU-PF**

**3.6.1** Applicants may claim asylum based on a fear of violence at the hands of state agents, war veterans or other supporters of ZANU-PF, because of their involvement with the Movement for Democratic Change (MDC) or the Zimbabwe African People's Union (ZAPU), or their involvement with human rights or humanitarian organisations; or because they are otherwise perceived to be opposed to ZANU-PF.

**3.6.2 Treatment.** President Mugabe and ZANU-PF's monopoly on power was not seriously challenged until the formation of the Movement for Democratic Change (MDC) in 1999. The MDC split in 2005 - the larger faction, MDC-T, led by Prime Minister Morgan Tsvangirai and the smaller, MDC-M, led by Deputy Prime Minister Prof Arthur Mutambara. Mutambara was replaced as leader by his party's Secretary-General, Welshman Ncube, in January 2011. In March 2008, for the first time since Independence, ZANU-PF lost its Parliamentary majority and Mugabe lost in the first round of Presidential elections to Tsvangirai (by 47.9% to 43.2%). However, Tsvangirai did not pass the 50% threshold required for outright victory. The run up to the second round of voting held in June 2008 was marred by widespread and orchestrated violence against MDC supporters, leading Tsvangirai to withdraw and leaving Mugabe to stand unopposed. In Parliament, MDC-T became the largest party in the House of Assembly, winning 100 of the 210 seats to ZANU-PF's 99. In the Senate (Upper House), ZANU-PF hold a majority. Given the parliamentary stalemate and the disputed presidential election, the SADC mandated Thabo Mbeki, the then President of South Africa, to broker a power-sharing agreement - the Global Political Agreement (GPA) - between ZANU-PF and the two MDC parties. The GPA was signed in September 2008 and created a coalition government - the Inclusive Government. Tsvangirai was sworn in as Prime Minister - a newly created post - in February 2009, with Mutambara as one of his Deputies and an expanded portfolio of Ministerial positions divided between the parties.<sup>28</sup>

**3.6.3** Freedom House's 2012 'Countries at the Crossroads' report notes that there have been some clear achievements in the Inclusive Government. The high levels of political violence associated with the contested and controversial 2008 presidential and parliamentary elections have subsided. The Zimbabwean parliament contains several parties that actively vie for power and policy influence. Political reform has begun to open up the political space to media and civil society. The abandonment of the Zimbabwean dollar for the American dollar has helped to stabilise the economy and end hyperinflation. After years of severe economic contraction, the economy grew about 6% in 2010. Investment, mostly from China, has grown significantly. The development of the Marange diamond mines threw an economic lifeline to the country. Despite these generally positive developments, the United States and the European Union have maintained sanctions due to the actions of ZANU-PF in earlier elections and as a means of continued leverage against the government.

<sup>28</sup> FCO Country Profile; Zimbabwe April 2012 <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/sub-saharan-africa/zimbabwe?profile=all>



Zimbabwe remains suspended from the International Monetary Fund due to its debt arrears. Signs of trouble in the agreement are also readily apparent. Mugabe has made no secret of his aversion to the unity government. He has tried to limit the influence of the MDC through political appointments and the assignment of ministerial responsibilities. These actions have been strenuously opposed by the MDC. Within the ZANU-PF fissures are emerging as factions and individuals jockey for positions in a post-Mugabe future. Mugabe now aged 88 years old and reportedly in ill health, has made a number of visits abroad for medical treatment.<sup>29</sup>

- 3.6.4** The Inclusive Government is a transitional arrangement. Under the GPA, a cross-party parliamentary committee (COPAC) was established to organise public consultations with a view to drafting a new Constitution that would reflect the wishes of the majority of Zimbabweans and take into account the views of civil society. The process on constitutional reform has been very much delayed by political wrangling and logistical concerns but public outreach eventually started in June 2010. Drafting of the new Constitution began in December 2011. No date has been set yet for elections, which are scheduled to be held after a referendum on the new constitution.<sup>30</sup> Constitutional Outreach meetings were marked by increasing violence and intimidation, mainly by ZANU-PF supporters and war veterans allied to ZANU-PF<sup>31</sup> and some public meetings being abandoned in the capital, Harare, and Mutare because of violence blamed on ZANU-PF youths.<sup>32</sup>
- 3.6.5** The Second All Stakeholders' Conference regarding a new constitution was held on 22-23 October 2012. It was reportedly held in a generally peaceful environment that was free from the violence which characterised the First All Stakeholders Conference held in 2009 in which some delegates and observers were assaulted resulting in a premature adjournment of proceedings. However, incidences were still recorded where some delegates resorted to intimidation, harassment, heckling and issuing verbal threats against other delegates as they squabbled during the thematic breakaway sessions and for expressing dissenting views.<sup>33</sup>
- 3.6.6** The Africa Report stated on 24 October 2012 that the Second All Stakeholders' Conference ended in a stalemate with the three governing political parties sticking to their hard-line stances on contentious provisions with delegates failing to agree on issues ranging from presidential powers to security sector reforms and devolution of power to provinces.<sup>34</sup> ZANU-PF wanted to overhaul some provisions limiting presidential powers while strengthening those of parliament while the Movement for Democratic Change accused ZANU-PF of retaining power through vote rigging and political violence.<sup>35</sup>

<sup>29</sup> [Freedom House](http://www.freedomhouse.org/report/countries-crossroads/2012/zimbabwe). Report on civil rights, rule of law, anticorruption and transparency 2012 20 September 2012 <http://www.freedomhouse.org/report/countries-crossroads/2012/zimbabwe>

<sup>30</sup> FCO Country Profile; Zimbabwe April 2012 <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/sub-saharan-africa/zimbabwe?profile=all>

<sup>31</sup> Human Rights Watch. World Report 2011– Zimbabwe, 24 January 2011. <http://www.hrw.org/en/world-report-2011/zimbabwe>

<sup>32</sup> Economist Intelligence Unit (subscription source) Country Profile 2008 (page 10).

<sup>33</sup> The Zimbabwean, ZZZICOMP's preliminary observations on the COPAC second all stakeholders conference, 26 October 2012, <http://www.thezimbabwean.co.uk/news/zimbabwe/61803/zzzicomps-preliminary-observations-on-the.html>

<sup>34</sup> The Africa Report, Zimbabwe's constitutional review ends in stalemate and drama, 24 October 2012, <http://www.theafricareport.com/20121024501820614/southern-africa/zimbabwes-constitutional-review-ends-in-stalemate-and-drama-501820614.html>

<sup>35</sup> Reuters, Zimbabwe's Mugabe, Tsvangirai in push for new constitution, 22 October 2012, <http://www.reuters.com/article/2012/10/22/us-zimbabwe-constitution-idUSBRE89L0T420121022>

- 3.6.7** The Herald reported on 30 October 2012 that MDC-T's secretary-general and who is also Finance Minister Tendai Biti said he would provide funds for the polls and referendum in his 2013 National Budget. The party had in the past resisted elections, arguing that there were outstanding reforms that needed attention. Minister Biti said he would cater for the elections in the 2013 budget, despite budgetary constraints. He said there was need to fund constitutional commissions such as the Zimbabwe Human Rights Commission, Zimbabwe Electoral Commission and Anti-Corruption Commission.<sup>36</sup>
- 3.6.8** In January 2013 it was reported that following further talks involving President Robert Mugabe and Prime Minister Morgan Tsvangirai that agreement had been reached over a new constitution.<sup>37</sup> Reuters subsequently reported that the draft constitution curbs presidential powers and strengthens cabinet and parliament. According to a final copy of the draft charter obtained by Reuters, the president will be required to exercise power in consultation with the cabinet, with decrees requiring its majority backing. The new document also limits the president to two, five-year terms, starting from the next election. Presidential powers to declare public emergencies and dissolve parliament have been diluted in the draft by requiring two-thirds of lawmakers to back any such measure in a vote. Parliament can also be dissolved only for "unreasonably" failing to approve the national budget. Some civil rights have also been expanded in the new document, with clauses on freedom of the press, access to information, political choice and activity as well as prisoners' rights. The draft retains the ban on same-sex marriage. It also keeps the death penalty, but only for "murder committed in aggravating circumstances" and makes exceptions for women and people aged below 21 years or those above 70 years old.<sup>38</sup>
- 3.6.9** In the same report Reuters commented that the country's two most powerful parties - Mugabe's ZANU-PF and the Movement for Democratic Change (MDC) of rival Prime Minister Morgan Tsvangirai - said they supported the draft, virtually ensuring its passage through parliament. If passed by parliament, it will be put up for a national referendum before elections required for this year.<sup>39</sup> It has been reported that the referendum on the new constitution has been tentatively set for 16 March 2013. Sources say the general elections are expected to be held between 15 and 30 July.<sup>40</sup>
- 3.6.10** In the country guidance case of [EM & others](#) (as re stated and modified by [CM](#)) the Tribunal found that as a general matter, there is significantly less politically motivated violence in Zimbabwe, compared with the situation considered by the AIT in [RN](#). Importantly the Tribunal stated that it did not consider that the evidence shows that, as a general matter, the return of a failed asylum seeker from the United Kingdom, having no significant MDC profile, would result in that person facing at present a real risk of having to demonstrate loyalty to ZANU-PF..

<sup>36</sup> The Herald, Zimbabwe: Biti to Set Poll Budget, 30 October 2012, <http://allafrica.com/stories/201210300311.html>

<sup>37</sup> BBC News. Zimbabwe: Mugabe and Tsvangirai in 'constitution deal' 17 January 2013 <http://www.bbc.co.uk/news/world-africa-21066037>

<sup>38</sup> Reuters. Zimbabwe draft constitution curbs presidential powers. 29 January 2013 <http://uk.reuters.com/article/2013/01/29/uk-zimbabwe-constitution-idUKBRE90S0Q620130129>

<sup>39</sup> Reuters. Zimbabwe draft constitution curbs presidential powers. 29 January 2013 <http://uk.reuters.com/article/2013/01/29/uk-zimbabwe-constitution-idUKBRE90S0Q620130129>

<sup>40</sup> BBC News. Zimbabwe referendum 'tentatively set for 16 March'. 13 February 2013. <http://www.bbc.co.uk/news/world-africa-21441744>

**3.6.11** The Tribunal found that there were differences in risks between urban and rural areas (and the situation is not uniform across the rural areas) as follows:

- (i) Zimbabweans without ZANU-PF connections, returning from the UK after a significant absence to live in Mashonaland West, Mashonaland central, Mashonaland East, Manicaland, Masvingo or Midlands province would face a real risk of persecution because of a continuing risk of being required to demonstrate loyalty to ZANU-PF.
- (ii) In respect of Matabeleland, the Tribunal found that as a general matter, a person returning from the UK to rural Matabeleland is highly unlikely to face any significant difficulty from ZANU-PF elements, including for this purpose members of the security forces. This would be so even if the person is a MDC member or supporter. A person may, however, be able to show that his or her village or area is one that, unusually, is under the sway of a ZANU-PF chief, or the like.
- (iii) In respect of Harare, the Tribunal found that a returnee to Harare will in general face no significant difficulties, if going to a low-density or medium-density area. Whilst the socio-economic situation in high-density areas is more challenging, in general a person without ZANU-PF connections will not face significant problems there (including a "loyalty test"), unless he or she has a significant MDC profile, which might cause him or her to feature on a list of those targeted for harassment, or would otherwise engage in political activities likely to attract the adverse attention of ZANU-PF, or would be reasonably likely to engage in such activities, but for a fear of thereby coming to the adverse attention of ZANU-PF. Furthermore, "there are difficulties faced by those living in high density areas not faced by those living in other urban areas: there is a greater prevalence of criminal disorder and reduced personal security; where it is available at all accommodation will be very crowded and a lower standard; street traders working in the informal economy may be the subject of harassment from state officials; persons perceived to be active in MDC politics may face the risk of targeted reprisals (paragraph 200) The Tribunal further concluded that "at the present time, although a person having no significant MDC profile returning to a high-density area of Harare is likely to face more difficulties than someone returning to a low-density area, he or she would not at present face a real risk of having to prove loyalty to ZANU-PF in order to avoid serious ill-treatment. Whether any individual having to live rough in shanty accommodation or other grossly overcrowded and insecure arrangements would be exposed to treatment of this level of severity would depend on an individual assessment of circumstances including age, gender, health, earning capacity, social assistance arrangements, the presence of young children and the like (paragraph 204).
- (iv) The position in Bulawayo has been found to be better than that in Harare. The Tribunal concluded that a person returning to Bulawayo at the current time from the UK is not reasonably likely to face a "loyalty test" or otherwise to suffer the adverse attention of ZANU-PF (including the security forces). That is so even if he or she has a significant MDC profile.

Levels of violence 2011-12

**3.6.12** Since the Upper Tribunal heard the case in [EM & others](#) there have been fluctuations in the level of some forms of violence in some areas of Zimbabwe. The current underlying situation however remains the same or similar to that considered by the Tribunal in [EM & others](#). It is however important that case owners ensure

that they obtain the latest information about the situation in the relevant province and take that into full account in reaching decisions on asylum claims made by Zimbabweans. Although not part of the country guidance, the Upper Tribunal commented in the case of [CM](#), that the picture presented by the fresh evidence as to the general position of Zimbabwe as at October 2012 does not differ in any material respect from the country guidance in [EM & others](#). However, it stated that in light of the evidence regarding the activities of Chipangano, judicial-fact finders may need to pay particular regard to whether a person, who is reasonably likely to go to Mbare or a neighbouring high density area of Harare, will come to the adverse attention of that group; in particular, if he or she is reasonably likely to have to find employment of a kind that Chipangano seeks to control or otherwise exploit for economic, rather than political, reasons.

**3.6.13** Human Rights Watch's World Report 2012 noted that after a period of relative calm, 2011 saw an increase in politically motivated violence across the country. Tensions flared between the ZANU-PF and the MDC as a result of the anticipated elections. The main perpetrators of the violence have been ZANU-PF supporters and youth who have attacked scores of people, mainly MDC supporters and members, in the high-density neighbourhoods of Harare, the capital, as well as outside of Harare. Over several days of violence in early February 2011, scores of MDC supporters were injured and some were hospitalized as a result of attacks by alleged ZANU-PF youth in Mbare.<sup>41</sup>

**3.6.14** Human Rights Watch World Report 2012 went on to say that the police and prosecutors have been highly partisan and biased in their investigations and prosecution of acts of violence between supporters of the two parties. Groups allied to ZANU-PF continue to beat and intimidate citizens in the high-density suburbs of Harare with impunity, while MDC activists accused of violence are disproportionately arrested.<sup>42</sup>

**3.6.15** The Human Rights Watch World Report 2013 noted that "More than four years after ZANU-PF and the MDC signed the GPA, few of the reforms outlined in the agreement have been fully implemented. Reforms needed to improve the human rights environment and to create conditions for democratic elections include: a parliament-led process to write a new constitution; police training; prioritizing a legislative agenda to enshrine the agreement's provisions; renouncing the use of violence; and ensuring that the government fully and impartially enforces domestic laws in bringing all perpetrators of politically motivated violence to justice. The GPA also guarantees free political activity whereby all political parties are able to propagate their views and canvass for support, free of harassment and intimidation, and calls for respect for the rule of law. It also commits the unity government to ensure the full implementation and realization of the rights to freedom of association and assembly, and the promotion of freedom of expression and communication." ... "While legislation to establish an independent and credible human rights commission and electoral commission has been passed, there are significant concerns with the two commissions. The law establishing the human rights commission states that it can only investigate alleged human rights abuses since the formation of the power-sharing government in February 2009. This prevents the commission from investigating other serious crimes, including election-related

<sup>41</sup> Human Rights Watch. World Report 2012: Zimbabwe. Political Violence. <http://www.hrw.org/world-report-2012/world-report-2012-zimbabwe-0>

<sup>42</sup> Human Rights Watch. World Report 2012: Zimbabwe. Political Violence. <http://www.hrw.org/world-report-2012/world-report-2012-zimbabwe-0>



violence in 2002, 2005 and 2008; the massacre of an estimated 20,000 people in Matabeleland North and South in the 1980s, as well as the government-led mass demolitions of homes and business structures, and evictions of several thousand people from their homes in 2005.<sup>43</sup>

- 3.6.16** In its June 2012 update on countries of concern, the Foreign and Commonwealth Office noted that “..the human rights environment in Zimbabwe in the second quarter of 2012 remained relatively calm, compared to the peak of abuses witnessed in 2008. According to Zimbabwe Peace Project figures, incidents of human rights abuses reported in the first four months of 2012 dropped by over 40% from the same period of 2011. However, we remain concerned by reports from NGOs and civil society groups that low-level harassment remains prevalent and appears to be increasing, such as disruption of MDC-T meetings and people being forced to join ZANU-PF. The state has continued its targeting of activists from...MDC-T.”<sup>44</sup>
- 3.6.17** The Zimbabwe Human Rights NGO Forum reported that in the first 6 months of 2012 the government continued to use repressive legislation such as the Public Order and Security Act (POSA) and the Access to Information and Protection of Privacy Act (AIPPA), some sections of the Criminal Law (Codification and Reform) Act (the Criminal Code) and the Broadcasting Services Act (BSA) to suppress rights such as freedom of speech, assembly, association and movement, and media and academic freedom. Human rights defenders, political activists, and ordinary citizens have been taken to court for allegedly insulting or undermining the authority of President Mugabe using section 33 of the Criminal Code.<sup>45</sup> Human Rights Watch, in a January 2013 report on the need for legal and institutional reforms ahead of Zimbabwe’s elections notes that “With the unity government making little progress in several areas, including on key legal reforms, there are genuine concerns that if elections are held in March [2013], there will be widespread human rights violations ahead of, during and after the elections”.<sup>46</sup>
- 3.6.18** In January 2013, a spokesman from the Office of the UN High Commissioner for Human Rights (OHCHR) stated that “We are concerned about the crackdown on non-governmental organisations and dissenting voices seen as critical of President Robert Mugabe’s rule and apparently politically motivated prosecutions”.<sup>47</sup> The World Organisation Against Torture reporting in December 2012 stated that the situation was “still characterized by acute acts of harassments, intimidation and reprisals, including particularly repeated arbitrary arrests and detentions, judicial harassment and acts of torture and ill-treatment as well as obstacles to the exercise of their right to freedoms of association, expression and peaceful assembly”.<sup>48</sup>

<sup>43</sup> Human Rights Watch. World Report 2013 <http://www.hrw.org/world-report/2013>

<sup>44</sup> Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report -Quarterly Updates: Zimbabwe. 30 September 2012 <http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/zimbabwe/quarterly-updates-zimbabwe/>

<sup>45</sup> Zimbabwe Human Rights NGO Forum, First half of 2012: An Unstable Coalition, Escalation of Violence, 28 November 2012 <http://www.hrforumzim.org/reports/reports-on-political-violence/mid-year-political-violence-report-2/>

<sup>46</sup> Human Rights Watch, Race Against Time; The Need for Legal and Institutional Reforms Ahead of Zimbabwe’s Elections, 10 January 2013, Summary <http://www.hrw.org/reports/2013/01/10/race-against-time>

<sup>47</sup> OHCHR, Zimbabwe: UN condemns attacks on human rights defenders ahead of elections, 18 January 2013 <http://www.un.org/apps/news/story.asp?NewsID=43954&Cr=zimbabwe&Cr1=#.URWA12cbKy6>

<sup>48</sup> World Organisation Against Torture, Zimbabwe: Ongoing risks for human rights defenders in the context of political deadlock and pre-electoral period, 26 December 2012 [http://www.omct.org/files/2012/11/22036/zimbabwe\\_mission\\_report.pdf](http://www.omct.org/files/2012/11/22036/zimbabwe_mission_report.pdf)



- 3.6.19** In November 2012 the Zimbabwe Peace Project (ZPP) noted that Masvingo provincial party chairperson, Lovemore Matuke is reported to have stated that it was mandatory for every Zanu PF supporter to have the sticker for “easy identification”.<sup>49</sup> ZPP considers that “There is no doubt that those stickers would be used to identify people who do not support Zanu PF, who would then be victimized during and after the elections”.<sup>50</sup> IRIN reported that in addition to the sticker campaign, “Security forces are being deployed across Zimbabwe ostensibly to record accounts of the country’s liberation struggle against white-minority rule, but both political parties and independent analysts view the tactic as a prelude to political violence ahead of next year’s scheduled elections”.<sup>51</sup>
- 3.6.20** The FCO have also reported that during the fourth quarter of 2012 there continued to be harassment and intimidation of political opponents, particularly from the MDC-T by ZANU PF. On 1 November 2012 the MDC-T Treasurer from Midlands North Province and his wife were attacked and brutally beaten. The motive for the attack was not clear.<sup>52</sup>
- 3.6.21** There have been a number of raids on the offices of civil society organisations. On 5 November, 2012 the Zimbabwe Republic Police raided the offices of the Counselling Services Unit, (CSU) arrested five staff and confiscated documents and a computer. The police claimed the raid was to recover “offensive and subversive material” from the organisation’s offices in Harare. This incident, which followed the raids on the offices of Gay and Lesbians of Zimbabwe (GALZ) in August, raised growing fears of a crackdown on civil society organisations and human rights groups in Zimbabwe in advance of elections in 2013.<sup>53</sup>
- 3.6.22** The Zimbabwe Peace Project (ZPP) publishes monthly statistics of human rights violations including murder, rape, kidnapping/abduction, assault, theft/looting, discrimination, MDP (malicious damage to property), unlawful detention, harassment/intimidation banned/disrupted political meetings and displacement for each province.<sup>54</sup> Reports continued to show a year-on-year decrease in human rights abuses since 2008. Figures from the Zimbabwe Peace Project indicated there were 23,757 incidents reports in 2008, which fell to 14,725 in 2009, 10,691 in 2010, 11,935 in 2011 and 4,699 for January to November 2012.<sup>55</sup> Case owners should refer to the original reports which also provide a detailed explanation of the nature of the violence, the perpetrators, victims, and geographical breakdown.

<sup>49</sup> Zimbabwe Peace Project, Statement on Zanu PF’s call for its members to have stickers on their homes, 23 November 2012

[http://www.kubatana.net/html/archive/hr/121123zpp.asp?orgcode=zim028&year=2012&range\\_start=1](http://www.kubatana.net/html/archive/hr/121123zpp.asp?orgcode=zim028&year=2012&range_start=1)

<sup>50</sup> Zimbabwe Peace Project, Statement on Zanu PF’s call for its members to have stickers on their homes, 23 November 2012

[http://www.kubatana.net/html/archive/hr/121123zpp.asp?orgcode=zim028&year=2012&range\\_start=1](http://www.kubatana.net/html/archive/hr/121123zpp.asp?orgcode=zim028&year=2012&range_start=1)

<sup>51</sup> IRIN, Security forces in Zimbabwe deployed as historians, 19 December 2012

<http://www.irinnews.org/Report/97081/Security-forces-in-Zimbabwe-deployed-as-historians>

<sup>52</sup> Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report -Quarterly Updates: Zimbabwe. 31 December 2012 <http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/zimbabwe/quarterly-updates-zimbabwe/>

<sup>53</sup> Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report -Quarterly Updates: Zimbabwe. 31 December 2012 <http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/zimbabwe/quarterly-updates-zimbabwe/>

<sup>54</sup> Zimbabwe Peace Project report archive

[http://www.kubatana.net/html/archive/archorg\\_index.asp?orgcode=zim028](http://www.kubatana.net/html/archive/archorg_index.asp?orgcode=zim028)

<sup>55</sup> Zimbabwe Peace Project.National Reports.

[http://www.zimpeaceproject.com/index.php?option=com\\_phocadownload&view=category&id=13:2012-reports&Itemid=5](http://www.zimpeaceproject.com/index.php?option=com_phocadownload&view=category&id=13:2012-reports&Itemid=5)

**3.6.23** It is important that case owners ensure that they obtain the latest information about the situation in the relevant province and take that into full account in reaching decisions on asylum claims made by Zimbabweans.

**See also:** [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

**3.6.24 Conclusion.** The Supreme Court held in [RT \(Zimbabwe\)](#) that the rationale of the decision in [HJ \(Iran\)](#) extends to the holding of political opinions. An individual should not be expected to modify or deny their political belief, or the lack of one, in order to avoid persecution. In the country guidance case of [EM & others](#) (and re-stated in [EM](#)) the Tribunal found that the evidence at that time did not show that, as a general matter, the return of a failed asylum seeker from the United Kingdom, having no significant MDC profile, would result in that person facing a real risk of having to demonstrate loyalty to ZANU-PF. The current country evidence is that the situation in Zimbabwe does not differ in any material respect from the country guidance in [EM & others](#).

**3.6.25** Assessing who may be at real risk from politically motivated violence is not simply a matter of the level of political activity in which the individual has engaged. Violence tends to be targeted at those with a perceived political profile, not necessarily of a high level, and those perceived to be active in MDC politics, human rights defenders and other perceived opponents of ZANU-PF

**3.6.26** The assessment of risk to a particular individual on return to Harare airport will also very much depend on the place to which he or she would return. There are differences between urban and rural areas (and the situation is not uniform across the rural areas). In general those returning to MDC dominated rural areas of Matabeleland North or Matabeleland South would generally be highly unlikely to face significant difficulty from ZANU-PF elements, including the security forces. Those returning to other rural areas from the UK after a significant absence would face a real risk of persecution because of a continuing risk of being required to demonstrate loyalty to ZANU-PF. However in such circumstances internal relocation to Harare or, in particular, Bulawayo may be a viable option for a person facing risk of persecution in rural Zimbabwe subject of course to the requirements that such relocation should not be unduly harsh.

**3.6.27** As regards major urban areas, a returnee to Harare will face difficulties living in high density areas not faced by those living in other urban areas and those persons perceived to be active in MDC politics may face the risk of targeted reprisals. However, at the present time, although a person having no significant MDC profile returning to a high-density area of Harare is likely to face more difficulties than someone returning to a low-density area, he or she would not at present face a real risk of having to prove loyalty to ZANU-PF in order to avoid serious ill-treatment. Returnees to Bulawayo will in general not suffer the adverse attention of ZANU-PF, including the security forces, even if he or she does have a significant MDC profile.

**3.6.28** MDC supporters, human rights defenders and other opponents of ZANU-PF, or those perceived to be any of the above, who are able to establish that their political opinions or perceived political activities in Zimbabwe and/or the UK mean that they

are at real risk of coming to the attention of ZANU-PF or its supporters and who cannot avoid that risk by internally relocating will have a well-founded fear of persecution.

### 3.7 Teachers

- 3.7.1** Applicants may claim fear of discrimination or violence due to actual or imputed political sympathy with the opposition, their role as election officers/polling agents or the implication that their professional position will be used to influence students.
- 3.7.2 Treatment.** In recent years students, teachers and academics have been either beaten, arrested, tortured, threatened with murder or shot dead by state forces or state-backed forces in Zimbabwe. Teacher trade unionists are also reported to continue to be singled out for assassination, false imprisonment or torture in Zimbabwe.<sup>56</sup>
- 3.7.3** Around 45,000 teachers left Zimbabwe between 2004 and 2008 to escape the economic crisis or political violence. Many thousands more were reportedly afraid to leave their homes in 2008 due to the political violence, which halted education in most schools, particularly in the rural areas.<sup>57</sup> Teachers were specifically targeted in post-election violence and some schools were taken over as torture bases.<sup>58</sup>
- 3.7.3** Education International reported on 30 March 2011 that the prospect of forthcoming national elections has resulted in Zimbabwe's teachers 'experiencing increased political threats and serious violent attacks'. Teachers, especially in rural areas, have been the victims of political violence and extortion by war veterans and ZANU-PF supporters who accuse them of supporting the MDC, with some reports of teachers being targeted to join ZANU-PF.<sup>59</sup>
- 3.7.4** The Zimbabwe Peace Project (ZPP) report, 'Summary on politically motivated human rights and food related violations: May 2011', published on 24 June 2011, noted that: "Harassment and intimidation of teachers was reported at Nyamandi Methodist School in Gutu District where the headmaster was threatened with unspecified action and accused of being an MDC-T activist.
- 3.7.5** Zimeye reported on 23 June 2011 that the PTUZ reported that its teachers had been "... harassed in some areas for taking part in the strike action that started Wednesday (22nd June 2011). PTUZ President, Takavafira Zhou, told SW Radio Africa that youth militia, intelligence agents and school heads aligned with ZANU-PF, are intimidating teachers and making threats.<sup>60</sup>
- 3.7.6** In August 2011 teachers at Gombakomba and Dangare schools in Zimunya district said that they were living in fear as they were being forced to buy ZANU-PF cards, as a way of showing allegiance to ZANU-PF, by war veterans (PF). A teacher at Gombakomba secondary school said that 'the situation is terrible here. We are on holiday but they are coming to our houses forcing us to buy the ZANU-PF cards.

<sup>56</sup> United Nations Educational, Scientific, and Cultural Organisation (UNESCO) Education under attack: 2010. (page 23 & 48) <http://unesdoc.unesco.org/images/0018/001868/186809e.pdf>

<sup>57</sup> United Nations Educational, Scientific, and Cultural Organisation (UNESCO) Education under attack: 2010. (page 101) <http://unesdoc.unesco.org/images/0018/001868/186809e.pdf>

<sup>58</sup> FCO Annual Human Rights report 2008; Zimbabwe <http://www.fco.gov.uk/resources/en/pdf/pdf15/human-rights-2008>

<sup>59</sup> Education International, Teachers under fire in Zimbabwe, 30 March 2011 [http://www.ei-ie.org/en/news/news\\_details/1755](http://www.ei-ie.org/en/news/news_details/1755)

<sup>60</sup> Zimeye. Union says militia & CIOs harassing striking teachers, 23 June 2011. <http://www.zimeye.org/?p=31383>

They also told us to assure them that ZANU-PF will not lose in the forthcoming elections'. 'They (war veterans) have all the names of teachers at our school and they have made sure that everyone has a ZANU-PF card,' said another teacher at Dangare primary school.<sup>61</sup>

- 3.7.7** In January 2012, soldiers were deployed in schools surrounding Masvingo town and threatened to beat anyone who did not participate in strike action.<sup>62</sup> The Zimbabwe Peace Project noted that in September 2011, "In Zvimba West Constituency, teachers from schools under Chief Chirau were reportedly forced to buy ZANU-PF party cards. Those who declined and were suspected of belonging to the MDC-T were threatened with transfers"<sup>63</sup>. It also found in November 2011, that teachers in Masvingo province, continued to be the "target of political violence."<sup>64</sup> In October 2011, it was reported that rural schools in Manicaland were suffering harassment and intimidation from ZANU-PF militia, who were ordering teachers to vacate their schools, accusing them of supporting the MDC.<sup>65</sup>
- 3.7.8** In January 2013, Newton Kachepa, the MP from Mudzi North, reportedly fired all school teachers in his constituency who were not ZANU PF supporters and were not raised in the area.<sup>66</sup> In 2011, Kachepa was accused of transporting ZANU PF supporters who attacked a MDC-T group gathering for a rally at Nyamukoko Business Centre, causing the death of MDC-T ward 1 chairman, Cephass Magura.<sup>67</sup>
- 3.7.9** In September 2012, a teacher from Mutoko was beaten by soldiers who accused him of attending a MDC rally and of being an activist masquerading as a teacher.<sup>68</sup> In September 2012, in Mutasa South, teachers were forced against their will to join the ZANU-PF by war veterans.<sup>69</sup> In August 2012, the Zimbabwe Peace Project reported that in Matabeleland South "The Census exercise saw the harassment of teachers in some training stations as they were unceremoniously dismissed by senior police officers from their training stations".<sup>70</sup>

**See also:** [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

<sup>61</sup> The Zimbabwean, 'Teachers forced to support' 26 August 2011

<http://www.thezimbabwean.co.uk/news/zimbabwe/52132/teachers-forced-to-support.html>

<sup>62</sup> Radio Vop, Soldiers Chase Teachers From Schools, 27 January 2012.

<http://www.radiovop.com/index.php/national-news/8088-soldiers-chase-teachers-from-schools.html>

<sup>63</sup> Zimbabwe Peace Project, Summary on politically-motivated human rights and food-related violations - September 2011, 28 October 2011

[http://www.kubatana.net/docs/hr/zpp\\_summary\\_hr\\_food\\_violations\\_111028.pdf](http://www.kubatana.net/docs/hr/zpp_summary_hr_food_violations_111028.pdf)

<sup>64</sup> Zimbabwe Peace Project, Summary on politically-motivated human rights and food-related violations - November 2011, 23 December 2011

[http://www.kubatana.net/docs/hr/zpp\\_summary\\_hr\\_food\\_violations\\_111223.pdf](http://www.kubatana.net/docs/hr/zpp_summary_hr_food_violations_111223.pdf)

<sup>65</sup> The Zimbabwean, Teachers flee rural schools: ZIMTA, 20/10/2011. <http://reliefweb.int/node/454092>

<sup>66</sup> SW Radio Africa, Teachers fired and ordered to leave by ZANU PF MP Kachepa, 11 January 2013

<http://www.swradioafrica.com/2013/01/11/teachers-fired-and-ordered-to-leave-by-zanu-pf-mp-kachepa/>

<sup>67</sup> SW Radio Africa, Teachers fired and ordered to leave by ZANU PF MP Kachepa, 11 January 2013

<http://www.swradioafrica.com/2013/01/11/teachers-fired-and-ordered-to-leave-by-zanu-pf-mp-kachepa/>

<sup>68</sup> The Zimbabwean, Mutoko teacher living in fear after army attack, 25 September 2012

<http://www.thezimbabwean.co.uk/news/zimbabwe/61001/mutoko-teacher-living-in-fear.html>

<sup>69</sup> SW Radio Africa, Teachers forced to join ZANU PF structures in Mutasa South, 18 September 2012

<http://www.swradioafrica.com/2012/09/18/teachers-forced-to-join-zanu-pf-structures-in-mutasa-south/>

<sup>70</sup> Zimbabwe Peace Project, Summary on politically-motivated human rights and food-related violations - August 2012, 17 September 2012

[http://www.kubatana.net/docs/hr/zpp\\_monthly\\_monitor\\_aug\\_2012\\_120917.pdf](http://www.kubatana.net/docs/hr/zpp_monthly_monitor_aug_2012_120917.pdf)



**3.7.10 Conclusion.** In the country guidance case of [EM & others](#) (as modified by [CM](#)) the Upper Tribunal confirmed that being a teacher places a person at a heightened risk of ill treatment. The heightened risks associated with being a teacher should be considered alongside the individual circumstances of each case, including their previous employment, any adverse interest by the authorities and an assessment of the risk to them on return to Zimbabwe whether or not they seek to resume their career as a teacher.

**3.7.11** Teachers who are able to establish that their perceived political opinion or activities mean that they are at real risk of persecution or serious harm and who cannot avoid that risk by internally relocating will have a well-founded fear of persecution and should be granted asylum.

### **3.8 Gay men, lesbians, bisexual and transgender persons**

**3.8.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the state as gay men, lesbians, bisexual or transgender persons in Zimbabwe.

**3.8.2 Treatment.** The criminal code's definition of sodomy includes "any act involving physical contact between males that would be regarded by a reasonable person to be an indecent act." Sodomy carries a penalty of up to one year in prison or a fine up to £3185. Common law prevents gay men, and to a lesser extent lesbians, from fully expressing their sexual orientation and, in some cases, criminalizes the display of affection between men.<sup>71</sup>

**3.8.3** Leadership in both ZANU-PF and MDC-T, including President Mugabe and Prime Minister Tsvangirai, publicly denounced the LGBT community and warned against the inclusion of LGBT rights in the constitution. Mugabe publicly blamed the LGBT community for Africa's ills and declared its members to be worse than "pigs and dogs."<sup>72</sup> However, in October 2011 Zimbabwe's Prime Minister Morgan Tsvangirai reversed his position on gay rights, saying he now wants them enshrined in a new constitution. He told the BBC that gay rights were a "human right" that conservative Zimbabweans should respect.<sup>73</sup> On 24 November, President Mugabe reportedly vowed to "punish severely" homosexuality that he said was un-Christian and un-African<sup>74</sup>. In January 2012, the New Zimbabwean published an article quoting a "key MP" sitting on the parliamentary committee in charge of the constitutional process as stating that there is "no chance in hell" that Zimbabwe's new constitution will include gay rights".<sup>75</sup>

**3.8.4** Members of the LGBT community reported widespread societal discrimination based on sexual orientation. In response to social pressure, some families reportedly subjected their LGBT members to "corrective" rape and forced marriages

<sup>71</sup> US State Department, Country Report on Human Rights Practices for 2011: Zimbabwe 24 May 2012,, section 6 [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>72</sup> US State Department, Country Report on Human Rights Practices for 2011: Zimbabwe 24 May 2012,, section 6 [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>73</sup> BBC News, 'Zimbabwe's PM Morgan Tsvangirai in gay rights U-turn' 24 October 2011 <http://www.bbc.co.uk/news/world-africa-15431142>

<sup>74</sup> Zim Online, We'll punish gay people: Mugabe, 24 November 2011 <http://www.zimonline.co.za/Article.aspx?ArticleId=6863>

<sup>75</sup> New Zimbabwean, 'No chance in hell' for gay rights, 12 January 2012 <http://www.newzimbabwe.com/news-6920-No+chance+in+hell+for+gay+rights/news.aspx>



to encourage heterosexual conduct. Such crimes were rarely reported to police. Women, in particular, were subjected to rape by male members of their own families. LGBT members often left school at an early age due to discrimination and had higher rates of unemployment and homelessness. Many persons who identified with the LGBT community did not seek medical care for sexually transmitted diseases or other health issues due to fear that health providers would shun them.<sup>76</sup> Similarly, the Institute for the Democratic Alternative for South Africa noted in May 2010, that: “Corrective rape against gay men and lesbians is on the rise. Victims are particularly vulnerable given the stigma attached to homosexuality in Zimbabwe which makes it difficult for them to report crimes or seek medical attention.”<sup>77</sup> However in the country guidance case of [LZ \(homosexuals\) Zimbabwe CG \[2011\] UKUT 487 \(IAC\) \(26 January 2012\)](#) the Tribunal’s assessment was that “corrective rape” is rare. The Tribunal accepted ‘that it does happen, and of its nature must often be a hidden crime, but it does not represent a real risk to homosexuals of either gender.’ (para 58 of the determination).

- 3.8.5** A February 2011 report from the International Gay and Lesbian Human Rights Commission noted that ‘in Zimbabwe the readiness of certain police officers to profit from a case of extortion that comes to their attention means that victims are reluctant to report the offence, as to do so significantly increases the likelihood of their own arrest and may compound the pressure on them to hand over even more money. In some cases, the police have actively sought out gay men and lesbians on their own initiative for the purpose of extortion.’<sup>78</sup> The organisation Zimbabwe Lawyers for Human Rights reported that lawyers representing two Mbare residents charged with committing sodomy were “intimidated, harassed and threatened” by ZANU PF supporters.<sup>79</sup>
- 3.8.6** A Gays and Lesbians of Zimbabwe (GALZ) representative interviewed by the UKBA Fact Finding Mission stated “The situation is much more difficult for lesbians [than gay and bisexual men] and hasn’t really improved significantly. It is very difficult for lesbians to ‘come out’ and those that do risk harassment and worse, ranging from taunts such as ‘you just haven’t found a good man yet’ to rape. It has also been difficult for women to participate fully in GALZ in the past because it was dominated by men, although lesbians now command more respect within the organisation. All this has meant that the number of lesbians who are ‘out’ is much lower than the number of gay men. Most of the harassment and the cases of rape of which GALZ is aware have taken place in the high density areas. For women who have been raped, shame often prevents them from reporting the crime to the police and if they do, the police are often reluctant to act. This means that for lesbians who are raped, counselling may be the best that they can hope for. GALZ is not aware of any active police persecution of lesbians nor of any cases of lesbians being detained, but there is a lack of police protection.”<sup>80</sup>

<sup>76</sup> US State Department Human Rights Report 2011; Zimbabwe, section 6

[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>77</sup> Institute for Democratic Alternative for South Africa (Idasa) States in Transition Observatory - GNU Watch Zimbabwe: April 2010. <http://www.idasa.org.za/gbOutputFiles.asp?WriteContent=Y&RID=2899>

<sup>78</sup> International Gay and Lesbian Human Rights Commission, Nowhere to Turn: Blackmail and Extortion of LGBT People in Sub-Saharan Africa, February 2011 <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/484-1.pdf>

<sup>79</sup> Zimbabwe Lawyers for Human Rights, Justice Patel Suspends Sodomy Trial, 17 November 2011. [http://www.zlhr.org.zw/index.php?option=com\\_content&task=view&id=54&Itemid=122](http://www.zlhr.org.zw/index.php?option=com_content&task=view&id=54&Itemid=122)

<sup>80</sup> COIS Zimbabwe Report of Fact Finding Mission to Zimbabwe Harare 9–17 August 2010 (p69-70) <http://www.unhcr.org/refworld/country,,,FACTFINDING,ZWE,,4c9c92752,0.html>

- 3.8.7** In March 2012 the UN Committee on the Elimination of Discrimination Against Women expressed concern about acts of violence, perpetrated by state and non-state actors, against lesbian, bisexual and transgender women.<sup>81</sup>
- 3.8.8** A representative of the Gays and Lesbians of Zimbabwe (GALZ), interviewed as part of UKBA's Fact Finding Mission in 2010 stated that: "Bulawayo is more open and tolerant and has a very different atmosphere from Harare. People in Bulawayo are more politically active and willing to push for their rights. There is a gay nightclub in the middle of town. GALZ thinks this different attitude may be related to proximity to South Africa".<sup>82</sup>
- 3.8.9** GALZ reported to CEDAW in January 2012 that "Many LBT people are unable to live openly because of their fear of stigma and discrimination. LBT people have been denied employment on the basis of their sexual orientation; women have been denied custody, guardianship or access to their children on the basis of their sexual orientation".<sup>83</sup> GALZ further notes that "The mere existence of laws criminalising homosexual acts impacts societal perceptions about 'female' sexuality and prevent women from living openly as LBT. In Zimbabwe, not only are the rights of LBT people not recognised, but the violations of LBT people's rights are often unpunished and justified. In August 2011, a lesbian woman was brutally assaulted with a bottle to the head after receiving threats for practicing homosexuality in a country where the president is opposed to such activities".<sup>84</sup>
- 3.8.10** In August 2012 Amnesty International noted that the police had reportedly detained and interrogated at least 10 members of Gays and Lesbians of Zimbabwe (GALZ), before releasing them. GALZ activists believed that the police operation was aimed at tracking down 44 of their members who had previously been arbitrarily arrested and unlawfully detained on 11 August 2012 as they took part in a peaceful gathering at the NGO's offices in the capital, Harare. Amnesty International called for the Zimbabwean authorities to "...halt to the ongoing arbitrary detention and interrogation of GALZ members. The police action is a blatant violation of the basic human rights of these individuals. They have not committed any crime under Zimbabwean law."<sup>85</sup> IRIN further reported in September 2012 that the detained GALZ members were 'profiled'; detainees' names, addresses, places of work and even details about friends and family were recorded, and with this information police have been pursuing these individuals as well as people close to them.<sup>86</sup> GALZ director Chesterfield Samba told IRIN that "People are being tracked down in clubs and bars, at their jobs and homes, because they are suspected of being gay."<sup>87</sup>

<sup>81</sup> UN Committee on the Elimination of Discrimination Against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women, Zimbabwe 01/03/2012 (para 23) <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-ZWE-CO-2-5.pdf>

<sup>82</sup> COIS Zimbabwe Report of Fact Finding Mission to Zimbabwe Harare 9–17 August 2010 (p70) <http://www.unhcr.org/refworld/country,,,FACTFINDING,ZWE,,4c9c92752,0.html>

<sup>83</sup> Gays and Lesbians of Zimbabwe (GALZ), Report on Discrimination against Women in Zimbabwe based on Sexual Orientation and Gender Identity Submitted to the Committee on the Elimination Discrimination against Women, 6 January 2012 <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/559-1.pdf>

<sup>84</sup> Gays and Lesbians of Zimbabwe (GALZ), Report on Discrimination against Women in Zimbabwe based on Sexual Orientation and Gender Identity Submitted to the Committee on the Elimination Discrimination against Women, 6 January 2012 <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/559-1.pdf>

<sup>85</sup> Amnesty International. Zimbabwe: Halt police intimidation of LGBTI activists 17 August 2012 <http://www.amnesty.org/en/news/zimbabwe-halt-police-intimidation-gay-and-lesbian-activists-following-violent-arrests-2012-08-1>

<sup>86</sup> Integrated Regional Information Networks (IRIN), Zimbabwe: The mean season for gays, 25 September 2012 <http://www.irinnews.org/report/96377/ZIMBABWE-The-mean-season-for-gays>

<sup>87</sup> Integrated Regional Information Networks (IRIN), Zimbabwe: The mean season for gays, 25 September 2012 <http://www.irinnews.org/report/96377/ZIMBABWE-The-mean-season-for-gays>

IRIN further noted that “Same-sex relationships are considered a breach of the traditional family structure, in which marriage and procreation help perpetuate a system of care for elders. In Zimbabwe, regard for tradition is used to stir up populist sentiment during elections”.<sup>88</sup> Samba further noted that “Usually when anything political is happening, the vilification of the [gay] community begins [...] It is a fearful time, and it becomes difficult to go about daily life as normal.”<sup>89</sup>

- 3.8.11** NewsDay reported on 15 October 2012 that the Gays and Lesbians of Zimbabwe (GALZ) had petitioned the police to release property they seized when they raided the organisation’s Harare offices in August. The police ransacked the GALZ offices in Milton Park and confiscated property, which included computers, compact discs, pamphlets and various documents, on allegations that the organisation was operating without registration as required under Private Voluntary Organisations Act. But the police at Harare Central Police Station said they would not release the property until completion of their probe. The police said they wanted to use the property as exhibits in court.<sup>90</sup>
- 3.8.12** In September 2012, the state owned Herald newspaper reported that a suspected gay couple, one of whom was wearing female clothing were arrested in Mashonaland West province and according to the police spokesman there, had appeared before a Kadoma magistrate facing sodomy charges as defined in section 73(i) of the Criminal Law (Codification and Reform) Act.<sup>91</sup> Following a meeting with Navi Pillai, the UN High Commissioner for Human Rights, Patrick Chinamasa, Zimbabwe’s justice minister told reporters “We made it clear that in our law homosexual activities are criminalized and that any person who commits homosexual activities will be arrested.”<sup>92</sup> Radio Vop reported that in August 2012 in Harare a group of suspected ZANU-PF youths “brutalised four young men accusing them of practising homosexuality”.<sup>93</sup>

**See also:** [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

- 3.8.13 Conclusion.** Societal hostility, forced marriage, harassment, blackmail, extortion, unjustified detentions, ‘corrective rape’ and discrimination against LGBT persons exist in Zimbabwe. Case owners must refer to the country guidance case of [LZ \(homosexuals\) Zimbabwe CG \[2011\] UKUT 487 \(IAC\) \(26 January 2012\)](#) in which the Upper Tribunal concluded that they were ‘unable to accept that homosexuals are being persecuted as a generality when concrete examples are few, and when that standpoint is not supported by the best placed local observers’ (para 109 of the determination). The Tribunal also noted that personal circumstances do place some

<sup>88</sup> Integrated Regional Information Networks (IRIN), Zimbabwe: The mean season for gays, 25 September 2012 <http://www.irinnews.org/report/96377/ZIMBABWE-The-mean-season-for-gays>

<sup>89</sup> Integrated Regional Information Networks (IRIN), Zimbabwe: The mean season for gays, 25 September 2012 <http://www.irinnews.org/report/96377/ZIMBABWE-The-mean-season-for-gays>

<sup>90</sup> NewsDay, Gays demands [sic] property back, 15 October 2012, <http://www.newsday.co.zw/2012/10/15/gays-demands-property-back/> Date accessed 31 October 2012

<sup>91</sup> The Herald, Zimbabwe: Gay Couple Arrested, 5 September 2012 <http://archive.globalgayz.com/africa/zimbabwe/zimbabwe-gay-couple-arrested/>

<sup>92</sup> Pink News, Zimbabwe rejects gay rights, says gay people will be imprisoned, 21 May 2012 <http://www.pinknews.co.uk/2012/05/21/zimbabwe-rejects-gay-rights-says-gay-people-will-be-imprisoned/>

<sup>93</sup> Radio Vop, ZANU(PF) Youths Launch Blitz Against Gays, 26 August 2012 <http://www.radiovop.com/index.php/national-news/9497-zanu-pf-youths-launch-blitz-against-gays.html>

gays and lesbians at risk and, although not decisive on its own, being openly gay may increase risk (para 116 of the determination). Given the continued anti-homosexual rhetoric and reality in Zimbabwe, case owners should ensure that they consider the latest country of origin information. Where gay men and lesbians do encounter local hostility they may be able to avoid this by moving elsewhere in Zimbabwe, but only if the risk is not present there and if it would not be unduly harsh to expect them to do so. Special attention should be placed on lesbian claimants as [LZ](#) found that lesbians “on their own or together, may face greater difficulties than gay men” (para. 116 of the determination). Each case must however be examined on its own merits. Where caseowners conclude that a claimant’s sexual orientation and personal circumstances places them at real risk of persecution in Zimbabwe then they should be granted asylum because gay men, lesbians, bisexuals and transgender persons in Zimbabwe may be considered to be members of a particular social group.

**3.8.14** If an individual chooses to live discreetly because he/she wants to avoid embarrassment or distress to her or his family and friends he/she will not be deemed to have a well founded fear of persecution and will not qualify for asylum. This is because he/she has adopted a lifestyle to cope with social pressures and not because he/she fears persecution due to her or his sexual orientation

**3.8.15** If an individual chooses to live discreetly because he/she fears persecution if he/she were to live as openly gay, lesbian or bisexual then he/she will have a well founded fear and should be granted asylum. It is important that gay, lesbian and bisexual people enjoy the right to live openly without fear of persecution. They should not be asked or be expected to live discreetly because of their well founded fear of persecution due to their sexual orientation.

### **3.9 General humanitarian situation**

**3.9.1** Some applicants may state that the general humanitarian situation in Zimbabwe is so poor that it would be a breach of Article 3 of ECHR to return them to Zimbabwe.

**3.9.2** Christian Aid reported that every year, millions of people rely on food aid in Zimbabwe. In 2011 the number reduced, but drought and erratic rainfall patterns, a ruined infrastructure and an economy in collapse, means millions of people still can't grow enough food to survive. Until food insecurity is properly addressed, outbreaks of diseases such as cholera, anthrax, TB and malaria will continue to claim lives.<sup>94</sup>

**3.9.3** In July 2012 the UN World Food Programme (WFP) reported that Zimbabwe’s cereal harvest in 2012 was one third lower than last year, making it the lowest since 2009. In addition, the number of people in need is 60 per cent higher than the one million who needed food assistance during the last lean season. Factors that have affected food security in the country in 2012 include erratic rainfall and dry spells, limited access to agricultural inputs such as seeds and fertilizers, a reduction in the planted area, poor farming practices and inadequate crop diversification. To meet the increased food needs, WFP and its partners will undertake food distributions with regionally procured cereals as well as imported vegetable oil and pulses, the agency said in a news release. Cash transfers will also be used in areas where there are functioning markets so that people have the flexibility to choose where and from whom they purchase their cereals. In addition, cereal imports from neighbouring countries will be needed to meet food shortages in the coming months. The report identifies the regions of Masvingo, Matabeleland North and South, and parts of Mashonaland, Midlands and Manicaland as the worst-affected

<sup>94</sup> Christian Aid, Christian Aid in Zimbabwe, <http://www.christianaid.org.uk/whatwedo/africa/zimbabwe.aspx>



areas. WFP said its Seasonal Targeted Assistance programme is due to run until the end of March 2013 to help address the food shortages.<sup>95</sup>

- 3.9.4** HIV infection can lead to malnutrition, while poor diet can in turn speed the infection's progress.<sup>96</sup> The country's economic collapse in the past decade has significantly strained the ability of poor HIV-positive Zimbabweans to feed themselves and their families when on ARVs.<sup>97</sup> In December 2011 the Zimbabwean reported that NGOs in Zimbabwe have embarked on a feeding programmes to benefit people living with HIV and AIDS in Marange and Bocha but have been affected by the politicisation. The villagers are meant to receive food hampers containing packets of beans, cooking oil, mealie meal, rice, soap and many other items, on a weekly basis. However, some ZANU-PF officials and war veterans in Marange have taken over the programme and are demanding that all beneficiaries join the party if they want to continue receiving the hampers. Some NGOs distributing food aid and medication in the district have suspended their operations following interference by ZANU-PF.<sup>98</sup> The Zimbabwe Peace Project (ZPP) publishes monthly statistics of food and other forms of aid related violations by province.<sup>99</sup>
- 3.9.5** An International Displacement Monitoring Centre report, dated 21 May 2010, noted that there were large differences across the country as to how people obtained their food, with many in the most fertile areas of the country relying on their "own production" of food, people in other areas, such as more arid and urban areas, relied upon purchasing food. The report noted that while "Diaspora remittances play[ed] a major role in supporting household food needs ..." very poor households, such as "... elderly-headed households, families hosting orphans or with disabled or chronically ill members, those with high levels of dependants, child-headed households and the destitute who lack any resources ..." were unable to "... purchase sufficient food, even at regulated prices ..." An earlier report by the Solidarity Peace Trust entitled *Gone to Egoli*, dated 30 June 2009, found that poorer rural families were less likely to receive remittances than the urban middle classes.<sup>100</sup>
- 3.9.6** At the end of 2012, UNOCHA reported that the humanitarian situation in Zimbabwe "remains largely stable". However, it also noted that despite positive gains, humanitarian challenges remain. These include "food insecurity mainly caused by drought—the impact of which is more visible in the south of the country—and sporadic outbreaks of waterborne diseases. In addition, a wide range of highly vulnerable groups such as the chronically ill, returned migrants, asylum seekers and those in displacement-like situations continue to require humanitarian aid".<sup>101</sup> In February 2012, VOA reported that in recent months, hundreds of Zimbabweans in the country's capital have contracted typhoid with as many as 50 new cases

<sup>95</sup> UN News Centre. 1.6 million people will need food assistance in Zimbabwe next year – UN report. 27 July 2012 <http://www.un.org/apps/news/story.asp?NewsID=42576>

<sup>96</sup> AVERT, HIV and Nutrition, <http://www.avert.org/hiv-nutrition.htm>

<sup>97</sup> IRIN, [Food voucher scheme benefits HIV-positive people](#), 20 October 2011.

<sup>98</sup> The Zimbabwean, Zanu blocks food aid, 7 December 2011, <http://www.thezimbabwean.co.uk/news/zimbabwe/55327/zanu-blocks-food-aid.html>

<sup>99</sup> Zimbabwe Peace Project report archive [http://www.kubatana.net/html/archive/archorg\\_index.asp?orgcode=zim028](http://www.kubatana.net/html/archive/archorg_index.asp?orgcode=zim028)

<sup>100</sup> Internal Displacement Monitoring Centre. Official acknowledgment of displacement yet to be translated into strategies for durable solutions, 21 May 2010. (Page 23-24 & 28) [http://www.internal-displacement.org/8025708F004CE90B/\(httpCountries\)/B8548DDB5E6A4450802570A7004B9FD7?OpenDocument](http://www.internal-displacement.org/8025708F004CE90B/(httpCountries)/B8548DDB5E6A4450802570A7004B9FD7?OpenDocument) and The Solidarity Peace Trust. *'Gone to egoli'*, 30 June 2009. [www.solidaritypeacetrust.org/reports/gone\\_to\\_egoli.pdf](http://www.solidaritypeacetrust.org/reports/gone_to_egoli.pdf)

<sup>101</sup> UNOCHA, Zimbabwe Humanitarian Gaps 2013, 23 November 2012 [http://reliefweb.int/sites/reliefweb.int/files/resources/Full%20Report\\_1174.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Full%20Report_1174.pdf)



reported daily, Harare residents stated that the government's response to the outbreak was inadequate.

- 3.9.7** In October 2012, the Zimbabwe Peace Project (ZPP) reported that "The food situation continued to deteriorate in the provinces of Masvingo, Bulawayo, Matabeleland North and South being the worst affected. Over the past three months, the ZPP has witnessed a nationwide trend where Zanu PF officials and traditional leaders aligned to the party are abusing their positions to deny deserving villagers access to government supported and donor funded food relief on political grounds".<sup>102</sup>
- 3.9.8** IRIN reported in February 2013 that nurses were demanding bribes to ensure that admitted patients received diagnosis and treatment.<sup>103</sup> Willus Madzimore, a member of parliament and chairperson of the Zimbabwe chapter of the African Parliamentarians Network Against Corruption told IRIN that in rural areas, traditional leaders are demanding about \$300 or cattle to be given land.<sup>104</sup> IRIN also reported in January 2013 that "Chronic shortages of generic and antiretroviral drugs, stock-outs, high medication costs, and long distances to clinics are some of the hurdles people face in their quest to access essential medicines in Zimbabwe".<sup>105</sup>

**See also:** [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)  
[Caselaw](#) (section 2.5 above)

**3.9.9 Conclusion.** Country conditions are generally stable. There is sufficient food in the shops for those who can pay for it. 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, financial circumstances and support network of the applicant. Although there have been reports that in some areas of Zimbabwe there has been discrimination on political grounds in the distribution of food aid, it is not such as to show a general or real risk.

**3.9.10** Where the conditions on return will be so extreme that returning the applicant would, taking his or her individual characteristics and circumstances into account, give rise to a real risk of inhuman or degrading treatment, a grant of Discretionary Leave will be appropriate.

### **3.10 Prison conditions**

**3.10.1** Applicants 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.

**3.10.2** 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

<sup>102</sup> Zimbabwe Peace Project, ZPP Monthly Monitor October 2012, 16 November 2012  
[http://www.kubatana.net/docs/hr/zpp\\_monthly\\_%20monitor\\_oct%20\\_2012\\_121116.pdf](http://www.kubatana.net/docs/hr/zpp_monthly_%20monitor_oct%20_2012_121116.pdf)

<sup>103</sup> IRIN, Corruption feeds on Zimbabwe's poor, 1 February 2013  
<http://www.irinnews.org/Report/97391/Corruption-feeds-on-Zimbabwe-s-poor>

<sup>104</sup> IRIN, Corruption feeds on Zimbabwe's poor, 1 February 2013  
<http://www.irinnews.org/Report/97391/Corruption-feeds-on-Zimbabwe-s-poor>

<sup>105</sup> IRIN, Still struggling with drug shortages, 11 January 2013  
<http://www.irinnews.org/Report/97224/Still-struggling-with-drug-shortages>

where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

- 3.10.3 Consideration.** The 2011 US State Department Human Rights Report stated that conditions in the 46 main prisons and 22 satellite prisons were harsh, although there were some improvements during 2011. Prison guards beat and abused prisoners. While prisons operated below capacity, NGOs reported that overcrowding continued due to dilapidated infrastructure, lengthy pretrial detentions, and prolonged trials. The occupation of cells in each prison by prison guards also contributed to overcrowding.<sup>106</sup> There are approximately 14,000 prisoners, including 340 women and 130 juveniles; the prison system was designed for a maximum of 17,000 prisoners.<sup>107</sup>
- 3.10.4** The 2011 US State Department Human Rights Report commented that in marked improvement from previous years, prisoners received at least two meals a day as a result of the revitalisation of the country's 23 prison farms; prisoners received one daily meal the previous year. Like most citizens of the country, prisoners had no access to potable water. The sale of prison farm products allowed authorities to address some shortages, and each prisoner was provided with two uniforms during the year.<sup>108</sup>
- 3.10.5** Security forces assaulted and tortured citizens in custody, particularly perceived opponents of ZANU-PF. According to the Zimbabwe Prison Service, remand prisons were overcrowded and conditions were harsh. Pretrial detainees were often held with convicted prisoners until their bail hearings. Many detainees were held in severely overcrowded police facilities. Police used cruel, inhuman, or degrading treatment or punishment against those in custody. Those detained for politically motivated reasons were kept at police stations for days, weeks, or months while their court dates or bail hearings were pending.<sup>109</sup>
- 3.10.6** In April 2012 the MDC urged the government to urgently look at the "deplorable conditions" at the country's prisons where they said prisoners across the country have been condemned to starvation and nutrition related sickness. The party was reported to be disturbed by a recent report by the Parliamentary Thematic Committee on Human Rights which said that prisoners are "living in hell holes where they lack basic necessities such as clothing, blankets, towels and soap among other day to day requirements."<sup>110</sup>
- 3.10.7** Also in April 2012 it was reported that Justice and Legal Affairs Minister, Patrick Chinamsa, described prison conditions in Zimbabwe as being "appalling" and that there is need for stakeholders to collectively improve them. The minister said his ministry had been carrying out an exercise on the prison conditions and the findings showed that the standards and conditions were very low. He said that conditions in the prisons are not good even though they have slightly improved from three years

<sup>106</sup> US State Department, Country Report on Human Rights Practices for 2011: Zimbabwe 24 May 2012 section 1c [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>107</sup> US State Department, Country Report on Human Rights Practices for 2011: Zimbabwe 24 May 2012 section 1c [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>108</sup> US State Department, Country Report on Human Rights Practices for 2011: Zimbabwe 24 May 2012 section 1c [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>109</sup> US State Department, Country Reports on Human Rights Practices for 2011: Zimbabwe 24 May 2012, section 1c [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>110</sup> Movement for Democratic Change (MDC). Government should look into the plight of prisoners 19 April 2012 [http://www.kubatana.net/html/archive/polpar/120419mdc.asp?sector=PRISON&year=0&range\\_start=1](http://www.kubatana.net/html/archive/polpar/120419mdc.asp?sector=PRISON&year=0&range_start=1)

back.<sup>111</sup>

- 3.10.8** In January 2013, the Mail and Guardian newspaper cited an anonymous prison official as stating that delays in the prosecution of cases also lead to prison overcrowding, “There are cases where the state applies for an accused person to be remanded in custody for months while it gathers evidence”.<sup>112</sup> In February 2013, it was reported that one man has spent 15 years on remand awaiting trial, having purchased a stolen car in 1998.<sup>113</sup> The same article cites Zimbabwe Prison Service (ZPS) Commissioner General Paradzai Zimondi as stating that they are overwhelmed by overcrowding in the country’s remand prisons.<sup>114</sup>
- 3.10.9** In March 2011, Human Rights Watch reported that “the use of torture by state agents is endemic in Zimbabwe”; that “torture and ill-treatment inflicted has included severe beatings on the back, buttocks and soles of the feet with blunt objects, forcing victims to seat or stand in uncomfortable positions for hours on end, as well as false executions and threats of death”; and that “the government has repeatedly refused to investigate allegations of torture by police and other state agents, despite court orders”.<sup>115</sup> According to Human Rights Watch, torture is used both as an element of coercive interrogations and as a form of punishment.<sup>116</sup> The Civil Society Monitoring Mechanism also noted that “Those remanded in custody (i.e. suspects and not criminals) have been subjected to assault and torture, denial of their rights to receive legal and medical assistance, denial of access to justice and were kept in custody beyond the legal provision”.<sup>117</sup> Poor sanitary conditions resulted in disease, including diarrhoea, measles, tuberculosis, and HIV/AIDS-related illnesses. Medical care, lighting, and ventilation were inadequate. There were insufficient mattresses, warm clothing, sanitary supplies, and hygiene products.<sup>118</sup>
- 3.10.10** In January 2013, it was reported that Zimbabwe Lawyers for Human Rights (ZLHR) had documented evidence of people being tortured and killed after being arrested.<sup>119</sup> ZLHR claims to have documented more than a dozen cases over the past two years in which suspects have died in suspicious circumstances with member Tawanda Zhuwarara noting “a disturbing pattern, and the similarities cannot be mere coincidence. Suspects are arrested, injured while in custody [and] suddenly they are allegedly shot while allegedly attempting to escape.”<sup>120</sup> The FCO also reports that “Torture is regularly used by the police when interrogating suspected criminals. The security sector continues to use torture during politically

<sup>111</sup> The Herald. Zimbabwe: Call to Improve Prison Conditions. 28 April 2012.

<http://allafrica.com/stories/201204290308.html>

<sup>112</sup> Mail and Guardian, Zim prisoners have no food or soap, 25 January 2013

<http://mg.co.za/article/2013-01-25-zim-prisoners-have-no-food-or-soap>

<sup>113</sup> Daily News, Man spends 15 years in remand prison, 3 February 2013

<http://www.dailynews.co.zw/article/News/d34a23b0-29ea-4f89-9468-03e149e1df5f>

<sup>114</sup> Daily News, Man spends 15 years in remand prison, 3 February 2013

<http://www.dailynews.co.zw/article/News/d34a23b0-29ea-4f89-9468-03e149e1df5f>

<sup>115</sup> Human Rights Watch, Perpetual Fear; Impunity and Cycles of Violence in Zimbabwe, 8 March 2011, V. Failure to Investigate Torture by State Agents. <http://www.hrw.org/node/96946>

<sup>116</sup> United Nations Human Rights Council, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1, 22 July 2011, para 23. [http://ap.ohchr.org/documents/dpage\\_e.aspx?c=207&su=196](http://ap.ohchr.org/documents/dpage_e.aspx?c=207&su=196)

<sup>117</sup> Civil Society Monitoring Mechanism CISOMM, February- March Bi-monthly Report 2011, 9 May 2011.

[http://www.cisomm.org/index.php?option=com\\_docman&task=doc\\_download&gid=57&Itemid=5](http://www.cisomm.org/index.php?option=com_docman&task=doc_download&gid=57&Itemid=5)

<sup>118</sup> US State Department, Country Report on Human Rights Practices for 2011: Zimbabwe 24 May 2012 section 1c [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>119</sup> Mail and Guardian, Alarm over Zim deaths in custody, 11 January 2013

<http://mg.co.za/article/2013-01-11-alarm-over-zim-deaths-in-custody>

<sup>120</sup> Mail and Guardian, Alarm over Zim deaths in custody, 11 January 2013

<http://mg.co.za/article/2013-01-11-alarm-over-zim-deaths-in-custody>

motivated interrogations".<sup>121</sup>

**3.10.11** NGOs reported that female prisoners generally fared better than males, were held in separate prison wings, and were guarded by female officials. Women generally received more food from their families than male prisoners, but children living with their incarcerated mothers were required to share their mothers' food allocation. Prison officials also appeared to have prioritised food distribution to women. NGOs were unaware of women reporting rapes or physical abuse, which were common among the male population. NGOs suggested that female guards may have been more diligent about protecting female prisoners from abuse or that female prisoners may not have reported abuse. Prisons, with support from NGOs, provided sanitary supplies for women. Pregnant and nursing mothers were not provided additional care or food rations, but the Zimbabwe Prison Service (ZPS) solicited donations from NGOs and donors for additional provisions.<sup>122</sup>

**3.10.12** There was one juvenile prison, but juveniles were also held in adult prisons throughout the country. Officials generally tried to place juvenile inmates in separate cells. Juveniles were generally sent to prison instead of to reformatory homes, as stipulated in the Children's Act. Juveniles were particularly vulnerable to abuse by prison officials and prisoners, and one church group confirmed two cases of abuse against juveniles by year's end. In both cases the Department of Social Services took over the investigation.<sup>123</sup>

**3.10.13 Conclusion** Prison conditions in Zimbabwe are harsh and taking into account the levels of poor sanitation, overcrowding and disease; the extensive use of pre-trial detention; and the regular use of torture and other forms of ill-treatment, are likely to reach the article 3 threshold in most cases. However, each assessment must be done on a case by case basis. The individual circumstances of each case should be considered to determine whether detention will cause a particular individual 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, gender and state of health. Where individual applicants are able to demonstrate a real risk of imprisonment on return to Zimbabwe (and exclusion is not justified), a grant of Humanitarian Protection may 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 Instruction 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

<sup>121</sup> Foreign and Commonwealth Office, Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report, 30 April 2012 <http://fcohrdreport.readandcomment.com/wp-content/uploads/2011/02/Cm-8339.pdf>

<sup>122</sup> US State Department, Country Report on Human Rights Practices for 2011: Zimbabwe 24 May 2012 section 1c [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)

<sup>123</sup> US State Department, Country Report on Human Rights Practices for 2011: Zimbabwe 24 May 2012; section 1c [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186257](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186257)



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 the Asylum Instructions 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 (a) they have family to return to; or (b) there are adequate reception and care arrangements. Case owners should refer to the Agency's guidance on Family Tracing following the Court of Appeal's conclusions in the case of [KA \(Afghanistan\) & Others \[2012\] EWCA civ1014](#). In this case the Court found that Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to endeavour to trace the families of Unaccompanied Asylum Seeking Children (UASCs).

### **4.4 Medical treatment**

**4.4.1** Individuals whose asylum claims have been refused and who seek to remain on the grounds that they require medical treatment which is either unavailable or difficult to access in their countries of origin, will not be removed to those countries if this would be inconsistent with our obligations under the ECHR. Case owners should give due consideration to the individual factors of each case and refer to the latest available country of origin information concerning the availability of medical treatment in the country concerned. If the information is not readily available, an information request should be submitted to the COI Service (COIS).

**4.4.2** The threshold set by Article 3 ECHR is a high one. It is not simply a question of whether the treatment required is unavailable or not easily accessible in the country of origin. According to the House of Lords' judgment in the case of [N \(FC\) v SSHD \[2005\] UKHL31](#), it is "whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity". That judgment was upheld in May 2008 by the European Court of Human Rights.

**4.4.3** That standard continues to be followed in the Upper Tribunal (UT) where, in the case of [GS and EO \(Article 3 – health cases\) India \[2012\] UKUT 00397\(IAC\)](#), the UT held that a dramatic shortening of life expectancy by the withdrawal of medical treatment as a result of removal cannot amount to the highly exceptional case that engages the Article 3 duty. But the UT also accepted that there are recognised departures from the high threshold approach in cases concerning children, discriminatory denial of treatment, the absence of resources through civil war or similar human agency.

**4.4.4** The improvement or stabilisation in an applicant's medical condition resulting from treatment in the UK and the prospect of serious or fatal relapse on expulsion will therefore not in itself render expulsion inhuman treatment contrary to Article 3 ECHR. All cases must be considered individually, in the light of the conditions in the country of origin, but an applicant will normally need to show exceptional circumstances that prevent return, namely that there are compelling humanitarian considerations, such as the applicant being in the final stages of a terminal illness without prospect of medical care or family support on return.

**4.4.5** Where a case owner considers that the circumstances of the individual applicant and the situation in the country would make 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. Case owners must refer to the [Asylum Instruction on Discretionary Leave](#) for the appropriate period of leave to grant.

## **5. Returns**

- 5.1** There is no policy which precludes the enforced return to Zimbabwe of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 5.2** 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 on return should however be considered in line with the [Immigration Rules](#).
- 5.3** Any medical conditions put forward by the person as a reason not to remove them which have not previously been considered must be fully investigated against the background of the latest available country of origin information and the specific facts of the case; and a decision made as to whether removal remains the correct course of action, in accordance with [chapter 53.8 of the Enforcement Instructions and Guidance](#).
- 5.4** Zimbabwean nationals may return voluntarily to any region of Zimbabwe at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.
- 5.5** The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Zimbabwe. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Zimbabwean nationals wishing to avail themselves of this opportunity for assisted return to Zimbabwe should be put in contact with Refugee Action. Details can be found on Refugee Action's web site at: [www.choices-avr.org.uk](http://www.choices-avr.org.uk).

**Country Specific Litigation Team  
Operational Policy & Rules Unit  
Strategy & Assurance Group  
UK Border Agency**

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