

Asylum and Immigration Tribunal

THE IMMIGRATION ACTS

**Heard at Field House
on 1st, 2nd and 5th September
and 1st and 30th October 2008**

Before

**Senior Immigration Judge P. R. Lane
Senior Immigration Judge Perkins
Senior Immigration Judge Southern**

Between

RN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M. Henderson, Counsel, instructed by I.A.S.
For the Respondent: Mr S. Kovats, Counsel, instructed by the Treasury Solicitor.

- 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.*

DETERMINATION AND REASONS

1. This is the determination of the Tribunal to which each member of the panel has contributed. We should say at the outset that the Tribunal has made an order under section 11 of the Contempt of Court Act 1981 that prevents the disclosure of the identity of some of the sources of the material which we take into account and to which we refer in this determination. Where we refer to a witness or an organisation by name that is because they have not sought anonymity and are content to be identified.
2. Because of the way in which events evolved as the hearing progressed it was necessary to amend that order by way of extending its scope. It may be helpful to explain why before progressing any further.
3. At the close of proceedings on 5th September 2008 we indicated that if, before the Tribunal's determination was promulgated, an event occurred that was capable of indicating a fundamental change in country conditions, the Tribunal would reconvene the hearing to enable the parties to advance such additional evidence and submissions as might be thought to be appropriate.
4. Subsequently we became aware of reports in the media that an agreement had been reached between Mr Mugabe and Mr Tsvangirai regarding a power sharing arrangement for the future governance of Zimbabwe. We considered that to be a development of such potential importance as to require us to allow the parties such an opportunity to comment.
5. The hearing was reconvened on 1st October. After hearing submissions from both parties to the appeal we decided that there was at least a real possibility that the power sharing agreement had the potential to alter significantly the political landscape in Zimbabwe and that this was a matter the Tribunal should deal with in this determination. In order to allow all concerned to address this issue the hearing was adjourned for one final day, on 30th October 2008. As we had resolved to address the impact of the power sharing agreement, we invited submissions on materials relating to the agreement (in the form of press reports) that the Tribunal had identified, as well as permitting the parties to adduce evidence regarding the

issue. In following this course we were mindful of the stance adopted by the respondent, as described below at paragraph 28 of this determination.

6. On the 30th October the Tribunal reconvened. We heard further oral evidence from the only witness to have given oral evidence for the respondent, Mr Mark Walker, Senior Executive Officer in the Country Specific Asylum Policy Team with responsibility for Zimbabwe. We consider that evidence in detail below, at paragraphs 152 and 199. That oral evidence was limited to the adoption of a further witness statement to which was exhibited a collection of reports of interviews recently carried out with representatives of organisations in Zimbabwe who were thought to be in a good position to comment upon current country conditions. We will consider this additional evidence, and our approach to it, in greater detail later in this determination. But it was to preserve the anonymity of most of those participating in those interviews that the scope of the order was extended.

The appellant's claim

7. The appellant, who was born on 20th June 1969, is a citizen of Zimbabwe. She arrived in the United Kingdom on 23rd January 2006 and claimed asylum the following day. Although she held no political beliefs and had engaged in no political activities, she had in the past worked as a teacher and, as someone not actively involved in supporting Zanu-PF, she said she would be assumed to be a supporter of the opposition, particularly because she would be returning after spending some time in the United Kingdom. Also, she feared retribution from a former boyfriend who had been violent towards her and towards her mother after her departure from Zimbabwe.

The appellant's appeal

8. The appellant appealed against the removal decision that accompanied refusal of her asylum claim on 13th March 2006. That appeal was dismissed by Immigration Judge Phillips following a hearing on 27th April 2006.
9. Reconsideration of that decision was ordered because the immigration judge had declined to determine the appellant's appeal on human rights grounds, explaining that, as the refusal letter stated that the respondent had suspended involuntary returns of failed asylum seekers to Zimbabwe, he considered it inappropriate to deal with the grounds of appeal argued on human rights grounds. That, plainly, was an error of law: see JM v SSHD [2006] EWCA Civ 1402. The immigration judge was required by section 86(2) of the Nationality, Immigration and Asylum Act 2002 to determine any matter raised as a ground of appeal and it was a material error because it did not follow that because he had dismissed the appeal on asylum grounds the appeal could not succeed on human rights grounds either. The full written reasons given by the Tribunal for finding that the immigration judge made a material error of law are set out below in the First Appendix.
10. The scope of the reconsideration that was to follow was made clear in the written reasons given by the Tribunal following a first stage reconsideration hearing. Although the Tribunal identified a material error of law such as to require the substitution of a fresh decision to allow or to dismiss the appeal, that error did not

infect the findings of fact made by the immigration judge and so those findings were preserved. (See the Second Appendix.)

11. As the Tribunal has become aware of new evidence tending to suggest that country conditions in Zimbabwe had continued to deteriorate, the reconsideration of this appeal was identified as a suitable vehicle for the Tribunal to give country guidance in respect of Zimbabwe. But issues regarding the scope of the reconsideration and the appropriateness of taking this opportunity to update country guidance have been raised by the parties. Mr Henderson, who appeared for the appellant, sought to widen the scope of the reconsideration so that all issues of fact should be at large, notwithstanding what we say above. Mr Kovats, for the respondent, submitted that given the fluidity of events in Zimbabwe it was not appropriate at this time for the Tribunal to update the country guidance presently available.
12. We shall deal with these issues before examining in detail this appellant's case and the evidence offered in support of her claim to be a refugee. Before doing so, something needs to be said about the existing country guidance on Zimbabwe.

The status of existing country guidance

13. The most recent country guidance is HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094, published in November 2007. A summary of the Tribunal's conclusions in HS is set out in the head note as follows:
 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) Zimbabwe 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.*
14. The Court of Appeal refused HS permission to appeal on the papers and the application was renewed orally. As can be seen from what was said by Buxton LJ in HS (Zimbabwe) v SSHD [2008] EWCA Civ 915, the appellant in HS sought to argue

that the Tribunal was wrong to proceed on the basis that, the hearing being a reconsideration rather than a fresh appeal, disputed findings of fact made by the immigration judge that were not infected by the error of law giving rise to the need for reconsideration should not be revisited. This was an argument awaiting consideration before the House of Lords on appeal from MT, RB & U v SSHD [2007] EWCA Civ 808, a case now being referred to as RB (Algeria). Buxton LJ summarised that argument as follows:

“... I am fairly confident in saying that the essential way in which the argument of the appellants in MT departed from the previous jurisprudence was that they contended that, in a case involving human rights convention issues, an appellate court, even if within the domestic legal order its jurisdiction was limited to issues of law, should nonetheless review the conclusions reached on matters of fact by the lower court in order to determine whether those were correct: as opposed to being limited to simply considering whether those conclusions had been reached by methods that exhibited irrationality.”

15. Although the Master of the Rolls had rejected that argument, the House of Lords has granted permission to appeal against that conclusion. That meant the Court of Appeal accepted that if the appeal was upheld by the House of Lords then the grounds relied upon by the appellant in HS could be redrawn so as to assert a challenge to findings of fact unrestrained by the need to demonstrate irrationality or other failure to meet the Wednesbury test. As a consequence, Buxton LJ concluded that it was not appropriate:

“... to go ahead with what is bound to be an extensive and burdensome enquiry only to find out that the legal basis upon which that enquiry has been placed turns out to be mistaken”.

16. For those reasons the application for permission to appeal against the decision of the Tribunal in HS has been stayed:

“... solely on the basis that the proper role of an appellate court, in relation to the assessment of facts as a Convention matter, must remain in doubt at least until the House of Lords has pronounced on RB (Algeria). ...”

17. We have dealt with all this in some detail because two questions arise to be addressed. First, what is the relevance of the unresolved challenge to the country guidance in HS? Secondly, in view of what we say below about the preservation of the disputed findings of fact made by the immigration judge, is the Tribunal now entitled to shut out the attempt to revisit the factual basis upon which the appellant argues her case?
18. We are satisfied that no difficulty arises because of the unresolved challenge to HS. The starting point is that HS remains in place as country guidance to be followed unless the evidence put before the Tribunal shows good reason to depart from it. see: Practice Direction 18 and OM (AA(1) wrong in law) Zimbabwe CG [2006] UKAIT 00077.
19. In any event, the appellant’s appeal does not depend solely upon the challenge to HS being pursued elsewhere. In this appeal the main focus has moved away from an assessment of risk on return to Harare airport at the hands of Immigration Officers, CIO officers or other officers of the state and has been placed instead

upon what happens after a person has passed through the airport and entered into Zimbabwe. It is about what difficulties the appellant is likely to experience when she returns to her home area, or tries to re-establish herself elsewhere in Zimbabwe, that the evidence put before us was concerned.

20. Paragraph 4 of the summary of findings in HS reproduced above indicates that the Tribunal did consider that issue. But the appellant now relies upon extensive evidence that has become available since HS was determined to establish that the conclusions reached in HS no longer represent the position and so should be revisited and the guidance updated.
21. In short, it is the appellant's case that whereas in the past one would be at risk on return if identified as a member or supporter of the Movement for Democratic Change ("MDC") or as an active critic or other opponent of the regime, in today's Zimbabwe anyone who cannot positively demonstrate that they are a supporter of the ruling party, Zanu-PF, or otherwise aligned with the interests of the regime, will be at risk of persecutory ill-treatment. That is because no longer do those relied upon by the regime to maintain its hold on power content themselves with repression of those identified as supporters of the opposition. They now seek to repress by violent and discriminatory means anyone who is seen as a *potential* supporter of the opposition.
22. Mr Henderson, in his oral submissions, explained that it was not suggested that the appellant would be at risk simply on the basis of being a failed asylum seeker removed from the United Kingdom. It is said that she would be at risk on account of the drastic and dramatic deterioration in country conditions. He said that she faces the same risk as any other ordinary citizen of Zimbabwe who is unable to demonstrate support for or allegiance with Zanu-PF or the regime but to a greater extent because, as a person returning from the United Kingdom after having made an unsuccessful asylum claim, she would be perceived to be a supporter of the MDC and at risk on that account.
23. In his submissions, Mr Henderson argued that, by inference, that must mean that there will be an enhanced level of risk for those returned to Harare airport after having made an unsuccessful claim for asylum in the United Kingdom. Those who enforced the will of Mr Mugabe and Zanu-PF throughout the country did so at the direction of the state authorities. Thus, there was no longer any reason to believe that a more sophisticated distinction would be drawn between those returnees about whom something was known to suggest they might be members, activists or supporters of the MDC and those about whom nothing more was known than that they were returning as failed asylum seekers from the United Kingdom. He submitted that it was clear from the evidence now available that such persons would be seen as potential supporters of the MDC and therefore as a threat to the regime and at risk on that account on arrival at the airport, just as they would be on return to their home areas.
24. The second question to be addressed is whether, should the challenge in RB (Algeria) succeed, the determination of this appeal would be flawed because it is based upon findings of fact made by the immigration judge which the appellant continues to challenge.

25. We are satisfied that would not be the case. Mr Henderson accepts that whether or not the appellant's factual account is accepted entirely or just to the extent accepted by the immigration judge, the nature of her appeal remains unchanged. He is entirely correct to make that concession. This means that even if it were to be the case that the Tribunal should have revisited those findings and should have concluded that the appellant's account be accepted in full, the outcome would not be different and so any error would not have been material.
26. It follows from all this that the country guidance provided in this determination is based mainly upon fresh evidence about current country conditions in Zimbabwe so that it stands apart and quite separate from HS and does not depend upon that determination being upheld in any challenge that might be given permission to proceed in the Court of Appeal.

Is this an appropriate time for country guidance in respect of Zimbabwe to be reconsidered?

27. Mr Kovats, upon instructions, took an unusual position in respect of his participation in the reconsideration of this appeal. He submitted that country conditions in Zimbabwe were volatile and extremely fluid and were likely to change significantly within the coming months. A political agreement between the regime and the opposition may or may not be reached. The standoff may persist or deteriorate into a civil war. The respondent had given an undertaking not to re-commence removals to Zimbabwe until the challenge to HS had been resolved. That meant that any country guidance now offered was likely to be out of date before it could be acted upon.
28. For those reasons Mr Kovats had instructions to limit the extent to which he would participate in the appeal. Mr Kovats chose his words carefully and we must make clear our approach to the position he has adopted.
29. Mr Kovats said that he did not seek to dispute any of the statements of fact made by the country witnesses giving evidence about the country conditions. He did not intend to cross examine those witnesses at all. But he made clear that he did not concede the appeal and would be advancing submissions upon the evidence adduced on behalf of the appellant.
30. But such witnesses are called by the appellant either as experts or as persons who are very well informed about such matters and who are well placed to give evidence about them. The purpose of doing so is not simply to enable them to put facts before the Tribunal. These witnesses are called to either to express an expert opinion or to give evidence as someone who is well informed. Mr Kovats has not put to those witnesses the respondent's case where it is contrary to the views expressed and so that evidence goes unchallenged.
31. That does not mean, of course, that the Tribunal is bound to accept all that such witnesses say. But, in the case of the two expert witnesses in particular, absent any reason to believe those views to be incorrect, the Tribunal is likely to accept that unchallenged evidence as made out, although before doing so will have regard to

the submission advanced by both representatives. We bear in mind also what was said recently by the European Court of Human Rights in NA v United Kingdom 25904/07:

“In assessing such material, consideration must be given to its source, in particular its independence, reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources are all relevant considerations (see *Saadi v. Italy*, cited above, § 143).”

and that one of the expert witnesses in particular, Professor Ranger, has given consistent evidence in the country guidance litigation over recent years and (although on a limited number of matters his evidence has not been accepted) his authority, integrity and reputation is unquestioned.

32. We do not agree with the submission advanced by Mr Kovats that now is not the time to issue current country guidance in respect of Zimbabwe. It is common ground and not disputed by the respondent that there has been during much of 2008 a significant deterioration in country conditions for what might be termed ordinary Zimbabweans. As is clear from what we say below, there has been a sufficient change in those country conditions to require a departure from existing country guidance. That there continues to be change in the country conditions is not a reason for the Tribunal to avoid giving guidance.
33. It is no doubt true that country conditions in Zimbabwe are in a state of flux and there may well be further changes. We are satisfied, however, that in the circumstances it is right to give country guidance in this case, not just because of the passage of time since HS but also because the events of 2008 demand an authoritative assessment from the Tribunal in the form of country guidance. We do not purport to be able to predict the future and it may well be that events in Zimbabwe will change swiftly and fundamentally. All we can do is to assess the situation on the basis of the evidence before us and give country guidance pursuant to Practice Direction 18 and section 107(3) of the Nationality, Immigration and Asylum Act 2002, which makes that guidance authoritative, to the extent that subsequent appeals depend upon the same or similar evidence as that before us. In taking this approach we have regard to what the Tribunal said about the giving of country guidance in the context of volatile country conditions: see KG (Review of current situation) Nepal CG [2006] UKAIT 00076.

The appellant's claim and the scope of the reconsideration

34. The findings of fact made by the immigration judge who dismissed the appellant's appeal as well as the written reasons given by the Tribunal for finding a material error of law in the determination and giving directions as to the scope of this reconsideration are set out in full at annexes 1 and 2 *post*. It is therefore necessary to set out here only a brief summary.
35. The appellant was born and lived until her departure from Zimbabwe in a village near Plumtree in the province of Matabeleland South, close to the border with Botswana. Between 1998 and 2003 she worked as a teacher in the local primary school. As such she was wary of the so called War Veterans who would come to

the school advancing their pro Zanu-PF propaganda, harassing teachers and others to secure their support for the regime and to ensure that children at the school were not receiving any pro MDC messages from the teachers. Generally the appellant was able to avoid their attentions but on three occasions she was made to attend rallies held at the school where people were required to chant slogans and sing songs in support of the regime or the ruling party.

36. But this harassment was not alone what led to her leaving this employment. In her initial witness statement the appellant explained:

“I finished teaching in 2003. Although I enjoyed my job it was becoming frustrating, as sometimes we would not be paid for a month or more at a time. We would queue at the bank for many hours to receive payment, but often there would be no money left and we would not be paid. Also, the War Vets would come to our rooms and tell us threateningly that if they find out that any teacher is telling the children anything against the government they would find the teacher and kill them.”

37. Having given up her job as a teacher she returned to her former occupation of selling fruit and vegetables with her mother in order to support herself. Soon afterwards she formed a relationship with a local man, to whom we shall refer as her boyfriend, as this is how he was described in evidence. All was fine until 2005 when he became violent and aggressive towards her. When the appellant sought to end the relationship he refused to accept that. It was the appellant’s account that they had fallen out because she had disapproved of his activities as a War Veteran and that after he had raped her several times he brought two friends who raped her also. After the appellant reported this multiple rape to the police, who did nothing in response to that complaint, the appellant’s home was burnt down while she was staying with her mother and as a result the appellant went to South Africa where she stayed while her mother raised the money from the sale of livestock to pay an agent to arrange for her journey to the United Kingdom some six months later. The appellant added that her former boyfriend went to her mother and beat her in order to discover her whereabouts in South Africa. The appellant feared that he would find her should she return home and she would continue to suffer at his hands.

38. The immigration judge did not believe that the appellant’s boyfriend was a War Veteran, nor that the appellant had been the victim of a multiple rape by the boyfriend and his friends by way of retribution after the appellant had sought to end the relationship. The immigration judge rejected as untrue also the account of her home being burnt down. But he did not reject the fact of the abusive relationship nor the appellant’s account of her mother being beaten by the appellant’s former boyfriend soon after the appellant had left Zimbabwe.

39. The grounds upon which the appellant sought reconsideration did not seek to challenge those findings of fact and nor was any such challenge pursued at the first stage reconsideration hearing. The Tribunal found in those circumstances that there was no reason at all to disturb those findings of fact, as they were not infected by the error of law found in the determination. The Tribunal said that the scope of the reconsideration was limited to what was said at paragraph 6 of its written reasons, which we reproduce below:

“What the immigration judge has not done is to make any findings as to whether the appellant would be at risk of being subjected to ill-treatment such as to infringe article 3 of

ECHR either on account of being forcibly returned as a failed asylum seeker or because she would be at risk from her abusive former boyfriend if he was able to locate her upon her return, should he be so motivated to do so, and whether there would be a sufficiency of protection from the police against any such criminal acts the appellant might be unfortunate enough to be threatened with.”

40. Mr Henderson submitted that the findings of fact should be set aside entirely. This is because the appellant was aggrieved about not being believed about the multiple rape by the friends of her boyfriend and had now given an explanation for not seeking medical assistance afterwards. She would have to give evidence anyway about the claimed risk from her former boyfriend and it would, he submitted, be artificial to exclude evidence about the claimed rape.
41. in DK (Serbia) and others v SSHD [2006] EWCA Civ 1747 the Court of Appeal said this:
 22. As far as what has been called the second stage of a reconsideration is concerned, the fact that it is, as I have said, conceptually a reconsideration by the same body which made the original decision, carries with it a number of consequences. The most important is that any body asked to reconsider a decision on the grounds of an identified error of law will approach its reconsideration on the basis that any factual findings and conclusions or judgments arising from those findings which are unaffected by the error of law need not be revisited. It is not a rehearing: Parliament chose not to use that concept, presumably for good reasons. ...
 23. It follows that if there is to be any challenge to the factual findings, or the judgments or conclusions reached on the facts which are unaffected by the errors of law that have been identified, that will only be other than in the most exceptional cases on the basis of new evidence or new material as to which the usual principles as to the reception of such evidence will apply, as envisaged in rule 32(2) of the Rules. It is to be noted that this rule imposes the obligation on the parties to identify the new material well before the reconsideration hearing. This requirement is now underlined in the new Practice Direction 14A. This sets out in some detail what is required in such a notice.
42. These requirements have not been met. We take as our starting point the facts as found by the immigration judge. This means that we accept that the appellant worked as a teacher between 1998 and 2003, giving up that employment both because she, like all teachers, was being harassed by the War Veterans as she has described and because she was not being paid. We accept also that she suffered at the hands of an abusive boyfriend although we adopt the findings of the immigration judge that led him to reject her claim that her boyfriend was a War Veteran or that the relationship ended in the circumstances claimed. The appellant has established also that her former boyfriend was violent towards the appellant's mother on the single occasion when he went to enquire about where she had gone soon after her departure from Zimbabwe in 2005. But the appellant's claim that her boyfriend and his friends raped her as a group and burnt down her house in retribution is also rejected.
43. This means that the findings of fact are preserved. But there is now before the Tribunal a good deal of more recent evidence than was before the immigration judge from which it is clear that the country conditions, so far as they relate to an assessment of the appellant's asylum and human rights claim, have changed significantly. That being the case, and with the agreement of the parties, we shall determine the appellant's appeal not simply on human rights grounds, as was directed at the first stage reconsideration hearing, but upon asylum and humanitarian protection grounds as well.

44. Thus, the appellant is someone who has lived her whole life in Zimbabwe in a village near Plumtree, a rural area in South Matabeleland, where she worked until 2003 as a teacher, thereafter supporting herself by selling fruit and vegetables. She has never disclosed support for any political party and left Zimbabwe after being beaten and abused by her former boyfriend about whom nothing more is known since he ill-treated the appellant's mother soon after her departure in 2005.
45. When the appellant left Zimbabwe she had a number of relatives living there. But now only a few remain. Her father still lives in a village, near to the one where the appellant lived, with his second wife and their children. But he is unemployed and without means to support himself and the appellant would not be made welcome there. The appellant's mother and sisters have moved to South Africa where they are living in difficult circumstances. The appellant's sister says in a witness statement that while in Zimbabwe they were in fear of violence from officials, members and supporters of Zanu-PF, theirs being an area that had demonstrated support for the MDC. The appellant's brother has also moved to South Africa although his wife and children remain in the village.

The oral evidence

46. We heard oral evidence from the appellant and from a number of witnesses who spoke not about the specific circumstances of this particular appellant but about the situation in Zimbabwe generally. The first of those witnesses was Mr Wilf Mbanga, a well known journalist who is editor of "the Zimbabwean", a newspaper published in the United Kingdom and available in Zimbabwe. He had provided written evidence to the Tribunal in HS. Next, we heard evidence from Mr Hebson Makuvise, who is the Chief Representative of the MDC in the United Kingdom and Ireland and who represents the party in Europe also. The two country experts who have each prepared reports for these proceedings and who attended to give oral evidence were Witness 66, who was a legal practitioner in Zimbabwe before settling in the United Kingdom in 2002 and Professor Terrance Ranger, who has given evidence in all the recent Zimbabwe country guidance cases.

The appellant's evidence

47. The appellant adopted her two previous written statements, the effect of which we have summarised above and confirmed that the circumstances described by her sister, P, in her statement were as she understood them to be. She confirmed that she had worked as a teacher in Zimbabwe between 1998 and 2003. Although she had left that employment both because of the harassment she was experiencing from the War Veterans and because she was not getting paid, she remained living in the same area where she had worked as a teacher and had not, on that account, experienced any difficulty thereafter. When asked why, then, she would be at risk as a former teacher should she return today, she explained that teachers were looked on as supporters of the MDC and the reports she had seen show that teachers are now being harassed and have real problems.
48. The appellant said that she would not feel able to seek work as a teacher should she have to return, because she would fear for her safety for the reasons she had

explained. She would be unable to work selling fruit and vegetables as she had done before because, as was the case for her sister, this would not be possible because there are no fruit and vegetables left to sell. She has no home to return to and no family support either. Her understanding is that one needs a Zanu-PF card in order to access any food at all. She would be in a worse situation than everyone else because she had come to the United Kingdom to claim asylum and that would be held against her.

49. She was asked why she thought she would be treated worse than others because of that. She explained that it was known that most Zimbabwean people in the United Kingdom campaign for the MDC and for Morgan Tsvangirai. Her evidence was that she believed President Mugabe had in fact lost the last elections, even if he is still in power, and he is not happy about that. It is because he nearly lost power that he is taking steps to ensure he does not do so in future.
50. The appellant confirmed also that she had had no contact with her former boyfriend since leaving Zimbabwe in July 2005 and nothing had been heard of him since he went to her mother two months after that seeking information as to her whereabouts.

The evidence of Mr Wilf Mbangwa

51. Mr Mbangwa is a journalist and has been for forty years. He has met Robert Mugabe and many of those prominent in his regime and was asked to establish a state news agency following independence in 1980. However, he became disenchanted with the rampant corruption and attempts by ministers to restrict his editorial independence and, in 1998, he established an independent newspaper which was published and available within Zimbabwe. As a consequence of his journalistic endeavours he was arrested in 2001 on what he describes as a “trumped up” charge after which he left the country, never to return. He is now based in Southampton and is the editor of “The Zimbabwean” newspaper, which he described as the largest independent newspaper available in Zimbabwe.
52. Against that background, and in view of his profession and current occupation, the Tribunal accepts that Mr Mbangwa is a person who monitors the situation in Zimbabwe closely and has a long standing professional interest in events and developments in that country. On the other hand, Mr Mbangwa, although very well informed, is plainly an advocate for change in Zimbabwe and cannot be regarded as a wholly objective witness.
53. Mr Mbangwa adopted as part of his evidence the written witness statement dated 26th August 2008 prepared for these proceedings. He confirmed that the two witness statements prepared for his evidence to the Tribunal in HS were true also. He is able to monitor events in Zimbabwe, even though he has himself been away for some years, because he has reporters working within Zimbabwe and receives also reports of secret briefings by CIO officers and even some ministers and senior army officers.
54. Speaking of the recent elections in March of this year, Mr Mbangwa said that it was not possible for the regime to rig the results as had been done in the past because,

following pressure from the South African Development Community (“SADC”), the results of voting at each polling station were to be posted outside and there were sufficient election observers to prevent them being tampered with. That was why local observers were targeted for retribution after the elections. He went on to say in his statement:

“We understand that Mugabe was shocked at the first results. He had been told there would be no problem. The regime had assumed that people were sufficiently compliant from past abuses that they would not vote for the MDC. He was most shocked to find that rural areas had voted for the MDC. The regime thought that the people were sufficiently intimidated by an implicit threat and that the results could anyway be rigged. They bargained against the camera phones used to photograph the local results and the bravery of people.”

55. Mr Mbanga described what happened immediately after the first round of the voting:

“After the first round election, Mugabe wanted to cut a deal that would protect himself, and the MDC were prepared to do it. The military junta went to Mugabe and said it was not a decision solely for him to make. They said that “we will make sure there is a rerun and we will implement a campaign that will guarantee you win the rerun”. The military commanders were frightened men. They were concerned at talk of a deal that would include an amnesty for Mugabe but not an amnesty for them. They were on record that they would never salute Morgan Tsvangirai.”

56. Mr Mbanga says that it was the military commanders who instructed the Electoral Commission not to release the results of the presidential election and who arranged for the counting exercise to be moved to a secret location where the vote could be rigged. It took four weeks for the outcome to be massaged so as to deny Mr Tsvangirai the outright victory he had won so as to ensure the need of a run off vote. Mr Mbanga believes that the long drawn out talks now taking place with a view to reaching a power sharing agreement between the parties are a sham with no prospect of success. He said that the Zimbabwean regime is allowing them to take place simply because they provide the time for Zanu-PF to entrench its position but meanwhile steps are being taken to eliminate the ability of the MDC to constitute an effective opposition or a real threat to the Zanu-PF hold on power:

“Mugabe will not cede power completely because he is terrified of ending up in The Hague. I do not think he is ready even to accept the role of ceremonial president, which would offer him some protection. More importantly the leaders of the security forces are terrified of ending up at The Hague and will not accept Mugabe ceding power. They are ready to annihilate the MDC to remove the threat to the regime. They would be pleased if the MDC took up weapons.

The army is still deployed along with the militia. A lot of rural areas are still no-go areas for the MDC. Internally displaced people and those who fled to neighbouring countries who have since tried to return have been punished or “fined” by local chiefs for fleeing. I am currently in South Africa. Large numbers have fled here, taking the risk of a xenophobic violence in preference to the activities of the militias in Zimbabwe.

Even in urban areas, torture centres remain in place. Wherever Mugabe did not win, local people have simply been beaten. We have carried horrible pictures of injuries. They have poured poison into open wounds. People have been forced to drink insecticide (the first time poison has been used like this on any scale in Zimbabwe). Some have been found with their eyes gouged out. Victims have been refused entry to hospitals”

And Mr Mbanga detects a change in the groups of people now being targeted:

“Those who can organise and report on abuses have been abducted and tortured and in many cases killed. Previously, the more serious ill-treatment was inflicted mainly on activists, but now ordinary voters face serious violence. If the assumption is that most people in an area are MDC then anyone in the area faces being beaten up. They sometimes beat up the Zanu supporters by mistake where they could not prove their affiliation to Zanu - the militias are not that careful.”

According to Mr Mbanga, there has been no let up in the violence as a consequence of Mr Mugabe securing his reappointment as President:

“The violence and intimidation continues indeed, it has increased in recent days as compared to the period immediately following the establishment of the talks. This is designed to send a message to the MDC about what will happen if they do not concede Mugabe retaining executive power.”

57. Mr Mbanga says this about his understanding of the view taken by the Zimbabwean regime of people returning from the United Kingdom:

“The regime views the Zimbabwean community in the UK (by which I mean those who live in the UK rather than temporary visitors) as pro MDC. That does not of course mean that every Zimbabwean in the UK is pro MDC ...

...

The reason there is such an intensive CIO operation aimed at the UK community is because it is known to be overwhelmingly pro MDC and providing resources to the MDC. The CIO have a lot of information about UK activities but it is second-hand information ...

...

In Zimbabwe all those who are merely viewed as potential MDC voters are now targeted ...”

58. Dealing with the so called “no go areas” that have been said to have arisen in some parts of Zimbabwe, Mr Mbanga said:

“The position is even worse in rural areas. People are beaten and killed without the world knowing about it. Zanu has made huge no-go areas for Harare based monitors. Even ambulances are turned away by the militia. Nobody will know about how you are treated and you are at the mercy of the lawless militia. Since the first round, the militia have beaten people up openly in the streets of Harare. So what chance do people have upon return to their rural home?

...

Anyone not seen as loyal to Zanu is now at much greater risk. The attitude is “if you are not one of us, you are one of them”. The risk to someone who sought asylum from Britain is correspondingly greater.

...

Criminal elements are taking advantage of the situation and threatening people with being denounced as sell-outs if they do not provide bribes and food. Mobs are roaming about inflicting casual violence. Anyone who stands out from the crowd or appears different is at particular risk.

...

People continue to believe that someone from the UK will have access to funds ...”

59. Notwithstanding what we say above about our approach to the objectivity of this witness, this part of his evidence is of particular significance. This represents an assertion or something offered by this witness as a statement of fact as to what is happening in Zimbabwe today and this evidence goes unchallenged by the respondent.
60. In his oral evidence Mr Mbanga said that it is precisely because people outside Zimbabwe are believed to be potential MDC supporters that they have been disenfranchised. The Tribunal notes that the constitutional arrangements of Zimbabwe allow for postal votes and these are used by significant numbers of civil servants but are not available for those ordinary citizens who have left the country.
61. The evidence provided by Mr Mbanga is in line with much of the other evidence before the Tribunal and there is no reason to suppose that he has given a description of conditions in Zimbabwe that is inaccurate or unreliable.

The evidence of Mr Hebson Makuvise

62. Mr Makuvise is the Chief Representative of the MDC in the United Kingdom and Ireland and he represents the party in Europe also. He has held that appointment since September 2006. In his oral evidence he adopted his witness statement made in August 2008 in which he described the contribution made by the United Kingdom wing of the party as “central to the struggle against Mugabe”:

“The MDC in the UK is the most vibrant centre of opposition to Mugabe in the world outside of Zimbabwe. The UK wing sent over 35000 USD to Zimbabwe to fund campaigning for the March elections. If it were not for the UK wing, I am confident that the MDC would not now have the majority in parliament which has led to an MDC speaker being elected. It was the resources provided by the UK wing that enabled MDC candidates to campaign vigorously in areas that it had previously regarded as no go areas. Mugabe knows this.

...

The regime is well aware of the importance of the community in Britain and the support that it provides the MDC. The regime puts great efforts into spying on the community in the UK and infiltrating the MDC in the UK. It has succeeded in the past to a very senior level before the infiltrators were exposed and expelled.”

63. In his oral evidence Mr Makuvise said that Robert Mugabe believes in retribution. Zanu-PF thrives on violence and people are still being beaten for having voted for the MDC. We understood his evidence to be not that individuals were identified as having voted for the MDC but that the people targeted were those living within a community that had demonstrated support for the MDC through the outcome of the vote in that constituency.
64. This witness told us also that he expected this to continue. For example, there would be a by-election following the election of a Speaker in Parliament. His constituency is in a rural area which has already been sealed off to the opposition to ensure that Zanu-PF will take back that seat from the MDC. As for the current position in Zimbabwe, Mr Makuvise said this:

“The current position is that the talks have stalled and the violence continues. The election of the Speaker is as I said, a reflection of the hard work of the UK wing in providing resources to fight the elections, but it cannot stop the forces maintaining the state sponsored

violence. The torture camps have not been dismantled. Illegal roadblocks remain in place. Nothing has fundamentally changed, nor will it change unless Morgan Tsvangirai is the dominant figure in a new government. Developments in Parliament will not change control of the so-called security forces. Their commanders are resisting real change; they know their crimes against humanity justify them being sent to the Hague so they do not want Mugabe to let go.”

65. As is the case with the previous witness, Mr Makuvishe cannot be regarded as a wholly objective witness. Plainly he has a political agenda to promote and does not seek to suggest otherwise. But his evidence chimes with much of the evidence before us that does originate from other well established sources and we accept him to be a witness of truth who has not sought to exaggerate or embellish his evidence in order to support his cause.
66. Mr Kovats did not cross examine this witness but in his closing submissions argued that it would be plain to all from the amount of the contribution made by the UK wing of the MDC, including the Zimbabwean authorities, that this did not indicate that all Zimbabweans in the United Kingdom supported the MDC. This is because there were tens of thousands of Zimbabweans in the United Kingdom so that US\$35,000 did not represent an expression of committed support from that community as a whole.
67. We do not accept that submission. It takes no account of the fact that this was not the sole contribution made to the MDC by those in the United Kingdom but an additional contribution on top of the regular monthly remittance upon which the MDC in Zimbabwe depends. We deal with the news reports as a body of evidence below, but in this respect might usefully refer here to one of those reports. An article in the Independent (online version) on 28th June 2008 discussed the interest shown by the CIO in MDC operations in the United Kingdom:

“MDC officials said a key target of the CIO operation appeared to be the money between £5,000 and £10,000 a month, which was being sent from the UK to back Mr Tsvangirai’s campaign until he withdrew from the ballot last week. With inflation in Zimbabwe running at three million per cent hard cash is vital to buy campaign essentials such as fuel and printing supplies.”
68. Also, a large number of Zimbabweans in the United Kingdom will be living in difficult financial circumstances and will have relatives remaining at home to support before financial contributions can be made to the MDC. By any view the financial support provided to the MDC in Zimbabwe from the United Kingdom is significant and we find it is improbable that the regime does not recognise that.
69. As Mr Makuvishe acknowledged, although many Zimbabweans in the United Kingdom, if not most of them, will support the aims and objectives of the MDC, there are also Zimbabweans present in the United Kingdom who support and are aligned with Zanu-PF or the regime in power.

Evidence of Witness 66 (“W66”)

70. The first of two country experts to give evidence to the Tribunal was W66 whose identity is protected under the terms of the confidentiality order referred to above. We cannot set out here much in the way of detail about his association with

Zimbabwe and his status as a country expert because to do so would serve to identify him. It is sufficient for us to record that he has given evidence to the Tribunal in earlier country guidance cases and that his qualification to offer expert opinion is not challenged by the respondent.

71. W66 adopted a witness statement prepared for these proceedings and in addition gave oral evidence. He confirmed also that he believed to be correct all that he had said in the two earlier witness statements or reports prepared for the Tribunal in HS.
72. W66 says that violence has continued to be experienced in Zimbabwe during the last year and has in fact escalated:

“Brutal attacks on MDC personnel in particular continued well past the middle of 2007 and virtually every day there were new reports of people being detained and tortured disappeared and even murdered. However, as a result of intense pressure within and outside of Africa, including within the African Union in general and the Southern African Development Community (SADC) in particular, as the March 2008 elections approached South African President Thabo Mbeki was mandated in the latter half of 2007 to endeavour to bring a situation about under which the election results would be broadly acceptable to the people of Zimbabwe in terms of democratic standards. A crucial impetus to this process was the continued meltdown of the Zimbabwe economy, massive employment, further collapse of public services, almost incomprehensible levels of inflation, a continued mass exodus of those able to get to South Africa in particular, and so on.

To understand recent developments it is necessary to examine the lead-up to the elections held at the end of March 2008 and the holding of elections, what happened afterwards beginning around the middle of April up to and after the June 27 run off, and the present situation at the time this report is being drawn. The overall picture is that there has been a catastrophic deterioration in the human rights situation in Zimbabwe since the middle of last year.”

73. W66 described in detail the talks that were held with a view to securing free and fair elections and the scepticism of the MDC that any such outcome could be achieved but noted that the weeks leading up to the March 2008 elections were relatively peaceful with the MDC being able to campaign as they had not before.
74. It soon became clear that the two MDC factions had won a combined majority in Parliament. But the presidential election results were not released, as we have noted above, and weeks passed during which the MDC claimed victory in that election also. W66 described in his report the scale of the violence that followed:

“It was while the country and the world waited for the presidential results to be released that a maelstrom of violence was unleashed against those perceived to have voted for the MDC, and a veritable orgy of destruction began. It soon became clear that this was a deliberate strategy adopted by the ruling junta (i.e. Mugabe and his security chiefs, including the director of the CIO, which constitute the Joint Operational Command (JOC) running the country) so that the results of the run-off election would not be in doubt..... it became obvious that the delay in releasing the results was to manipulate the figures as much as possible to reduce the gap between (Tsvangirai’s) total and Mugabe’s, but more importantly to give time for Zanu-PF to regroup and campaign for the run-off...

...

It is impossible to know the full extent of the human rights violations during the three months up to the end of June, or subsequently, but from all the major reports it appears that well over 160 people were killed and more than five thousand beaten and tortured. Tens if not hundreds of thousands of persons have been internally displaced as a direct result of the

post-March violence, these numbers now added to the estimated half a million previously displaced in 2005 as a result of Operation Murambatsvina and the many tens of thousands of farm workers displaced by the land seizures which began in 2000. Along with these physical attacks widespread destruction of property occurred especially in rural areas but also in urban suburbs. The majority of victims killed injured or displaced were middle ranking ordinary MDC members or perceived supporters or members of their families and whole communities and villages branded as MDC were targeted in the most brutal fashion. Many people of no particular political persuasion but were caught up in the violence suffered.”

75. W66 said that although the police, CIO and the army were involved in coordinating and directing the overall strategy, the attacks themselves were mostly carried out by Zanu-PF supporters, particularly the youth members, together with the youth militias or so called green bombers and War Veterans:

“The pattern which emerged was that the party supporters, militias and “war veterans” were often led by more senior persons drawn from the ranks of genuine war veterans, along with government soldiers. Camps of armed Zanu-PF supporters, youth militias and “war veterans” were set up across the country both in rural and urban areas, and a witch hunt ensued against a wide range of opposition elements. Additionally, specific torture camps were set up in many areas, both rural and urban. The aim of this onslaught was to ensure Mugabe’s victory in the run-off...”

76. W66 detected a geographical pattern of this violence also, based upon the changing political landscape emerging from the March 2008 elections. At first, the attacks were in areas where Zanu-PF had traditionally predominated and into which the MDC had made significant inroads. Then the attacks moved to the main urban areas, traditionally centres of MDC support.

77. Nor did it seem to W66 that there was any reason to suppose that violence would taper off following the conclusion of the drawn out electoral process that started in March of this year:

“There can be no doubt at all, therefore, that compared to a year ago the human rights situation has deteriorated very significantly indeed. While it is true that there has been some lessening of attacks since the election was finalised the prognosis must be that there is small room for optimism or that there will be a significant improvement at any time soon. Forces were unleashed which it appears are to a degree out of control, with reports of continuing violence; war vets and militias still operate in many parts; although the 21 July Memorandum of Understanding envisaged a cessation of attacks, this has failed to materialise. Part of the reason could be that the formations used to spearhead the attacks on the MDC and anyone identified with it have not received the “spoils” they were promised when their services were required... The regime is refusing to negotiate itself out of power and it is very likely that the MDC and anyone regarded as anti-Zanu-PF will continue to face very real danger...”

Since after the March elections when violence again broke out openly it has done so at a new and higher levels of intensity and over a wider area, with an ever larger cast of victims. At the time this report is being prepared the level of attacks is lower than in June, but continues at a high level, as does the climate of fear. Zimbabwe, therefore, despite any attempts by the major parties to form a negotiated settlement, remains in an extremely volatile and precarious state for anybody who is believed to be an MDC sympathiser. Anyone who is not clearly a loyalist is clearly a “traitor” – this was the case to a large extent before and is now even more so. Retribution against those voters and communities who betrayed Mugabe in March has not and will not simply evaporate because of the talks, whatever their outcome may eventually be; the Memorandum of Understanding has already failed to halt the violations, and has shown itself to be no panacea for the human rights crisis

which has engulfed the country. The huge numbers of internally displaced persons who are the victims of the violence illustrate what has happened while their continued inability, or reluctance or refusal to return to their home areas also reflects the ongoing level of fear, violence and instability in the country as a whole.”

78. We find this part of the expert evidence to be of particular significance. It indicates that the violence continues not only after the conclusion of the electoral process but after, and in breach of, the Memorandum of Understanding that was supposed to bring about a cessation of that violence. It is important to have regard to W66’s expert opinion that the campaign of violence against those seen as potential supporters of the MDC will not evaporate, whatever the outcome of the talks now being conducted.

79. W66 went on to say that:

“... the policy and strategy behind the regime’s attacks goes well beyond focusing on known individual supporters and former MDC strongholds; there is an ever widening general campaign of terror against virtually the whole population, including those communities previously regarded as loyal but who voted against Mugabe in March.”

W66 said that in his opinion even if a failed asylum seeker experienced no problem at the airport he or she would do so on return to his or her home area because:

... anything which might draw attention to an individual, suggesting they are an MDC sympathiser or unsympathetic to Zanu-PF, could mark them for special treatment in the present climate.”

80. In response to questions from the Tribunal, W66 said that the appellant may well encounter road blocks when seeking to travel from Harare to her home area by bus or other means of transport. If so, she would be required to produce proof of identification to demonstrate that she was from the area she was seeking to access. Those operating the roadblock would be looking for some proof of support for Zanu-PF. What was required could vary. It may be enough to have relatives from the area who could vouch for you. W66 made clear that this is what he expected to be the case rather than what he knew it to be.

81. We observe here that there can be found within the extensive documentary evidence put before us other accounts of the means used by those manning road blocks to establish whether a person is loyal to the ruling party. For example, a person who was unable to produce a Zanu-PF card might be asked to sing the latest Zanu-PF campaign songs. An inability to do so would be taken as evidence of disloyalty to the party and so of support for the opposition. Clearly, a person returning to Zimbabwe after some years living in the United Kingdom would be unlikely to be able to pass such a test.

82. Finally, this witness spoke of the difficulties experienced by Zimbabweans in need of assistance in accessing food aid. Government distribution efforts were deployed as a political tool, favouring its own supporters. There had been a ban since June of this year preventing NGOs from distributing food and, although there were very recent reports that the ban had been lifted, he did not expect that to make any real difference in fact.

83. As was the case with the other witnesses apart from the appellant herself, Mr Kovats did not seek to cross examine this witness on his evidence but did seek to elicit some information that the witness was thought able to provide that had not been dealt with in his statement. Mr Kovats made clear that in doing so he was not challenging any statement of fact asserted by the witness.
84. These questions concerned the circumstances surrounding the appointment of an MDC MP as speaker. It was W66's understanding that this appointment would lead to a by-election because upon appointment the speaker was regarded as no longer having a constituency. Another consequence of the appointment was, of course, that the MDC would lose a vote in Parliament unless they secured that seat in the by-election, a date for which has not yet been set.
85. This witness observed, as did a number of other sources made available to the Tribunal, that the scale and extent of the abuses being perpetrated upon whole communities within Zimbabwe is very likely to be under-reported. That is because much of the violence is going on in rural areas under control of the militias and other representatives of the regime and access is denied to those who are unwelcome. Roadblocks have been established to control and limit freedom of movement of displaced persons and access to areas where these forces are seeking to eliminate the MDC vote so as to reverse the changes in the political landscape that began to emerge in the March elections.
86. He made clear also his opinion that the "formal" state authorities, including the CIO and the security forces:

"... (were) very much involved through the JOC, in planning, launching and co-ordinating the initial onslaught, which gathered a momentum of its own, without the necessity of day to day hands-on involvement of the leadership".

This, he said, has led to shocking levels of brutality:

"... those perceived as not being loyal to the regime are still in danger; it is a society where a person is guilty until proved innocent... Although this scenario has existed in the country for years now it has recently reached unprecedented proportions. Thus while there is no doubt that specific MDC activists were targeted, so too were whole communities, villages and areas which voted the wrong way. The brutality levelled against and mutilations of victims has been particularly shocking; women have been targeted along with men, the old as well as the young...

Torture camps have become notorious places for the severe beating of anyone against whom the slightest finger of suspicion is pointed; victims have been forced to denounce others who in turn become victims and denounce others, and so the violence has spread."

87. W66 made clear also that he was of the view that those returned to Zimbabwe from the United Kingdom would face a heightened risk on that account:

"There has been no let up in the blame which the regime has placed on Britain, a central plank of all anti-MDC propaganda being that they are puppets of the UK...

Even if a returnee from the UK was not identified as a failed asylum seeker at the airport, then it is now more likely than it was a year ago that he/she would become known as such later, wherever that person might settle. Because of the state of terror, anybody coming back could be in a more vulnerable position than even ordinary persons who are desperately

trying to maintain an invisible profile. I say this because anything which might draw attention to an individual, suggesting they are an MDC sympathiser or unsympathetic to Zanu-PF could mark them out for special treatment in the present climate ... I say this because they will have all the problems of ordinary people who are not accepted as genuine loyalists, and then some.”

88. The evidence of W66 is significant and goes unchallenged by any cross examination. As we will explain below, it is in line with a large body of documentary evidence before the Tribunal, which we consider below, and is consistent with that of the other country expert who has given oral evidence to us.
89. It is of particular significance in that it identifies important changes that have arisen in Zimbabwe since the summer of 2007 when the Tribunal in HS examined the country evidence then available. In particular, W66 has described how the violence is being delivered by various groups of people on behalf of the regime who, having been directed as to the task by the formal state authorities, have been left to carry it out as they see fit. This has led to an escalation in the scale and extent of the brutality involved as well as the categories of victims, which is demonstrated also by the many reports from NGOs and others to which we have been referred. The basis of identification of those targeted has changed from the individual to the collective and from the gathering of information as to an individual's acts in support of the MDC to the targeting of those who simply are unable to demonstrate support for Zanu-PF or loyalty to the regime of Robert Mugabe.
90. It is, then, the expert evidence of this witness, unchallenged by any cross examination on behalf of the respondent, that the militias unleashed to secure the regime's hold on power do regard Zimbabweans living in the United Kingdom as a community predominately comprised of MDC supporters. Thus, absent any reason to suppose the contrary, a person returning from the United Kingdom as a failed asylum seeker faces a real risk of being regarded as disloyal to the ruling party and liable to be ill-treated in precisely the same way as members of a community identified in a geographical sense as such.

The Evidence of Terence Ranger, Emeritus Professor, Oxford University.

91. The Tribunal accepts that Professor Ranger is well placed to express an expert view on country conditions in Zimbabwe. He has more than 45 years of familiarity with the country. He has known Robert Mugabe and other senior leaders of ZANU-PF throughout that time. He has spent periods teaching at the University of Zimbabwe, most recently between January 1998 and June 2001. He has visited Zimbabwe every year between 1980 and 2006 and would have continued to do so but for health problems. He maintains regular contact with human rights activists in Zimbabwe, some of whom have visited him in the United Kingdom. He has written widely upon events in Zimbabwe and has devoted his professional attention to the development of conditions in that country for many years.
92. In reaching the positive assessment that we do of the evidence of Professor Ranger we bear in mind that in HS the Tribunal did not accept his opinion in respect of all key issues about which he offered evidence as an expert witness. But that does not diminish the value the Tribunal attaches to his opinion and, as we have explained,

the views he expresses in his current evidence are supported by a large body of documentary evidence, as well as some other oral evidence.

93. Professor Ranger adopted as part of his evidence a written report prepared for these proceedings dated 26th August 2008. Of the President of Zimbabwe he says this:

“Robert Mugabe, a very able but introverted man, has dealt ruthlessly with opposition throughout his career. He did so in Mozambique during the 1970s; he did so in Matabeleland in the 1980s; he did so in breaking the challenge of Edgar Tekere’s Zimbabwe Unity Movement; he did so during the presidential run-off campaign between March and June this year; and the evidence suggests he is prepared to do so again should the current talks break down.”

94. We find these observations to be of real significance because they demonstrate that Mr Mugabe, and those who advise him and act in his name, have a real propensity, demonstrated repeatedly, to see off opposition to the ruling party’s continuing hold on power by resorting to ruthless violence against those perceived to be his opponents who are of a sufficient threat to merit such treatment. As the professor puts it:

“What we have been seeing this year is the worst violence for years but it falls into and repeats long established patterns.”

All this is done in the name of independence from the old colonialism:

“... George Charamba, Mugabe’s publicity secretary, laments that “a mere X on a piece of paper, all done in time shorter than life creating ecstasy, can steal a free people, steal a heritage, steal a freedom, steal a land, steal a future”. Maybe, he says, we should have had to “shoot - yes shoot - the ballot box for the preservation of your independence”. The presidential run-off was announced as the people’s “last chance” to avoid a resumption of revolutionary war and Mugabe himself declared that he was prepared to go back into the bush if he were again defeated at the polls.”

95. Professor Ranger gives a similar account as does W66 of the elections in March. It was because the votes were posted outside each polling station that large scale vote rigging was very difficult. The best that could be achieved, after weeks of delay, was to deprive the MDC of the outright victory they claimed to be entitled to in the Presidential elections so that there would have to be a run off vote:

“But these locally posted results allowed militia gangs, soldiers and CIO to identify targets. By early May many press reports were appearing of retaliations. On May 8, (a news report) described how the worst violence in Zimbabwe’s recent political history had taken place in Mapondera village. There the posted result showed that 70 people had voted for the MDC and only 10 for ZANU/PF. Militia attacked at night, telling people that “you made us lose and you have to pay for it ... They pulled out husbands and wives, separated them and killed them on the spot; then they proceeded to the school where they killed four teachers.

...

Another vivid and disturbing report had been filed earlier... This described how nurses and patients were dragged out of Louis Guidotti hospital in Mutoko. They were addressed by armed men with the same message: “This is your last chance. You messed up when you voted. Next time you must get it right or you die.”

96. Asked to address the position of teachers in Zimbabwe, the professor explained that, once again, they have become targets. This is because many had acted as polling officers and were accused of favouring the MDC. A report in the state sponsored Herald newspaper asserted that many teachers who had rigged the poll had fled the country to escape “the long arm of the law”. The evidence indicates that 2,700 teachers had fled, dozens of schools had closed and 123 teachers were charged with election fraud offences. On April 30th 2008 the Institute for War and Peace Studies published a report entitled “Zimbabwe: Teachers fall victim to rural violence” in which an account was given of teachers being subjected to “hate speech” and assaults.

97. In his report Professor Ranger reviewed the widespread accounts of serious violence perpetrated after the first round of voting in March 2008. He said that, in his opinion, there could be no doubt as to the objectivity of the reports he refers to. It seemed that the violence was concentrated in areas traditionally viewed as Zanu-PF strongholds. A Human Rights Watch report dated June 2008 said:

“For the first time in its history, ZANU/PF either suffered heavy losses or won by much narrower margins than it expected in its “strongholds” in the parliamentary elections. For example, in Mashonaland Central, one of the areas of rampant ZANU/PF violence, ZANU/PF actually won 16 of the 18 contested House of Assembly seats. In Mashonaland East, another area that has seen high levels of the ZANU/PF violence (almost 50% of the cases documented by Human Rights Watch) ZANU/PF won 19 of the 23 contested House of Assembly seats. However, closer scrutiny of the polling station results indicate that the MDC made significant inroads in each of these provinces, losing by much narrower margins than ZANU/PF had expected.”

98. Professor Ranger regards as accurate the view expressed in the HRW report that the range of people targeted has broadened and it is no longer just those who are identified as MDC members or supporters in fact who are at risk:

“In these and other areas the report stresses that “ZANU/PF supporters and their allies have not found it necessary to prove that a person voted for the MDC before meting out “punishment”. Instead they have examined results posted outside polling stations to identify areas where people voted for MDC in large numbers, even if the MDC had lost to ZANU/PF in those areas”. They beat men “simply because they believed” they were MDC supporters...”

99. The professor referred next to a report published in June 2008 by an organisation whose identity is protected by the Tribunal’s order and so is referred to simply as Source H. This organisation said that it:

“...found “a phenomenal escalation of electoral violence”. The nature of the violence had changed “to more extreme physical systematic and retributive acts”. There was a “chilling craving to inflict physical harm, to eliminate, to disenfranchise, to displace and to starve ... features that are reminiscent of scorched earth strategies [in] a well coordinated program of violence”. And by early June “post election and pre run-off violence had reportedly transformed into a full state-sponsored retributive violence with visible involvement of the police, army, prison officers and CIO operatives”. The report found a “resort to liberation war strategies characterised by the setting up of liberation war style bases, use of war language, fist pointing, hate speech and hate politics”. It emphasised that so much damage had been done to social relations that it would be very difficult to restore anything like normality. ... Illegal roadblocks were still in place; people returning home from the towns were being beaten and fined; several murders were reported...”

100. Turning next to a consideration of the re-run of the Presidential poll, from which Mr Tsvangirai withdrew in the face of the scale of the violence being suffered by his supporters, Professor Ranger said that there had been no let up in the violence in the days before the run-off vote so that African observers could see for themselves what was taking place. As a result, the election was declared illegitimate even by those who had been allowed to observe it.

101. According to Professor Ranger, Mr Mugabe sought to lay the blame for all this violence with the British government. On 19th June 2008 the Chronicle newspaper carried a report of a speech by Mr Mugabe delivered in Matabeleland South, which is, of course, the province where the appellant lived throughout her time in Zimbabwe:

“The British realised that they could not argue with us on the land issue and hatched a plan to rope in their allies into the dispute by fabricating excuses such as allegations that there was no democracy in Zimbabwe, no rule of law, no freedom. Hakuna democracy. Was there freedom when the British ruled this country? Did they give you democracy? We had no vote at all ... We figured that the only way we can now win, the only language which the settlers and the British understand is the language of the bullet ... Britain are the creators of the MDC to fight the revolutionary party of Mugabe and Nkomo.”

102. The professor then addressed the question of whether the signing of a Memorandum of Understanding by Mr Mugabe and Mr Tsvangirai, leading to talks concerning power sharing (which talks at the time had failed to produce agreement) would lead to an end to the violence. There was ample evidence that the violence has continued. Some of the militia bases established in the election based campaign of violence and retribution have been dismantled but others have not. An emerging worry was that ZANU/PF youth in some of the militia camps are refusing to disband, claiming that they have not been paid and threatening to reward themselves by looting. Professor Ranger referred to a Human Rights Watch report published just last month:

“The report describes abuses by ZANU/PF. that continue to take place despite ongoing negotiations between the two parties. Hundreds of MDC activists who fled the violence in the weeks before the July 7 runoff remain in hiding while war veterans and youth militia continued to terrorise villagers in the rural areas ... Thirty two people were killed since the two parties signed the Memorandum of Understanding. The government has made little attempt to dismantle the torture camps and bases that it established in the immediate aftermath of the March 29 elections. The continued existence of these camps and armed ZANU/PF supporters, youth militia and “war veterans” raises the possibility of further violence and highlights the precarious nature of the human rights situation in the country. Abuses continue to take place with almost total impunity. Serious crimes are committed without investigation, prosecution or legal redress or compensation instead the police have embarked all on a witch-hunt of elected MDC MPs with at least 12 facing what Human Rights Watch believes to be politically motivated criminal charges.”

103. This is important evidence because, again, it indicates that the recent wave of politically targeted violence was designed not simply to deliver a particular outcome in the run-off vote but to visit retribution for what had already occurred and to change the political landscape on a continuing basis.

104. The evidence indicates that the government continued to deny food and medicines to perceived supporters of the MDC and the continuing violence, repression and suspension of humanitarian aid by Zanu-PF shows, according to Professor Ranger,

the absence of good faith in which Mr Mugabe and Zanu-PF are participating in the current talks.

105. Professor Ranger told us that it was the Joint Operational Command (“JOC”) that was responsible for the central direction of the violence being perpetrated in Zimbabwe today and the more informal militias who were delivering it to the people:

“As for the militia, they have provided the enforcement muscle, working out of camps in the countryside and bases in the high density areas. Some of the appalling atrocities committed have unfortunately been the work of local “activists” taking revenge on their neighbours, with whom they will not have to live. But much has been the work of young uniformed militia men. Some have been indoctrinated by the patriotic history doctrines of ZANU/PF and a generational tension has been reported to me from many areas of Zimbabwe.”

106. These are the sort of people with whom the appellant will have to deal should she be challenged upon her return to her home area about her affiliations. Professor Ranger said:

“The situation in Zimbabwe is transformed since the first round election. No part of Zimbabwe is safe; many are no-go areas. It is clear from the reports I have summarised above that violence has been directed not only against MDC activists and members but against anyone whose loyalty to ZANU/PF is suspect. That will obviously be the case for someone who has sought asylum from Britain.”

107. We find of particular significance that this expert evidence to the effect that, in the current climate, a failed asylum seeker returning to Zimbabwe would “obviously” on that account be regarded as disloyal and that violence is directed at those regarded as disloyal goes unchallenged by cross examination.

108. In his oral evidence Professor Ranger told us that he was himself familiar with the part of Zimbabwe where the appellant lived. He described it as most certainly a rural area. He said it was like “the back of beyond”. Its remoteness is indicated by the fact that there is no radio or TV transmission available there.

109. He confirmed also that there were still very large numbers of displaced people in Zimbabwe who were afraid to return to their home areas. No-go areas had been established by Zanu-PF where entry was regulated to ensure Zanu control. There were road blocks and curfew arrangements that may be encountered.

110. The appellant’s area had been one hotly contested in the elections. It was from this province that a number of the MDC- M faction MPs were returned.

111. It is Professor Ranger’s view that the position facing someone such as the appellant upon return to Zimbabwe today is worse than it has been in recent years:

“When I wrote my country case report last year I warned that the situation was bad. The evidence I have adduced now shows that it is very much worse. For Matabeleland things are worse than they have been since the 1980s; in the rest of the country they are worse than they have been since the guerrilla war and martial law in the 1970s.”

112. We accept the expert opinion of Professor Ranger. As we will identify below, it is in line with the other expert evidence and there is a wide range of documentary evidence from many respected sources that confirms what he says. His evidence

goes unchallenged other than by Mr Kovats' submissions, which are summarised below but which, we find, do not undermine the professor's evidence.

Evidences of witnesses not called to give oral evidence

113. We consider next the evidence of a number of witnesses who, for various reasons mainly of a geographical or practical nature, were not called to give oral evidence but who have provided witness statements specifically for these proceedings. The respondent did not seek to resist the introduction of this evidence.

114. The first of these is Witness 4 ("W4") of Source D, a well known and respected organisation with a long history of working in Zimbabwe. W4 himself has also a long association with the country, as is clear by the observation he makes at paragraph 3 of his statement in which he feels able to say this:

"I am personally mature enough to remember the war of liberation. Nothing compares in brutality to what the regime has done to its people since March 2008.

Civilians were of course often victims in the war for independence between Rhodesian soldiers and the Freedom Fighters. However, this situation is wholly different as ordinary people have been systematically targeted in a military campaign. The most primitive and uncivilised methods and tactics have been used. (A religious representative organisation) has issued a public statement in June describing it as a "reign of terror that has been unleashed on the country."

115. W4 described how the violence has continued "more or less unabated" even after the run-off election. Those seeking to return to a home area they had left face very real difficulties:

"We are aware of people who fled their local areas during the election period and tried to return having been beaten and worse for having fled. The fact that they fled has been taken as evidence that they are disloyal and working with the enemies of the state. Given that those who have fled are perceived to be disloyal, it is also easy for them to become victims of extortion.

Those who seek refuge in the UK and US are seen as much worse than those who fled internally or even to neighbouring countries. They are perceived as showing allegiance to those countries that are seeking to overthrow the regime."

116. This is further cogent evidence that those returning to Zimbabwe after having claimed asylum in the United Kingdom are now at risk on return to their home areas in Zimbabwe, or in most areas of relocation (subject to what we say about this below), of being regarded as disloyal and so as legitimate targets for retribution and ill-treatment at the hands of the various militias who continue to seek to protect and preserve the ruling party's hold on power.

117. This witness, who in view of the nature of the organisation he works with is in a very good position to know, says that food aid is being used as a political tool by the regime:

"Without a Zanu-PF party card there is no access to food. Those with sufficient foreign currency and access have been going to South Africa to get food. Bartering for food is no longer taking place on any scale as most people do not have any items to barter with. You cannot barter if you have nothing. Some emergency food aid does arrive into the country

but it does not find its way to the people it is intended for. The food shortages apply to both urban and rural areas. The current harvest is the worst harvest since independence. A loaf of bread cost approximately 400 billion Zimbabwean dollars. I have not eaten bread for months.”

118. Witness 2 (“W2”) of Source F is another person whose views command respect and deserve to be given weight. We do not seek to disagree with what Mr Henderson says in his skeleton argument:

“W2 has repeatedly been identified as the most reliable human rights reporter in Zimbabwe and described by the Court of Appeal in AA1 as a “much respected representative” (para 64) of the organisation identified by (the respondent) as the British Embassy’s main NGO contact.”

W2 has prepared a statement for these proceedings in which he recalls that he had expressed his concern in a report he prepared for the Tribunal in 2007 that anyone not perceived to be loyal to Zanu-PF would be viewed as a “sell-out” and so at risk. He now says this:

“Regrettably, the campaign unleashed against ordinary Zimbabweans considered unsympathetic to the regime has more than fulfilled these fears. The extent of the violence and the targeting of ordinary Zimbabweans not seen as supporting the regime is well off the scale in comparison to what went before. ... Ordinary Zimbabweans are targeted simply because they are assumed to be against the regime and liable to vote to the MDC.

...

... The violence now seems to be wholly unrestrained even compared to what was seen in previous years. It is carried out with complete impunity and very obviously. This has assisted in manifesting terror in the population. The situation is exceptionally insecure because the threat to the regime’s existence following the March elections is very real.”

W2 confirms the point made by other witnesses that it is no longer simply those identified as MDC activists who are at risk:

“They know from the polling data from the first round that the majority of a particular community is pro MDC and they have attacked whole communities as a result. One of the elements of the new situation is that people who were no more than suspected MDC voters have been receiving severe violence of the sort previously experienced more by activists.”

119. Dealing specifically with the position of someone returning to Zimbabwe after having spent a period of time living in the United Kingdom, W2 said:

“Someone returning to Zimbabwe now after seeking asylum in the UK would return to a substantially more dangerous situation even than 2007. It has been demonstrated over the last five months that the mere suspicion that someone supports and would vote for the MDC is sufficient to lead to severe violence without the person having been active in any way. It is simply enough to live in a majority MDC area, without having acted as a sell-out by going to the UK to join the refugee community there.

Travel within Zimbabwe carries particular risks for anyone who cannot demonstrate adherence to Zanu-PF (which someone who has sought asylum in the UK will not be able to do for that reason, unless they have proved they are Zanu-PF or are very well connected). The extent of the violence and the targeting of whole communities is, as I indicated, a new phase in the deterioration in Zimbabwe. A person who has been in the UK for years is unlikely to be as streetwise about how to minimise risk from militia in this new situation and such a person would be in a lot of trouble.

I said before that even if someone is not identified at the airport as having sought asylum in the UK, they could not simply return home anonymously because to simply appear in a new area after several years of absence would attract questions. That is especially true now in light of the polarisation and militarisation I referred to above.”

120. This witness identifies, as have others, the suspicion that arises in respect of a person who is known to have come back to Zimbabwe from the United Kingdom.

“The xenophobia against the UK has reached new heights. The regime has seen the effectiveness of international pressure from the UK, including bringing Zimbabwe to the Security Council and the condemnation of the G8. The regime is now in real danger of losing power. The attacks on the UK are relentless. Among the cases I have seen have been people who were attacked, tortured and told to go back to England. These were rural villagers - they had not been to the UK and most probably did not know where it was.

In the current atmosphere, people who have sought asylum in the UK may be accused of being British sympathisers or even spies. The militia inflicting the violence locally are very brutal and very unsophisticated although they are directed by sophisticated people. They are encouraged by the government to believe that it is Britain that is creating Zimbabwe’s problem is that they are hungry because of the UK and the UK is controlling the MDC as a means of controlling Zimbabwe. It is crude propaganda, untrue and irrational but you can see the impact on the irrational local militia and the propaganda is churned out by the state-controlled media as well as their commanders and the party so there is no alternative perspective.”

121. The argument that those returned to Zimbabwe after having made an unsuccessful claim for asylum in the United Kingdom would be regarded as spies or saboteurs sent to destabilise the country, often called “Blair’s spies”, was considered by the Tribunal in HS and rejected as being unfounded. The CIO, being the organisation who would assess returnees, was described as a sophisticated organisation of professional intelligence officers. They acted on the basis of intelligence obtained not least from the extensive investment the regime had made in infiltrating the MDC in the United Kingdom. Such professional intelligence officers would not believe that the United Kingdom, if minded to send spies to Zimbabwe, would do so in a category of those returning who were bound to attract attention, unlike ordinary travellers who would pass through the airport unhindered.

122. But the answer to that reasoning is now found in the final paragraph of the extract from the evidence of W2 set out above. It is no longer the professional security staff at Harare airport who are the main concern for returnees. It is the ill-disciplined, irrational and unpredictably violent militias to be confronted upon return to the home area.

123. In our view, the evidence indicates that those groups act with unprecedented brutality towards a broad range of people on the basis of suspicions of disloyalty and that they have been indoctrinated to believe that the United Kingdom, and those associated with it, are the source of Zimbabwe’s problems today. It is plainly the case that the Zimbabwean community in the United Kingdom is an area of solid support for the MDC. It would, in our view, be naive to assume that those tasked with eliminating potential support for the MDC in Zimbabwe would not be aware of that. There is a large body of evidence that membership of a community perceived to support the MDC is sufficient to mark a person out for violent harassment or worse treatment. It is not hard to see how anyone returning from the United

Kingdom would be associated with the hysterical propaganda that continues to be peddled to these various groups or militias who appear to be acting with impunity.

124. W2 also speaks of discriminatory exclusion from access to food on the basis of supposed political affiliation:

“There is no longer the hope of obtaining food from NGOs for those denied government food aid because they do not have a Zanu-PF card. Despite the MOU (Memorandum of Understanding) providing for humanitarian assistance, the regime has continued to obstruct it. NGOs are being permitted to assist those on ARVs but have not been permitted to provide general food aid. The NGOs are told they must re-register but there is no clear procedure for registering. “

The documentary evidence from NGOs and Human Rights Organisations

125. There is a very large body of such evidence put before us by the appellant's representatives. We have had regard to all that we have been referred to but the extent of this material is such that we cannot discuss it all in this determination. What follows is a consideration of what must be only a sample of this evidence. But we are entirely satisfied that the part of this category of the evidence to which we now refer is representative of the whole.

126. A report from the Institute for War & Peace in May 2008 noted that “huge masses” of people from Plumtree, which is near to where the appellant lived in Zimbabwe, were crossing illegally the border into Mozambique fleeing from “political violence”. Homes had been destroyed and fathers beaten in front of their children by ruling party supporters and War Veterans. That report was published before the outcome of the run-off vote but must be viewed in the light of what is now known about the road blocks and no-go areas established by the militia to control the movement of displaced persons.

127. Solidarity Peace Trust (“SPT”) published a report in May 2008 in which it noted a significant increase in violence immediately after the first round elections in March:

“It was clear to the State by 30 March that they had lost the presidential and parliamentary elections. Media reports indicate that in the early days of April, Mugabe considered conceding defeat, but that by around 3 April the hardliners in his party, together with the Joint Operational Command, had decided that there would be no such concession, and that ZANU PF would remain in power by brute force.”

128. That report gives an indication of the scale of the violence. 650 out of 700 people interviewed spoke of post election violence, SPT said those:

“... are likely to represent a very small percentage of those who are in fact suffering violations at this time. ZADHR estimate only a tiny fraction of victims is managing to travel to a major centre for medical support, with others being treated in rural clinics and hospitals, or not being treated at all, either because they are too injured to travel or because their efforts to reach help are being obstructed. There are reports of ambulances being turned back from accessing these districts, and of severely affected districts being under curfew where any movement out of the area is almost impossible owing to army and police roadblocks. Nobody is being allowed to leave certain areas where violence is very bad without written permission from the war vets and police controlling these areas.”

129. Included in the SPT report are a series of photographs of campaign posters used by Zanu-PF during the March elections. These include slogans such as:

“TO PUNISH AND FOREVER SILENCE “PUPPET SANCTION-MONGERS”

“ZIMBABWE WILL NEVER BE A COLONY AGAIN!”

“TO DEFEAT PUPPETS, BUSH, BROWN AND THEIR SANCTIONS”

making clear that anti British rhetoric was very much part of the Zanu-PF campaign message and that it attempted to associate the opposition very clearly with the British in the eyes of its own supporters.

130. A Zimbabwe Crisis report in May 2008 said that hundreds of rural schools had been closed because “most teachers have fled local violence”:

“War veterans and militias have reportedly unleashed a reign of terror in the countryside, and although many victims are said to be opposition supporters, ordinary teachers have also borne the brunt.

...

Teachers have long been regarded as community leaders and opinion formers, particularly in the rural areas, and often they have found themselves the target of militias loyal to the governing party.”

131. Human Rights Watch (“HRW”) has published a detailed report concerning the March 2008 elections. Its title, “Bullets for each of you”, taken from what had been said to communities thought likely to have voted for the opposition, gives an indication of its conclusions. Once again, clear evidence was found by those compiling this report that it was not simply MDC activists or supporters who were at risk:

“ZANU-PF supporters and their allies have not found it necessary to prove that a person voted for the MDC before meting out “punishment”. Instead they have examined results posted outside polling stations to identify areas where people voted for MDC in large numbers, even if the MDC lost to ZANU-PF in those areas.”

And, according to HRW, the reasons for this went beyond the short term objective of punishing people for having voted in the elections that are now a fact of history:

“...it is being used to change the political landscape of rural areas by effectively displacing and thereby disenfranchising the voting rights of known MDC members and supporters.”

132. There is evidence also that the militias set up under the direction of the formal state authorities to act during the election period are taking on a momentum of their own. As it is put by a SPT report published more recently, in July 2008, there may be difficulty in “putting the genie back into the bottle”. This gives rise to the prospect of criminally motivated attacks been carried out by those who had been provided with impunity to visit violence upon those thought to be potential supporters of the opposition.

133. Included in this volume of evidence prepared by the appellant’s representatives is the travel advice published by the Foreign & Commonwealth Office for British

citizens contemplating travelling to Zimbabwe. The following advice was current when the bundle was prepared just a few days before the hearing:

“We advise against all but essential travel to Zimbabwe at this time. The situation remains unpredictable and incidents of violence across the country continue: it could deteriorate further without warning.”

The updated advice is:

“We advise against all travel to high density, low-income suburban areas at any time; and all but essential travel to rural Mashonaland, rural Manicaland and farming areas. There have been a number of serious incidents in rural areas and it is dangerous for farmers or agricultural workers to visit former properties or other agricultural areas. You should also avoid areas where War Veterans are active. The situation remains unpredictable and incidents of violence across the country continue: it could deteriorate further, without warning. See the Political Situation and Local Travel sections of this advice for more details.”

And both versions add:

“You are strongly advised to have your own contingency plan in place for how you would leave at short notice and ensure your travel documents are up to date and readily available. You should keep a low profile, exercise a high degree of caution, monitor local media for developments and avoid all areas where demonstrations may be held, or where there are large gatherings of people. See the Political Situation and the General (Living in, or travelling to, Zimbabwe) sections of this advice for more details.”

134. As Mr Kovats points out, correctly, this is advice offered to British citizens and not to nationals of the country concerned. But it does represent an acknowledgement of the volatility of country conditions. And it is hard to see how anyone can be confident, whether a Zimbabwean national or a visitor, that an area of intended destination is one where War Veterans are currently active.

The stated position of the United Kingdom Government

135. At this point, before going on to discuss the large collection of recent news reports compiled by the appellant’s representatives, it is convenient to consider the public statements of ministers of the government of this country relating to the current country conditions in Zimbabwe. This evidence is put before the Tribunal on behalf of the appellant to support the submission that the position adopted by the respondent before the Tribunal, that it is safe to recommence involuntary returns of failed asylum seekers to Zimbabwe, is irreconcilable with the public statements of senior ministers. Where such statements have been made in Parliament they must, it is said, be taken to represent the position of the government.

136. Of events in Zimbabwe following the first round of voting in March of this year, Mr David Miliband, Foreign Secretary, made this written ministerial statement, delivered to Parliament by the Foreign Office minister Lord Malloch-Brown on 15th July 2008:

“We believe that dialogue between the parties provide a way forward for Zimbabwe’s crisis. But we need to be clear about the basis on which dialogue can be developed. At present we have one party that won a popular mandate in the Parliamentary elections of 29 March at but whose members and supporters have been intimidated by the violence unleashed on

them by the state and ZANU-PF militia. And we have another party that has refused to cede power and that has used the full force of the state security apparatus to intimidate its citizens and turned the presidential run-off into a farce.”

And on 10th July 2008 the Prime Minister addressed the House of Commons thus:

“Let me first draw the House’s attention to the unprecedented G8 statement on Zimbabwe. In the face of the deepening tragedy in Zimbabwe - the intimidation and deaths, the violation of human rights, the detention of political prisoners - the G8 made it clear that we do not accept the legitimacy of the Mugabe government and that the UN Secretary General should now appoint a special envoy both to report on the deterioration of human rights and to support regional mediation efforts to bring about change.

With worldwide sanctions and the worldwide arms embargo that we propose, our aim is that there would be no safe haven and no hiding place for the criminal cabal that surrounds the Mugabe regime.

I hope that United Nations members - even those that in the past have not supported such action on Zimbabwe - will realise that in terms of humanitarian aid, this is an emergency, that a criminal cabal is running a country without legitimacy, and that the people of that country need relief from the miseries to which they are subjected.”

And on 2nd July he had said:

“it is indeed time for Mugabe to step down, and he has blood on his hands after what happened during the election campaign, in which so many people died and were displaced.”

And on 23rd June:

“Our thoughts are with the people of Zimbabwe, who are facing an unprecedented level of violence and intimidation from the regime. The whole world is of one view: that the status quo cannot continue.

The international community must send a powerful and united message: that we will not recognise the fraudulent election rigging and the violence and intimidation of a criminal and discredited cabal.”

137. If nothing else, these public statements do confirm that which is asserted by the Mugabe regime: regime change in Zimbabwe is a policy advocated by the British government. On 8th July 2008 the Foreign Officer minister told Parliament that:

“... unlike six months ago, there is now no doubt that Mr Mugabe and those around him have committed crimes which deserve referral to the ICC (International Criminal Court).”

Having earlier said, on 3rd July:

“In his determination to cling to power, Mugabe has turned on his own people.”

And appeared to recognise that in Zimbabwe there was :

“... abuse that is sometimes targeted and sometimes anarchic and random.”

And on 10th June 2008, speaking in Parliament about an incident in which the British diplomatic staff had become involved in Harare:

“the incident last week is never the less mild compared with the terrible violence that ordinary Zimbabweans are subjected to.”

138. Winding up the 3rd July debate upon Zimbabwe, the Under-Secretary of State for International Development, recognising that “conditions in the country are desperate”, said of the ban introduced by the Mugabe regime in June affecting the ability of NGOs to distribute food aid:

“The banning of non-governmental organisations has affected 1.5 million people and it demonstrates that Mugabe is using hunger as a political weapon with a callous disregard for human life.”

139. There is more to the same effect. On 25th June 2008 another minister, the Sports Minister Mr Andy Burnham, delivered a written ministerial statement explaining the decision to cancel the proposed tour by the Zimbabwean cricket team:

“the Zimbabwean government has ceased to observe the principle of the rule of law: they have terrorised their own citizens, including the ruthless and violent suppression of legitimate political opposition.”

And, more significantly still, the Under Secretary of State of the Foreign Office said in Parliament on 24th June 2008:

“As my right hon. Friends the Foreign Secretary and the Prime Minister have said, the violence, suspension of aid and the ongoing murder and intimidation of ordinary Zimbabweans are unacceptable. The regime lost all vestiges of legitimacy long ago. We continue to work through the EU, U.N. and African union to press for solutions to the current electoral crisis that reflect the will of the people as they voted on 29 March.”

140. In considering these statements by ministers, the Tribunal recognises that the government is not concerned only, as is the Tribunal, with the limited question of whether a person can assert as a legal right that he or she should not be required to return to their country of nationality. It is not hard to see that there may well be circumstances in which a person fails to establish such a right as a matter of law yet where the government may still consider it inappropriate to return a person to their country of origin in view of the difficult country conditions currently prevailing. But it is difficult to reconcile the comments set out above with the respondent’s position as expressed by Mr Walker, that because those Zimbabweans living in the United Kingdom would not have been able to vote in the elections they would not likely to be assumed to be MDC supporters on return to Zimbabwe and targeted on that account.

News reports

141. As with the NGO reports, the appellant’s representatives have compiled a collection of a large number of news reports. Such is their number that we cannot discuss in this determination all of those or even the reports to which Mr Henderson specifically referred in his submissions. But we have taken note of all of that material and what we set out below is indicative and representative of this body of material as a whole.

142. A report in “Zimbabwe Today” dated 9th April 2008 refers both to the fact that government food aid was being delivered only to those seen to be “accredited Zanu-PF supporters” and to the fact that youth militias and War Veterans had

erected road blocks and required motorists to produce Zanu-PF membership cards. A Times online report published between the first round of voting in March 2008 and the run-off presidential that followed said:

“Unwilling to allow Mr Mugabe to slope off to retirement and immunity, the military has taken the reins, unleashing an orchestrated campaign of terror against opposition activists, election observers and ordinary voters in an attempt to secure Mr Mugabe’s victory in a second-round poll. The results lists posted outside polling stations that made massive rigging impossible are now being used to target those areas that voted the wrong way.

Areas across Matabeleland, Masvingo, Masvingo and Manicaland, which swung away from the ruling Zanu (PF) party for the first time, have found themselves at the forefront of the brutality.

...

On Tuesday in Matabeleland South, to the east of Bulawayo, youth militia armed with AK-47’s stopped traffic and ordered people off buses, rounding them up and forcing them at gunpoint to chant slogans in praise of the ruling party. If they could not, they were beaten.”

143. A BBC news report of 21st April 2008 observed that:

“Most worryingly, President Mugabe and his Zanu-PF party have unleashed a campaign of violence against those ordinary Zimbabweans, 60% of them, who in spite of everything, voted against him”

The same is confirmed by an IRIN report dated 9th May 2008:

“Hunger is giving a brutal edge to the alleged work of militias implementing Operation Mavhoterapapi (who did you vote for?), a campaign launched by President Mugabe’s ZANU-PF government in the wake of the ruling party’s loss of its Parliamentary majority for the first time since independence in 1980.

The post-election crackdown, allegedly orchestrated by police, soldiers and veterans of the liberation war, has led to widespread reports of torture, the razing of houses and killing of livestock, perpetrated mainly against people in rural areas suspected of voting for the opposition party, Movement for Democratic Change.”

144. There are very many reports of the public utterances of Robert Mugabe, blaming the United Kingdom government for the economic problems suffered by Zimbabwe and for seeking “illegal regime change”. There are a large number of news reports describing the sheer scale and extent of the brutality being meted out, with hands and feet being chopped off, eyes gouged and very serious beatings resulting in life threatening injuries, sometimes accompanied by attempts to prevent access to medical treatment.

145. A Voice of America report on 13th June 2008 spoke of rural areas, including in the appellant’s home province of Matabeleland South, being cut off by militias and War Veterans while violent attacks were carried out against those targeted. On 14th June 2008 Reuters carried a report of an article in the Chronicle newspaper in Zimbabwe publishing comments by General Chiwenga, who was coordinating Robert Mugabe’s re-election campaign. He said that Western forces led by Britain were trying to seize control of Zimbabwe and that it was:

“imperative to Zimbabweans to remain resolute in defending their sovereignty” after freeing themselves from British occupation, oppression and exploitation at independence in 1980.

146. An indication that the run-off vote was never going to be the end of the Zanu-PF regime, whatever its outcome, is found in a Times online report dated 17th June 2008:

“Robert Mugabe gave warning yesterday that he would not cede power if he loses next week’s election by the opposition in his most explicit statement yet of his refusal to respect the result.

State-controlled media reported his comments to supporters at an election rally, the latest in a series of increasingly menacing threats as Zimbabwe counts down to the June 27 presidential run-off poll. Mr Mugabe’s military-backed regime has been carrying out a campaign of violence aimed at wiping out the opposition vote.

“We fought for this country, and a lot of blood was shed,” Mr Mugabe told his supporters. “We are not going to give up our country because of a mere X. How can a ballpoint fight with a gun?”

The warning came a day after he declared “We are ready to go to war”. Evidence, say observers, of mounting concerns that he may not have done enough to secure the vote.

Mr Mugabe’s threat coincided with a sudden worsening in violence in the townships around Harare, as mobs of hundred of Zanu (PF) youths marched through the streets at night, chanting war songs, dragging people out of their homes and beating them up with sticks, iron rods and axes. Until then the terror campaign had been confined largely to rural areas where security forces and militia groups have conspired to create “no-go zones”, banning aid organisations and all outsiders to prevent them witnessing the intimidation.

The level of violence has increased dramatically in the past two weeks, moving from beatings and torture to mutilation and killing, with several victims burnt alive and others shot.”

And the much published comments of Robert Mugabe, as reported by the Telegraph on 21st June 2008:

“The MDC will never be allowed to rule this country – never ever,” Mr Mugabe, 84, told a meeting of business people in Bulawayo.

“Only God who appointed me will remove me, not the MDC, not the British.”

147. Recent reports support that which has been said by the country experts in this appeal. It is said repeatedly that it is the military commanders of the JOC who have taken power in Zimbabwe and who are masterminding the campaign of violence designed to eliminate the possibility of any challenge to the continuing authority of the regime and its hold on power. Unlike Robert Mugabe, there was no amnesty on offer to protect them in the proposals under which the President was asked to relinquish power after the first round of voting.

148. There is to be found within this material much to support the views expressed by both country experts that there has been a broadening of the range of people targeted by the regime beyond simply those actually identified as supporters or activists for the MDC. A Guardian report of 24th June 2008 said:

“The campaign of intimidation that was once aimed at the second-tier activist for the Movement for Democratic Change has now been turned on everyone else.”

And a report from the Daily Mirror referred to such violent intimidation taking place in the area of Plumtree, from where the appellant originates. Having described the beating of a teacher, who had been hung from a tree by his wrists the report said:

“The teacher was just one more victim of the malignant psychopaths Robert Mugabe has unleashed on his own citizens. Children as young as five have been beaten with hammers while women are led away to camps where they are systematically raped.”

There are other similar reports of young women being raped after having been taken to camps established by the youth militias, such as that carried by Times online on 6th July 2008 and IRIN which said that rape was being used as a deplorable weapon against those “perceived as not supporting ZANU-PF”.

149. There is material here, also, to support the assertion that the violence was not limited to secure the outcome delivered in the run-off vote but that it is continuing while the MDC is still considered to represent a viable opposition to the regime. Voice of America reported on 23rd July 2008:

“Although Zimbabwe President Robert Mugabe’s ZANU-PF party has agreed to talks with the opposition Movement for Democratic Change on a possible power-sharing arrangement, the country’s political violence and intimidation continue. ... ZANU-PF militia are still patrolling vast parts of the country.”

And a more recent Voice of America report dated 14th August 2008, said that War Veterans continued to be active in Tshitshi district in rural Plumtree, which is close to the appellant’s home area in Zimbabwe.

The respondent’s case

150. The respondent’s case was not put to the witnesses in cross examination other than briefly to the appellant herself. That challenge was limited to the suggestion that sufficient time had elapsed since her departure that it was improbable that her former boyfriend would still have any interest in her, even if he remained in the area, and now that the elections were over the risk of the appellant encountering the sort of difficulties we have discussed above was very much reduced. It was suggested to the appellant that if she were to return to Zimbabwe she would be in no worse a position than anyone else.

151. Only one witness was called for the respondent. That was Mr Mark Walker.

152. Mr Walker is a Senior Executive Officer in the Country Specific Asylum Policy Team, UK Border Agency. His day to day responsibilities include country policy on Zimbabwe. He has given evidence to the Tribunal in recent country guidance cases and submits two statements, dated 26th August and 1st September 2008 respectively, that set out the respondent’s case from information supplied to him. He makes clear that he does not have direct knowledge of all that information but, as it is provided to him by colleagues in the UK Border Agency, the Foreign Office and the British Embassy in Harare, he believes to be correct all that he says in the witness statement that he adopted as his evidence before us.

153. In his earlier statement Mr Walker dealt first with the respondent’s position in respect of the risk on return faced by returnees on arrival at Harare airport:

“It is the opinion of the Secretary of State for the Home Department that the conclusions of this tribunal in “HS” (AA/02471/2006) continue accurately to reflect the treatment that failed asylum seekers would encounter at Harare airport if they were to be returned to Zimbabwe, whether voluntarily or involuntarily. SSHD accepts that in the absence of significant numbers of involuntary returns since 2005, any assessment of risk to involuntary returnees in the future must to some extent be speculative. However, that was true even at the time that HS was heard, and the Tribunal in that case had to rely in part on the logicality of the reasoning behind the appellant’s assertions about the way that the Zimbabwean security apparatus would work if involuntary returns were to take place.

SSHD accepts that the country situation in Zimbabwe has continued to deteriorate since HS was heard and deplores the violence that has surrounded the parliamentary and presidential elections there. But that violence is targeted at actual and perceived supporters of the political opposition within Zimbabwe, mainly with a view to affecting the way they voted in the elections or to punish them for not voting for Robert Mugabe or ZANU-PF. It is SSHD’s opinion that the government of Zimbabwe would not assume that all failed asylum seekers returned from the UK would be opposition supporters and that returning failed asylum seekers would not as such be any more likely to be targeted for mistreatment than any other Zimbabwean returning to Zimbabwe. In particular in the context of the recent elections, as Zimbabwean electoral law does not provide the inclusion on the electoral roll of those who are outside Zimbabwe, there would be no reason why such returnees would be targeted for retributory violence.”

154. Four things might be noted about that extract. First, it is concerned with reception at Harare airport by official agents of the state rather than the reception to be faced on return in the returnee’s home area or elsewhere. Second, the respondent here accepts that adverse interest is now extended to those who are simply perceived to be supporters of the opposition. Third, it assumes that the purpose of the post election violence was restricted to delivering to Mr Mugabe a successful outcome in the run-off vote, whereas the evidence now before the Tribunal demonstrates that the real purpose went much further and explained why violence has persisted even after the signing of the Memorandum of Understanding. Finally, it assumes that because a returning failed asylum seeker could not have voted in the March or June elections such persons would not be assumed to be supporters of the MDC.

155. That reasoning is based also upon the understanding that the violence that persists in Zimbabwe after the electoral process has concluded is retributory in its nature. But as can be seen from what has been set out above, the evidence establishes that there is a broader agenda. The reason for the continuing violence is not just to punish those thought to have voted for the MDC for having done so but to eliminate the possibility of any future challenge.

156. With regard to the relevance of the poor country conditions in themselves, Mr Walker said this:

“It is SSHD’s opinion that despite the poor and deteriorating humanitarian situation in Zimbabwe, taking into account information in the latest UK Border Agency Country of Origin Information Service Country Report on Zimbabwe ... and (a) letter from the Foreign and Commonwealth Office (exhibited to the statement) general country conditions are not such that they would in the case of an ordinary Zimbabwean who has no individual protection

needs reach the high threshold of article 3 of ECHR. However, every case is considered on an individual basis and this does not preclude a finding that the UK's Article 3 obligations may be engaged in some cases."

157. We agree that each case must be considered on its own merits and that, for the reasons that we set out below, it is possible to see that some Zimbabweans may now be living in conditions of such cumulative difficulty as to reach the high threshold of article 3 of the ECHR.
158. Mr Walker pointed out that since September 2006 the respondent has enforced the return to Zimbabwe of fifty Zimbabweans who had been refused leave to enter the United Kingdom and he is aware of no report suggesting that any of those returnees had been mistreated. However, only one failed asylum seeker has been returned since 2005.
159. Arrangements with the International Office for Migration ("IOM"), discussed in detail by the Tribunal in HS will remain in place to assist returnees in resettlement. Mr Walker referred to a table exhibited to his statement containing comments recorded by IOM in respect of the returnees helped. These were consistently positive but Mr Walker accepts that these are not direct quotes but rather an indication of the experience of return as identified by the IOM representative. Having considered these in detail the Tribunal considers that they add very little either way.
160. Mr Walker sets out in his statement the response to enquiries made of other governments about their practice and experience of returning immigration offenders to Zimbabwe. The United States of America has continued to remove such persons to Zimbabwe, 26 in 2007 and 21 so far this year, sending escorts where necessary. However, it is not clear how many agreed to a voluntary return, in which case they would hold their own travel documents and be indistinguishable from any other traveller.
161. Canada does not presently remove failed asylum seekers to Zimbabwe and has not done since 2002 and does not monitor how other returnees are treated. Denmark has suspended such removals as well.
162. In his later statement Mr Walker set out the results of enquiries made of other countries. Sweden had no statistics concerning enforced returns of failed asylum seekers to Zimbabwe but it was known that one person returned voluntarily this year although none did during 2007. Norway has not carried out any returns over the last year and there had been no voluntary returns in 2008. There was no suspension upon removals to Zimbabwe in place from Germany but very few had been returned, one in 2006 and one in 2007. There were no forced returns from Belgium either but they handle a very small number of asylum claims from Zimbabwean claimants.
163. As for ordinary travel in and out of Zimbabwe, the Tribunal is aware that at about the time of HS British Airways ceased operating flights to Harare airport, citing commercial reasons. Mr Walker has made enquiries of Air Zimbabwe and, although they declined to confirm passenger numbers, he calculates by reference to the type of aircraft used and the frequency of the flights now operated between this country and Zimbabwe, that the maximum capacity is just under 31,000 passengers a year.

In addition there are about 30 indirect flight routes between the United Kingdom and Zimbabwe each week but no information is available as to passenger numbers making that journey.

164. Finally, Mr Walker quotes in his earlier statement details from the Zimbabwe Tourism Authority's "Tourism Statistics 1st half Report, 2008" which show that the number of tourists from the United Kingdom fell from 15,378 in the first half of 2007 to 10,066 in the first half of 2008.

165. Exhibited to Mr Walker's second statement is a letter from the Foreign and Commonwealth Office dated 22nd August 2008. In that letter is set out an description of the difficult living conditions encountered by ordinary Zimbabweans. We shall examine that later in the determination when dealing with that aspect of the appellant's case. Noting that state sponsored violence and intimidation against MDC supporters was "a significant feature of the recent election period", the letter continues:

"More recently, the level of political violence and intimidation has fallen. For instance, the groups of ZANU-PF youth previously prevalent in the northern, wealthier suburbs of Harare disbursed almost immediately. The situation has remained tense, particularly in the parts of Mashonaland and Manicaland, where the ZANU-PF leadership is exceptionally vicious. Access to the rural areas has remained restricted by roadblocks with groups of ZANU-PF youth still present in those areas and the main bases still in place. Attacks, abductions and arrests of perceived MDC activists are still occurring around the country, but at a lower level than April – June.

While there is a current downward trend in violence the situation remains unpredictable and incidents of violence across the country continue. It could also deteriorate further without warning."

166. We do not find surprising that the presence of Zanu-PF youth groups has declined in the more wealthy suburbs of Harare. Those are unlikely to be areas within which much support would be found for the MDC. We have seen evidence of the "high walls" behind which people live in these suburbs, an expression which, as we understand it, extends beyond the protection of bricks and mortar so as to involve also security measures that are not available outside such areas. On the other hand, it is difficult to see how a confident view can be expressed concerning declining levels of violence within areas to which access has been restricted by those who are said to be responsible for that violence.

167. Two further documents accompanied this second statement. The first was a news report concerning the hostile and disrespectful reception given to Mr Mugabe at the opening of Parliament, now effectively controlled (in theory at least) by the MDC. That report confirmed also that five MDC MPs had been arrested and detained in custody. The other document is a BBC news report concerning the announcement of the lifting of the ban, imposed in June, that prevented NGO's involved in the distribution of food aid from carrying out those activities.

168. Mr Walker's evidence in chief was limited to the adoption of his witness statements. In cross examination he expressed the view that he doubted very much that the Zimbabwean regime would deduce from a contribution of US\$35,000 that most

Zimbabweans living in the United Kingdom must be supporters of the MDC. We have dealt with that part of the respondent's case above.

169. It was suggested to Mr Walker in cross examination that what has changed in Zimbabwe, and this was described as "a new phase" emerging this year, was that areas containing a sizeable proportion of MDC supporters have had indiscriminate violence perpetrated upon them. Mr Walker said he believed that to be the case.

170. In HS the Tribunal in finding an absence of real risk for returnees to Harare airport, found that as a matter of logic failed asylum seekers would not be assumed by CIO officers to be spies or saboteurs sent by Britain. Taking up this point, Mr Henderson asked Mr Walker:

"We are in a new situation now. We have to address when a returnee returns home. How she would fare at the hands of local Zanu-PF militia. Is it your analysis that she can take comfort in the logic of that militia?"

To which he replied:

"No;"

an answer which Mr Henderson recognised was a very fair one.

171. The Tribunal recognises that Mr Walker is a witness of complete integrity who gives evidence in a fair and objective manner and who does not seek to sweep aside the difficulties the respondent faces in resisting this appeal. He acknowledged, for example, that the evidence clearly indicated that the categories of those at risk in Zimbabwe had broadened, saying that the guidance offered by his department was being revised and that:

"The range of people at risk appears to have widened."

172. Mr Walker produces the Country of Origin Information Report ("COIR) for Zimbabwe published in August 2008. He was invited to comment on the section commencing at paragraph 10.04, which we reproduce below:

10.04 Noting the events that followed the 29 March elections, a member of staff working for the British Embassy in Harare described the situation in the run up to the presidential run-off in June 2008.

"Despair and fear infects us working at the British Embassy... Living through such a period is taking chunks out of us. In June we held our annual reception to celebrate the Queen's Birthday, and give some aid and comfort to our community and friends here. Some of the guests could not attend, as they were being held as political prisoners. Others have been savagely beaten since the party. It hurts to see such cruelty close up.

"Every day we see the latest victims of torture and murder – sometimes photos, sometimes face-to-face. The latest man to die horribly is a driver called Gift Mutsvungunu, whose 'crime' was to move the furniture of a previous murder victim. Gift was abducted. His eyes were gouged out and he was burned. Only then was he killed. His torture was sub-human. It's only motive was the sadistic fury of ZANU-PF's revenge on the MDC for its 29 March election victory. It is shredding us inside to see such horrors, particularly when all we can do is document what we see and hope for eventual justice." (Foreign and Commonwealth Office blog, 18 July 2008) [13n]

10.05 The FCO blog went on to note that:

“...we feel that our little bubble of diplomatic safety is contracting. The state-sponsored papers are loaded with hatred every day. We are accused of causing the crisis, of ordering the MDC to commit murder, of racism. When we venture out of the Embassy, we are treated as suspicious people. We are questioned and sometimes even threatened. We feel reasonably confident that the police will do us no harm. But we see ZANU-PF militias on the streets – young thugs pumped up with alcohol and drugs...” (Foreign and Commonwealth Office blog, 18 July 2008) [13n]

Nine days later, the FCO blog noted:

“Zimbabwe has become a country where you can be snatched on your way to work and your body will be found some days later at times. A person walking to the neighbourhood shops to buy bread can be diverted to a ruling party political rally or to put up campaign posters.” (Foreign and Commonwealth Office blog, 27 June 2008) [13n]

Mr Walker observed that this was not the stated position of the Foreign Office but comments by individuals, a so called “Foreign Office Blog”. But it has been considered to be of sufficient relevance to warrant inclusion in the COIS report and is further evidence before the Tribunal of the escalation and randomness of violence in Zimbabwe.

173. Other than the evidence of Mr Walker, the Tribunal can look only to Mr Kovats’ skeleton argument and oral submissions to assess the case put forward by the respondent. In the former, he says:

“The respondent does not underestimate the difficulties currently faced by Zimbabweans. She accepts both that there has been, and continues to be, appalling violence perpetrated by supporters of Mr Mugabe, and that the economic situation is dire.

Nevertheless, for the reasons set out in Mr Walker’s statement, the Secretary of State submits that failed asylum seekers from the United Kingdom are as such neither at real risk of persecution nor at risk of suffering inhuman or degrading treatment which would lead to the grant of humanitarian protection.”

174. This, it is submitted, is because the primary reason for the violence was to enable Mr Mugabe to claim victory in the elections. Those elections are now over and the level of violence has decreased. Although millions of Zimbabweans had left, millions do remain. Each case, submits Mr Kovats, should be examined on its individual merits. There will be some in the United Kingdom who are in fact supporters of Zanu-PF who plainly are not entitled to the grant of international protection.

175. Mr Kovats emphasised the unpredictability of events in Zimbabwe today. The evidence indicated that the level of violence has reduced from the level reported in the period leading up to the run-off vote. But, in our view there is sufficient evidence to demonstrate that the level of violence now taking place is significantly under reported as a consequence of the establishment of no go areas and road blocks by the militias that have restricted access to areas where that violence is taking place.

176. Similarly, Mr Kovats points to the very recent reports that the ban restricting the activities of NGOs activities in the distribution of food aid, introduced in June of this year, has been lifted. But such information as is available suggests that this will not

enable those activities to resume unhindered as there are registration requirements to be met and on-going obligations upon the NGOs to liaise with local authorities in respect of how they propose to act.

177. Mr Kovats submitted that the documentary evidence disclosed a range of views as to everyday life in Zimbabwe today. But he was able to refer us only to one news report containing a positive response to enquiry (at page 371 of appellant's bundle B, Tab A):

"A number of people who fled the village are now back"

"There are still a few pockets of enmity here and there, but generally, we are living together as one people. We have forgiven each other as brothers."

Those comments stand in some isolation from the very large body of reports to the contrary. Indeed, later in the very same report is found this:

"Hundreds of MDC officials and supporters have not returned to their homes fearing retribution from militias loyal to the fist-waving president.

...

The MDC spokesperson for Manicaland, Pishai Muchauraya said self styled war veterans were still waging a violent campaign against his party supporters in the province."

This does, of course relate to MDC officials and supporters but is to be considered in the context of the clear evidence to the effect that those who seek to support the regime in its determined effort to retain power have abandoned any real attempt to distinguish between those who are supporters of the opposition and those who are unable to demonstrate positive support for Zanu-PF or the Zimbabwean regime.

178. We were referred also to the Solidarity Peace Trust report on the elections, which we have mentioned above. Mr Kovats relies upon this as indication that since the March 2008 first round voting there is said to have been a shift in the identification of those targeted as victims of violence. An analysis of statistics compiled about victims spoken to by SPT led to the conclusion that:

"This indicates a clear strategy of targeting leadership figures and opinion makers in the wake of the elections. Sadly, families including parents and children of candidates and position holders have not been spared in these attacks."

179. Mr Kovats referred us also to a later report from the same organisation dated 29th July, which is after the date of the run-off vote. Again, he submitted this was evidence of a more specific targeting of the violence upon those associated with the MDC and their families. But this is based upon the information available to SPT who do not claim to have had access to the areas where many were excluded by the militias and must be considered in the light of the evidence we have about the significant underreporting of such events.

The Legal Test

180. It is unnecessary to go through an elaborate exercise in definition of the standard of proof. The question is one of real risk. The Court of Appeal (AA (Zimbabwe) v SSHD [2007] EWCA Civ 149) approved the approach taken by the Tribunal in AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061:

"The issue is whether the evidence establishes a real risk. The Appellant does not need to show a certainty or a probability that all failed asylum seekers returned involuntarily will face serious ill-treatment upon return. He needs to show only that there is a consistent pattern of such mistreatment such that anyone returning in those circumstances faces a real risk of coming to harm even though not everyone does. So is there evidence pointing to a substantial number of cases in the context of general evidence showing that involuntarily returned failed asylum seekers are at real risk of being subjected to serious ill-treatment on that account alone?"

181. Here, the consistent pattern of mistreatment is not that applied to returned failed asylum seekers because, with one exception, no such persons have been returned since 2005. Therefore inferences must be drawn from the evidence as a whole. As the Tribunal said in AA (Involuntary returns to Zimbabwe) Zimbabwe [2005] UKAIT 00144:

"... the Appellant needs to establish a real risk to returned asylum seekers. He does not need to show that all, or nearly all, returned asylum seekers are harmed. He needs only to show that all returned asylum seekers are at real risk. He can do that, as a matter of logic (and in our judgement as a matter of law) by any evidence that properly leads to the conclusion in question."

182. With regard to the assessment of claims under article 3 of the ECHR, based upon adverse conditions generally, it can be seen that similar phraseology was approved in NA v UK [2008] ECHR 616.

Additional evidence and submissions following the power sharing agreement.

183. Despite the doubts and reservations expressed after the signing of the Memorandum of Understanding, the talks that took place between Mr Mugabe and the opposition did result in what has been described as a power sharing agreement. Understandably, this was met with high expectations for resolution of the problems that have beset Zimbabwe. After all, if that agreement eventually leads to the establishment of a government of national unity, with the MDC playing a full role as an equal partner in the government of Zimbabwe, it would be difficult to see how its supporters could be at any continuation of risk. Further, the establishment of such a government, with Mr Tsvangirai as Prime Minister, would unlock access to huge monetary and other aid that is needed to start the process of rebuilding Zimbabwe's shattered economy and so improving living conditions for ordinary citizens.

184. As we have mentioned, at the resumed hearing on 30th October there were two further sources of evidence upon which both representatives made submissions. There was a collection of news reports about the power sharing agreement and a number of reports of interviews conducted by Embassy staff in Harare with organisations said to be able to comment upon the situation "on the ground" consequent to the signing of that agreement on 15th September 2008. We deal first with the news reports.

185. The first of those was a BBC news report of 15th September headed: “Zimbabwe rivals in historic pact”:

“Zimbabwe’s President Robert Mugabe has signed a historic power-sharing deal with his long time rival, opposition leader Morgan Tsvangirai.

...

Mr Tsvangirai said the agreement provided the best hope for Zimbabwe and called on President Mugabe to work together to implement the deal.

And President Mugabe said the leaders would have to “walk the same route”.

186. But in addressing the large audience before whom the agreement had been signed President Mugabe said this:

“... frontline states against colonialism in the region had helped Zimbabwe gain independence, and now they had helped to confront problems caused by a former colonial power – Britain – wishing to continue to interfere in its affairs.”

187. In view of what he had been saying throughout the election campaign about the MDC being puppets of the West, that was not a promising start. It soon became clear that the agreement, which has been since widely criticised for having left too much unresolved, did not provide a clear framework for delivering the actual division of power.

188. We have explained above why we find that it is the JOC and senior military and police officers who were largely responsible for unleashing the recent abuses, because they feared that, unlike Mr Mugabe who was likely to be granted immunity from any prosecution, they would be at risk of precisely that should the MDC acquire any real power. This much is made clear from the evidence we have from many informed sources. See, for example, what we say about the evidence of Mr Mbanga at paragraphs 55 and 194 of this determination; Mr Makuvishe at paragraph 62; Witness 66 at paragraph 86; the Solidarity Peace Trust report considered at paragraph 127. And the British government has made clear its view that those responsible for the violence in Zimbabwe should be called to account: see paragraph 136. Those concerns were shown to be well founded by the reports that followed. For example in a BBC report published just two days after the agreement was signed, under a headline “Zimbabwe victims demand justice” we see this:

“As the deal was announced last week, Zimbabwe’s long-suffering civil society and the Human Rights Forum put out a statement of demands. These demands included:

No amnesty for: (a) crimes against humanity, torture and other international crimes (b) rape and other sexual based crimes (c) corruption and other crimes of greed

No extinguishing of civil claims against the perpetrators or the state. No guarantee of job security for those found responsible for gross human rights violations and corruption.”

189. In a BBC report dated 18th September, under a headline “Deal a humiliation, says Mugabe” Mr Mugabe is quoted as saying when addressing a Zanu-PF meeting:

“If we hadn’t blundered in the March elections we wouldn’t be facing this humiliation.”

making clear his view that the elections could and should, if properly managed, have delivered a different result. This, in our view, is very relevant to how Zanu-PF would approach any future elections.

190. On 24th September a Voice of America news item reported that:

“Political violence is on the rise again in Zimbabwe despite the signature less than two weeks ago of an agreement to establish a unity government in which power would be shared by the long ruling ZANU-PF party of President Robert Mugabe and the Movement for Democratic Change, now in majority in Parliament, MDC officials said.

...

Some of that violence has been taking place in Mbare, a populous Harare suburb where according to MDC sources some 61 families were attacked by ZANU-PF militia members in full view of police at the Matapi station, who took no action.

...

Witnesses said two truckloads of ZANU-PF militia including the notorious Chipango gang associated with ZANU-PF invaded the police station singing songs denouncing the MDC and beating party members while the police passively looked on.”

And in an Independent on line report of 25th September a spokesperson for the National Constitutional Assembly, a forum for trades unions, NGOs and church organisations, said that he feared that the power sharing agreement was designed simply to absorb the MDC rather than to share power with it:

“We will be happy if it fails. The people were running Mugabe’s torture camps in the June election are now the same ones who are explaining the agreement to people in the rural areas.

“They are saying it gobbles the MDC up into Zanu-PF,” he added.

...

MDC spokesperson Nelson Chamisa said on Wednesday night political violence was continuing in some parts of the country. He gave details of three separate incidents, and added that no arrests had been made despite reports to the police. “Zanu-PF torture bases are still operational in Mbare and other parts of the country, but the police are not doing anything to dismantle them.”

191. Reports continued to emerge to the effect that there was no real chance that the agreement would result in a genuine sharing of power in a government of national unity. A Times on line article of 26th September said:

“Mr Mugabe and his party have shown contempt for the deal from the outset. In a televised speech the octogenarian President insisted that Zanu (PF) remained in the driving seat and would not tolerate any nonsense from our new partners.”

192. MDC spokespersons, party secretary Mr Dube complained that:

“Torture camps run by Zanu-PF are still operational and there is no concealment.”

And other news articles published after the power sharing agreement was signed indicated that far from ceding any power, representatives of Zanu-PF were seeking to dilute such positions of influence as had been won by the MDC. There were reports that “special interest representatives” nominated by Zanu-PF, with full voting rights, were placed on councils control of which had been won by the MDC at the local elections.

193. As time went on it became apparent that Mr Mugabe had allocated all key ministries to Zanu-PF and, in particular, had retained control of both the army and the interior ministry and so control of the police. This led to the MDC spokesperson saying on 1st October of the continuing talks:

“At the end of the meeting it emerged we are still poles apart, with Zanu-PF insisting on taking all the key ministries, literally rendering the opposition peripheral in government, in fact a situation where we would be in but out of government.”

194. The Tribunal has had regard also to an article written by Mr Wilf Mbanga, published on 13th October 2008:

“Despite the country collapsing around him and millions suffering from hunger and disease, there is method in Mugabe’s madness. He is positioning himself for the next election - determined to reverse his humiliation at the hands of the electorate on March 29. He will never forgive Zimbabweans for rejecting him.

This is why he has insisted on retaining control of the power ministries, while giving MDC the service ministries. He needs the police and the army, home affairs and defence ministries, to seal off the rural areas, disrupt the MDC’s activities and thrash and threaten its supporters. In addition, home affairs is responsible for the conduct of elections. He needs local government to retain control of the chiefs and keep them on side. He needs information to maintain his stranglehold on the media, keeping people in the dark - as is the wont of every dictator. ...

His henchmen, the military chiefs, have a particularly vested interest in keeping control over the police - most, if not all, of them could and certainly would be arrested in an MDC controlled police force on a wide range of charges, from crimes against humanity to theft and corruption.”

Furthermore, as Mr Tsvangirai is reported to have told supporters at a rally in Harare on 12th October that he would not be part of a deal that did not give the MDC control of both the Finance and Home Ministries it is hard to see where there is room for compromise.

195. It can be seen from this material that Mr Mugabe and his supporters appear determined to retain control of the instruments used previously to deliver the “right” result at any future elections. And the recent news reports indicate that such elections may well be in contemplation. This is for two reasons. First there are now six vacant seats in Parliament. There is said to be provision in the power sharing agreement for continuity in that where a by-election is necessary only the party holding the seat that becomes vacant would put up a candidate. But even if that provision were honoured, it would apply to only three of the six seats and, in view of the very slim majority that is presently held by the combined MDC factions when voting together it is not hard to see the importance of any such elections.

196. Secondly, as it has become increasingly clear that the power sharing agreement is unable on its own to produce a national unity government acceptable to all concerned there have been calls for fresh elections generally. We refer to a BBC report headed “MDC seeks new election” published on 21st October:

“New polls are “the only way forward”, Movement for Democratic change spokesman Nelson Chamisa told the BBC.

Neighbouring Botswana has also called for new elections, after a regional summit on Zimbabwe was postponed.

...

At a summit in Swaziland to discuss the deadlocked power-sharing agreement was postponed for a week after the MDC insisted that its leader Morgan Tsvangirai be granted a passport.”

197. Drawing all this together, considered in the context of the evidence as a whole, we conclude that the agreement signed on 15th September in Harare has not resulted in the Mugabe regime ceding any real power to the MDC.

198. Of course it always remains possible that the worsening chaos of the Zimbabwean economy and the pressure from the international community, which stands ready to pump massive aid into the country but not until there is real change, will bring about just that. But we have to reach our conclusions upon the basis of the evidence that is available to us. That evidence leads us to find that the power sharing agreement signed on 15th September has not resulted in any significant change in the political situation in Zimbabwe and that the real intention of the regime appears to be to claw back control of parliament and to retain the presidency by keeping in place and by continuing to exercise the militias and party machinery that were deployed following the March elections.

199. We consider next the new evidence introduced by Mr Walker. We should say that Mr Henderson submitted with some vigour that this material should not be admitted. He gave a number of reasons for excluding this evidence. It was served late and those instructing him had just three working days to consider a response, which was insufficient to make the sort of enquiries of the organisations concerned in Zimbabwe that were carried out last time such questionnaires were relied upon in the previous Zimbabwe country guidance litigation. Two of the informants were anonymous and so no assessment of their reliability could be made. The subject covered by this evidence took it outside the scope of the direction made by the Tribunal limiting any further evidence to the issue of the power sharing agreement.

200. We decided to admit this material but in doing so recognise all that Mr Henderson says and agree with his submission that those concerns go to the weight to be given to this evidence. But we do find it difficult to understand why he seeks to diminish the relevance of this material because, in our view, it is largely helpful to the appellant’s case in any event. Our ultimate concern must be to base our assessment on as full a picture of events in Zimbabwe as possible, within the constraints of the procedures we have adopted.

201. As we have indicated above, the point of this evidence is said to be that, whereas the press reports we have just examined are largely concerned with the political situation, this material collects together the views of people or organisations working in Zimbabwe who are in a position to comment upon the situation “on the ground” in Zimbabwe today. As the interviews were conducted after the power sharing agreement was signed any effects of that agreement might reasonably be expected to be reflected in those interviews. Mr Kovats submits that three things can be drawn from the new material:

- a. There has been a reduction in the level of violence in Zimbabwe since the time of the run off poll;
- b. Although it is accepted that food aid distributed by the government of Zimbabwe is used as a political tool to advance its own agenda, that distributed by NGOs is not subject to political discrimination;
- c. The political situation could change rapidly. As Mr Kovats puts it: Zimbabwe is holding its breath.

202. It is correct to say that the level of reported human rights violations has reduced since the height of the violence during the period leading up to and immediately after the run off vote. But the militias and Zanu–PF groups, encouraged by state agents, have sealed off the areas in which they have focused their attentions and we are satisfied that this has been done specifically to prevent access by those who would report such events. It is also correct to say that the absolute ban upon NGOs’ food relief programs has been lifted but it is clear also that these organisations do not in general have anything approaching the freedom they need to carry out these aid operations as they would wish. There is evidence before us that one reason for limiting the scope of these aid operations is to restrict access to areas in which abuses continue to be perpetrated by those seeking to maintain the current regime in power.

203. Turning to the interview summaries themselves, we find there further evidence to support, rather than to diminish, the concerns we have expressed above. Some of the interview summaries express more positive assessments than others but they include the following:

The European Commission:

“Currently there are very few (if any) gross violations of human rights in terms of assaults, murders etc but the threat of repetition of this violence remains. Perpetrators are still deployed to rural areas and there is an atmosphere of fear, intimidation and mistrust.”

“The police Have not generally taken steps to protect victims... In some cases the police have been perpetrators themselves.”

“... It is likely to be very difficult for [voluntary returnees from the United Kingdom] to return to their communities, particularly in the rural areas. The environment remains quite tense, and there is likely to be suspicion about returnees’ political affiliation. It is likely that they would find it harder than others to get access to food and services.”

Zimbabwe Human Rights NGO Forum:

“the police are not doing anything to protect the victims and have even been perpetrators themselves.

We have regular reports of discrimination on the part of the government in distributing aid.

Returnees would come back to a situation of uncertainty, economic disaster, hunger and poverty. They would not be able to rely on social or health or education services, unless they could afford to go privately. The local authorities are likely to be suspicious of them, just by the fact of having been to the UK. They might well be labelled sell-outs or MDC supporters. They would be disadvantaged if they tried to get access to GMB food, land or BACOSI distributions. In certain areas, depending on the profile/activism of the returnee and the local presence of Zanu-PF supporters/youth militia, they might be at risk of physical harm. Returning to urban areas is probably safer than to rural areas. It is hard to predict how the central authorities would react - some returnees might be welcomed back to prove that the government is reformed and ready to welcome back its citizens. Others might be arrested.”

Zimbabwe Lawyers for Human Rights:

“Overtly, there has been a reduction in the level of violence compared to the electoral period, but this might give a false picture because many of the internally displaced people have not yet returned home. In addition, the structures of state control remain in place. After the signing of the deal there was an easing of the situation but in the last couple of weeks, we have seen authorities returning to their usual attitudes and behaviour.”

Witness 4 of Source D:

“There are signs of hate speech starting again e.g. over sanctions and MDC being puppets of the West. And in rural areas things are still tense. The deal has not changed realities on the ground. Some of the celebrations over the signing of the power-sharing agreement were broken up. People are still fearful and suspicious, and afraid of retribution if they show support for MDC. An MDC event in Makoni to explain what was happening was disrupted by soldiers, who wanted to make people attend a rival ZANU-PF meeting.”

Source R:

“[Source R] continues to get reports of beatings and torture of MDC supporters around the country e.g. 15 people were treated in Buhera, Manicaland on 1 October. Structures of control and intimidation are still in place (made up of army, war vets, CIO and rogue elements of the police) but the bases/structures are more active in some places than others. In some areas, the ZANU PF activists are telling the MDC to forget the agreement, as it will not be implemented. In addition there is a purge exercise going on among ZANU PF local structures to ensure only Mugabe loyalists attend the Congress in December.”

General Conclusions

204. The history of Zimbabwe demonstrates that Robert Mugabe and those he looks to in order to support his regime have consistently acted ruthlessly to suppress all effective opposition. As recognised in SM, those identified as active opponents of the regime or supporters of the MDC have been at real risk of violent retribution from agents of the state, both formal in the sense of the police and the security services and informal as characterised by the so called War Veterans (although many of those calling themselves such are not) and the youth militias. Persons targeted have not been simply those in positions or leadership. Even what are described as low level members or supporters of the MDC have been at risk when identified as such by those tasked with suppressing opposition to the regime.

205. The Tribunal found in HS that the well resourced, professional and sophisticated intelligence service that is the CIO would distinguish, when dealing with those returning as deportees from the United Kingdom, between those deportees in whom there was some reason to have interest and those who were of no adverse interest simply on that account. This was an intelligence led process informed by record keeping in Zimbabwe and information from operatives sent to the United Kingdom to infiltrate MDC groups active there. The risk categories were clearly identified and there was evidence that those not falling into such were able, generally, to pass through the airport without real difficulty.
206. There can be no doubt that those falling into the risk categories identified and reaffirmed in HS continue to face a real risk of persecutory ill-treatment on return.
207. The fresh evidence now before the Tribunal demonstrates clearly that there has been a major shift in the respective roles of the formal agents of the state, such as the army, the police and the CIO on the one hand and on the other the less formal representatives of the regime deployed in the form of the so called “War Veterans”, youth militias and the groups of people who simply regard themselves as Zanu-PF supporters.
208. There can be little doubt either that Mr Mugabe expected to win both the parliamentary and the presidential elections in March 2008. Given the political history, there can be no other credible explanation for the relatively peaceful pre-election period and the fact that the MDC was able to campaign relatively freely. The reasons for such misplaced confidence were based upon the harsh brutality used against opponents at previous elections and the belief that the electorate had been “tamed”.
209. Because the voting results were displayed outside each polling station there was a limit to the extent to which the vote could be rigged. The parliamentary vote was announced, leaving Zanu-PF without a majority for the first time since independence. In the weeks of delay that followed the presidential vote was “massaged” but this could be achieved only to the extent that Mr Tsvangirai was denied the outright victory he claimed to have secured, so as to require a run-off vote.
210. The evidence demonstrates also, and this is of significance to our findings, that Mr Mugabe considered accepting the outcome of the first round but was persuaded not to by those who stood behind him such as the commanders of the JOC and senior representatives of the CIO who are also members of the JOC. They feared that should the MDC take power they would themselves be called to account for their own misdeeds without the protection of the amnesty that would be expected to be made available to Mr Mugabe. We are satisfied that it was these officers who promised to deliver the second round vote in the presidential elections to Mr Mugabe and it is they who orchestrated what followed.
211. The aim was to delay the run-off until the opposition vote had been annihilated. How this was sought to be achieved is set out in detail above, in our consideration of the evidence. The fresh evidence now before the Tribunal demonstrates clearly

that there has been a major shift in the way in which the formal agents of the state, such as the army, police and CIO deployed the less formal representatives of the regime in the form of the so called “War Veterans”, youth militias or “green bombers” and groups of youths who simply regard themselves as Zanu-PF supporters.

212. This change in the approach of the Zimbabwean regime in its determination to suppress dissent and preserve its authority echoed the state sponsored displacement of hundreds of thousands of people known as Operation Murambatsvina. President Mugabe, or those acting on his behalf, recognised that support for the MDC was centred in certain urban areas and so reasoned that within those communities were to be found significant numbers of MDC supporters or, perhaps more accurately, significant numbers of people who, given the opportunity, were likely to vote for the MDC in any election that was held, even if they engaged in no activities such as to identify themselves as supporters of the MDC. Thus the target of the operation was not simply those identified as opposition supporters but whole communities within which such people might reasonably be expected to be found.
213. But now the operation to ensure a Zanu-PF victory in the run-off vote was delivered to its target not principally by soldiers, police and CIO officers but by the youth militias and the War Veterans. The evidence indicates that these groups were directed as to their establishment in camps in the rural areas and bases in the urban districts by the formal agents of state but, once established, were left to carry out their task as they saw fit.
214. It has been said that these groups were motivated by promises of payment for seeing off any chance of a real challenge by the MDC and that as no such payment has been forthcoming they are now rewarding themselves by looting. The evidence does not clearly establish whether that is so or whether the motivation was and continues to be support for Zanu-PF or indoctrination against the opposition, said to be puppets of the former colonial masters who were now seeking to rob the nation of hard won independence.
215. What is clear, however, is that it has been established by overwhelming evidence that in deploying these militias the regime unleashed against its own citizens a vicious campaign of violence, murder, destruction, rape and displacement designed to ensure that there remains of the MDC nothing capable of mounting a challenge to the continued authority of the ruling party.
216. This campaign has been rolled out across the country not by disciplined state forces but by the loose collection of undisciplined militias who have delivered a quite astonishingly brutal wave of violence to whole communities thought to bear responsibility for the “wrong” outcome of the March 2008 poll. It is precisely because of that that any attempt to target specifically those who have chosen to involve themselves with the MDC has been abandoned. In our view there can be no doubt at all from the evidence now before the Tribunal that those at risk are not simply those who are seen to be supporters of the MDC but anyone who cannot demonstrate positive support for Zanu-PF or alignment with the regime.

217. We are reinforced in that conclusion by the reports that even some Zanu-PF supporters have suffered beatings when confronted by the militias and when they have been unable to demonstrate their loyalty.
218. The evidence demonstrates also, in our view clearly and without ambiguity, that the aim of the violence was not limited to delivering for Mr Mugabe victory in the run-off vote, but to ensure that the MDC support base was sufficiently dismantled as to ensure that it ceased to exist in any meaningful way as to remain a threat to Zanu-PF's hold on power. That explains why, notwithstanding the talks taking place following the Memorandum of Understanding and the fact that the elections are, for now at least, concluded, the violence continues. Although this violence is not at the levels seen during the summer of this year, everything remains in place for it to be repeated, should the regime deem this necessary.
219. We are satisfied also that the militias have established no go areas and road blocks to ensure that abuses that continue in rural areas where the MDC had made inroads into the Zanu-PF vote go unreported wherever possible and so that displaced people are not allowed to return to their home areas.
220. For these reasons we do not see that there can be said to be an end in sight to the real risk of violence being perpetrated on those identified as disloyal to the regime and therefore as potential supporters of the MDC.
221. As we have seen, by the time the hearing was reconvened on 30th October such a power sharing agreement had been reached but, for the reasons given above, that has not led us to a different conclusion from that we reached at the conclusion of the first part of the hearing when we initially reserved our decision.
222. Even though a form of agreement has now been reached in these talks, it remains to be seen whether that will bring about any reduction in the level of risk to those not able to demonstrate loyalty to Zanu-PF. After all, the Memorandum of Understanding that was signed by Mr Mugabe on behalf of his party and the regime contained assurances about the cessation of politically related violence but that has not been delivered. It is not readily apparent how the militias and War Veterans who have been meting out violence would be disbanded without genuine commitment by Mr Mugabe and his senior supporters to the sharing of power. It is evident from the failure to implement the power sharing agreement that no such intention presently exists.
223. For these reasons we are not satisfied that the power sharing agreement has given rise in itself to any significant change on the ground in Zimbabwe, so far as international protection issues are concerned. There is, moreover, no evidence to show that, in the absence of more effective foreign political or other political pressure, the position is likely to change spontaneously.
224. A number of questions need to be addressed:
- a. On the basis of the current evidence, what is the extent of the category of persons at risk in Zimbabwe today?

- b. Is a failed asylum seeker returning from the United Kingdom at risk on that account alone?
- c. Does that risk arise equally in the returnee's home area and in a place of re-establishment within Zimbabwe where he or she is not previously known?
- d. Does the returnee face a real risk of persecution or article 3 ill-treatment on return to Harare airport (or any other airport) at the hands of immigration officers, CIO officers or other "formal" state agents?
- e. Do country conditions in themselves give rise to a real risk that a returnee will have to live in conditions sufficiently poor as to infringe article 3?

225. The answer to the first of those questions will be apparent from what we have said above. A person who is unable to demonstrate that he is a member or supporter of Zanu-PF or otherwise loyal to or associated with the regime when asked to do so by any of the various groups deployed across the country by the Zimbabwean regime to maintain its authority and hold on power will be at real risk of being subjected to ill-treatment amounting to persecution and serious harm such as to infringe article 3 of the ECHR.

226. That risk arises throughout the country, in both urban and rural areas. A person may be faced with the need to demonstrate such loyalty to the ruling party in varying circumstances. The youth militias, "War Veterans" and other groups put together under the direction of the state authorities have established camps or bases throughout the country from which they operate. Although the evidence suggests that some of those camps or bases have closed down after the run off vote in July of this year it is plain that many remain and that they are to be found throughout the country in both rural and urban areas. Ordinary Zimbabwean citizens may encounter these groups at road blocks set up to establish no go areas or simply when at home as the militias move into areas thought to harbour MDC support.

227. The means by which loyalty to the regime may be demonstrated will vary depending upon who is demanding it. Production of a Zanu-PF card is likely to suffice where an individual is confronted with such a demand, for example at a road block. But even that may not protect the holder from serious harm in rural areas where the adverse interest is in the community as a whole because the area is one in which the MDC made inroads in the Zanu-PF vote at the March 2008 elections.

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

229. The evidence suggests that those living in the more affluent low density urban areas or suburbs are likely to avoid such difficulties, the relative security of their homes and their personal security arrangements being sufficient to keep out speculative visits. Many of those with the means to occupy such residences are in general likely to be associated with the regime and so not a target on the basis of doubted loyalty. Others may enjoy such a lifestyle as a result of a more circumspect relationship with the regime falling short of actual association, but which is, nevertheless, such as to give the appearance of loyalty.

230. It remains the position, in our judgement, that a person returning to his home area from the United Kingdom as a failed asylum seeker will not generally be at risk on that account alone, although in some cases that may in fact be sufficient to give rise to a real risk. Each case will turn on its own facts and the particular circumstances of the individual are to be assessed as a whole. If such a person (and as we explain below there may be a not insignificant number) is in fact associated with the regime or is otherwise a person who would be returning to a *milieu* where loyalty to the regime is assumed, he will not be at any real risk simply because he has spent time in the United Kingdom and sought to extend his stay by making a false asylum claim.
231. But, apart from in those circumstances, having made an unsuccessful asylum claim in the United Kingdom will make it very difficult for the returnee to demonstrate the loyalty to the regime and the ruling party necessary to avoid the risk of serious harm at the hands of the War Veterans or militias that are likely to be encountered either on the way to the home area or after having returned there. This is because, even if such a person is not returning to one of the areas where risk arises simply from being resident there, he will be unable to demonstrate that he voted for Zanu-PF and so he may be assumed to be a supporter of the opposition, that being sufficient to give rise to a real risk of being subjected to ill-treatment such as to infringe article 3.
232. And, regardless of the political opinion or associations of the individual, or the absence of any at all, the persecution involved in the infliction of such ill-treatment will be for a reason recognised by the Convention. This is because it is inflicted on the basis of imputed political opinion.
233. In our view the level of risk is not reduced by the failed asylum seeker returning not to his home area but to another area instead where he is unknown. As a newcomer to the area, he would be very likely to encounter enquiries from those representatives of the regime in control of the area as to his background, history and associations. In such an area the same risk arises of being faced with a demand to demonstrate loyalty to the ruling party and it may be that the level of risk is perhaps enhanced because, as a newcomer, he would attract interest as to his background and suspicion of having been displaced already on account of being found to be disloyal or a potential supporter of the opposition to the regime.
234. For these reasons, a person not able to demonstrate loyalty to Zanu-PF or with the regime in some form or other will be at real risk having returned to Zimbabwe from the United Kingdom having made an unsuccessful asylum claim. That will be regardless of the mechanics of his return. Those with whom he would have to deal in his home area or other place of relocation would be concerned, once he had failed to demonstrate any links with Zanu-PF, not with the method by which he had been returned from the United Kingdom but simply with the fact that his having made an asylum claim here demonstrated him to be a disloyal person who had not supported the party in the elections and as a potential supporter of the MDC.
235. The risk on return to the airport, during the process of passing through immigration control, is a different matter and can be assessed as a discrete issue. The Tribunal

explained in HS why a failed asylum seeker would not be at risk at the airport on that account alone. There is no evidence before us as to how failed asylum seekers are treated at the airport because removals of such persons have not been taking place for some years. There is a distinction to be drawn between how a returnee would be treated at the airport and the likely reception in his area of residence because in the former case he would be dealt with by the “official” or “formal” agents of the state rather than the War Veterans and youth militias he would have to deal with in his home area.

236. No fresh evidence has been put before us as to procedures at the airport and there is insufficient reason to suppose that those procedures have changed since the position as it was found to be in HS other than that the resources available to those charged with monitoring movements through the airport must be seen to be under the same pressures of hyperinflation as affect all other public services. It must be assumed that failed asylum seekers returned from the United Kingdom, whether escorted or not and whether or not holding their own travel documents, would be identifiable as such by the CIO at the airport. This is because they will be identifiable as deportees from the passenger manifest and are not expected to lie if asked the reasons for their return.

237. Unlike the untrained and ill-disciplined mobs that make up the War Veterans and youth militias who have been motivated by the political rhetoric and extravagant rantings against the MDC and its alleged association with the United Kingdom, as we have discussed above, the CIO is, as the Tribunal has observed, a well trained and well resourced professional intelligence organisation. It is true that the CIO has been involved also with the deployment of those militias across the country and so is closely involved with the strategy of seeking out for ill-treatment not simply perceived supporters of the MDC but all those who might not be able to demonstrate support for the regime. But that simply reinforces the distinction to be drawn between the two. We referred above to the evidence of Witness 2 who noted that distinction also, saying:

“The militia inflicting the violence locally are very brutal and very unsophisticated although they are directed by sophisticated people.”

W2 spoke also of the irrationality of the militias, not importing that characteristic to the CIO and others who directed them.

238. We have, then, a very large body of compelling evidence of the risk to those returning from the United Kingdom after having made an unsuccessful asylum claim at the hands of the militias, War Veterans and Zanu-PF groups to be encountered in Zimbabwe, if such returnees are unable to demonstrate loyalty to Zanu-PF or to the regime. But there is no evidence at all that there has been any change of the approach taken at the airport by those monitoring arrivals from the United Kingdom.

239. There is good reason to explain why the violence has been directed at a wider category of persons in and around the country: to ensure that the less sophisticated groups tasked with doing so will catch up all those who are to be targeted. But that does not support the suggestion that therefore a broader category of persons would be targeted at the airport as well. Indeed, as the CIO has been instrumental in

putting in place the mechanisms for ensuring that newcomers to an area will be subject to much more careful and rigorous scrutiny than before, there is no reason to suppose that any purpose has been seen in changing the arrangements at the airport.

240. Drawing all this together we see no reason to depart from the conclusions reached in HS about risk on return while passing through the airport. The CIO would have adverse interest only in those deportees about whom something was known as to bring them within the risk categories identified in HS.

241. But having passed through the airport without any real difficulty, as will be the case for very many deportees about whom there is nothing known to excite the interest of the CIO, we recognise that many returnees will experience very real difficulty upon return to the areas of residence or other relocation. That does not mean that a bare assertion of Zimbabwean nationality and the claimed inability to demonstrate ZANU-PF membership or loyalty to the regime will be sufficient to establish a right to be recognised as a refugee.

242. The evidence upon which this decision is based is mostly in the public domain and so is available to be placed before the authorities in other countries as well as in the United Kingdom. We are told that some four million Zimbabweans have left that country to live elsewhere. If a person is able to do so and now travels to the United Kingdom to claim asylum here he will need to explain why, if he is indeed a refugee, he did not seek international protection in the country to which he had fled initially: see section 8(4) Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. Similar issues may arise under section 8(5) or (6).

243. And it may be difficult to reconcile the nature and cost of the journey to the United Kingdom with the economic deprivations suffered by many Zimbabweans in their country of nationality or subsequent place of residence. That may raise questions as to whether such a claimant was in fact aligned with or otherwise viewed as loyal to the regime so as to be able to avoid the consequences of the chaotic disarray in the economy that other Zimbabweans have had to deal with, so as to preserve the means to finance such a journey. As can be seen from the discussion below, the economic conditions under which the majority of Zimbabweans other than those favoured by the regime are stark. Most ordinary Zimbabweans not prospering under the patronage of the regime have very little left in the way of resources or possessions.

244. What this means is that each case will turn on its own facts. We do not say that most Zimbabwean claimants will be unable to demonstrate the loyalty to the regime that will be necessary to avoid the persecutory ill-treatment meted out to those who cannot. The evidence indicates that there are large numbers of Zimbabweans who are members or supporters of Zanu-PF or who voted for that party at the elections, whether that was because of expedience or genuine support for the aims and objectives of the party.

245. Many such persons will no doubt have contemplated migration to escape the economic catastrophe of their country, even if because of their demonstrated support for the party they have had access to some services such as the food aid

that has been denied to others. Whilst it is entirely understandable that in such dire circumstances many should seek economic opportunities abroad, that does not give rise to a sound claim to be in need of international protection.

246. So, this will be a question of fact to be resolved in each case. This may come down to a simple assessment of credibility. But immigration judges are well accustomed to making such judgements. An appellant who has been found not to be a witness of truth in respect of the factual basis of his claim will not be assumed to be truthful about his inability to demonstrate loyalty to the regime simply because he asserts that. The burden remains on the appellant throughout to establish the facts upon which he seeks to rely.

247. But care must be taken in respect of such an appellant who has chosen to put forward a wholly untruthful account in support of his claim. The standard of proof he must meet is not a demanding one. As was pointed out in GM & YT (Eritrea) v SSHD [2008] EWCA Civ 833, per Buxton LJ at paragraph 31:

“In every case it is still necessary to consider, despite the failure of the applicant to help himself by giving a true or any account of his own experiences, whether there is a reasonable likelihood of persecution on return.”

Country conditions and article 3 of the ECHR.

248. We consider next whether the general country conditions in Zimbabwe, which are accepted to have deteriorated further since the Tribunal considered the evidence in the summer of 2007, are now so bad that there would be an infringement of the appellant's rights under article 3 of the ECHR if she were required to return.

249. We do accept that discriminatory exclusion from access to food aid is capable itself of constituting persecution for a reason recognised by the Convention.

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

251. There is no doubt at all that the country conditions in Zimbabwe today are, for many of its citizens, harsh, and extremely difficult. There are many reports in the evidence before us that demonstrate the extent of the difficulties now facing ordinary Zimbabweans in their everyday living conditions. In the letter from the Foreign and Commonwealth Office produced by Mr Walker to which we referred above can be found this assessment:

“The humanitarian situation in Zimbabwe is a major cause for concern for the international community. Zimbabwe is suffering from a major economic crisis. Unofficial estimates

suggest inflation could now be as high as 100 million%. The economy, and particularly agricultural production, has shrunk by over 50% since 1996. Gold production is at its lowest levels for 90 years. Electricity is severely restricted, blackouts are common and water shortages last four days at a time in some areas. Basic food and fuel are difficult to obtain, with people turning to the black market where prices are too high for the majority. For example, a teacher's monthly salary is less than the cost of a 10 kg bag of maize meal - which would last a small family about a week. The worst hit are the elderly caring for grand children orphaned by the country's AIDS epidemic.

There has been a significant deterioration of the food supply situation in Zimbabwe over recent years. Factors such as drought and floods, low crop performance and limited irrigation have been exacerbated by the sharp economic decline. The annual crop and food assessment indicates that this year's harvest was one of the worst in living memory and Zimbabwe is facing a deficit of over 1 million metric tons in cereals. In addition, Zimbabwe is suffering as a result of HIV and AIDS. The pandemic claims an estimated 2300 lives a week."

252. It is not hard to add to the list of catastrophes. The health and education services have collapsed. There is very little economic activity and for many no real prospect of employment. Even where work is available, the sheer scale of inflation means that the cost of travel to and from work often renders the effort pointless.

253. Mr Henderson refers in his skeleton argument and closing submissions to the approach taken by the Tribunal to this issue in HS and argues that the fresh evidence demonstrates that the regime does now bear responsibility for the desperate living conditions endured by many "ordinary" Zimbabweans, even if the Tribunal found that not to be the case in 2007. This is relevant to the article 3 threshold in this respect.

254. As Mr Henderson takes this as his starting point, we reproduce below what was said by the Tribunal in this regard in HS:

55. Article 3 of the European Convention provides that:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

56. In submitting that there would be an infringement of article 3 Mr Henderson relies upon what was said by Lord Brown at paragraph 24 of his speech in R (Bagdanavicius) v SSHD [2005] UKHL 38. He said that it was important:

"to grasp the distinction in non-state agent cases between on the one hand the risk of serious harm and on the other hand the risk of treatment contrary to article 3. In cases where the risk "emanates from intentionally inflicted acts of the public authorities in the receiving country" (the language of para 49 of *D v United Kingdom* 24 EHRR 423, 447) one can use those terms interchangeably: the intentionally inflicted acts would without more constitute the proscribed treatment. Where, however, the risk emanates from non-state bodies, that is not so: any harm inflicted by non-state agents will not constitute article 3 ill-treatment unless in addition the state has failed to provide reasonable protection."

57. Although Mr Henderson asserts in his skeleton argument that it is not in dispute that the present humanitarian catastrophe "emanates from the intentionally inflicted acts" of President Mugabe's regime, that is not so. As Mr Kovats makes clear in his submissions, the respondent's position is that the food shortages, interruption in water and power supplies, and the other consequences of the collapsed economy may well be the result of governmental incompetence and crop failures due to the lack of farming expertise and drought but it is not the purpose of governmental policy to visit deprivation upon the people of Zimbabwe.

58. We do not accept that the current economic crisis and near collapsed infrastructure is a deliberate, intended consequence of the actions of the government. Subject to what we say below about Operation Murambatsvina, the evidence simply does not establish that the current country conditions are the intended aim as opposed to the unintended consequence, of government policy.

59. We do accept that poor living conditions are capable of raising an issue under article 3 if they reach a minimum level of severity. See: Pancenko v Latvia No 40772/98. A similar view was taken by the House of Lords in R v SSHD ex parte Adam, Limbuela and Tesema [2005] UKHL 66. At paragraph 7 Lord Bingham said:

“... Treatment is inhuman or degrading if, to a seriously detrimental extent, it denies the most basic needs of any human being. As in all article 3 cases, the treatment, to be proscribed, must achieve a minimum standard of severity, and I would accept that in a context such as this, not involving the deliberate infliction of pain or suffering, the threshold is a high one. But I have no doubt that the threshold may be crossed if a late applicant with no means and no alternative means of support, unable to support himself, is, by the deliberate action of the state, denied shelter, food or the most basic necessities of life. ...”

60. This concept of a varying threshold to engagement of article 3, dependant upon the responsibility of the receiving state for the circumstances complained of, is analogous to that discussed below in the context of the risk of ill-treatment faced by deportees to Zimbabwe at the hands of those concerned with their reception at Harare airport. But we have found that the difficult living conditions are not visited upon the people of Zimbabwe generally by the deliberate actions of the state. Other than those who have been made homeless and displaced to areas where they have no support mechanisms to fall back on as a consequence of Operation Murambatsvina, citizens of Zimbabwe face such difficulties as they have to confront as a consequence of ill-judged political initiatives, economic mismanagement and unusually bad weather conditions affecting further the capacity of the country to produce crops.

61. That being the case the appellant faces a high threshold in seeking to establish that the act of the United Kingdom in returning her to Zimbabwe will expose her to a real risk of having to live in circumstances that will represent an infringement of her rights protected by article 3.

62. The country conditions, poor as they are, do not establish that the generality of those returning to Zimbabwe today would be subjected to conditions that are sufficiently grave as to infringe article 3. Even if conditions were life threatening, that in itself would not enable the appellant to rely upon article 3 to resist removal. That much is established from what might be referred to as the article 3 health cases. As can be seen from N v SSHD [2005] UKHL 31, there would be no infringement even where:

“in almost all these cases stopping the treatment will lead in a very short time to a revival of all the symptoms from which the patient was originally suffering and to an early death.”

63. Further, the evidence does not establish that everyone presently living in Zimbabwe is doing so in the conditions of near complete deprivation that some evidently are. The WHO report referred to in paragraph 46 above notes that 5 million Zimbabweans are unable to meet their minimum food requirements. That means, of course, that something approaching a similar number are able to. We have heard evidence of how people survive which we discuss later in this determination. Support, both material and financial, can be and is provided to some by relatives living abroad. Many houses have been demolished and many people have been required to relocate to areas they might not have chosen, but many are not subjected to those difficulties. There is free movement across borders with some neighbouring countries and we have before us accounts of those who make regular trips across the border to buy goods or to trade.

64. We find that returnees, whether deportees or voluntary returnees, do not all face living conditions sufficiently severe to reach the article 3 threshold. This does not mean that each such claim must fail. Each case must be considered on its own facts. That is acknowledged by the respondent's own Asylum Policy Instruction on discretionary leave:

"There may be some extreme cases (although such cases are likely to be rare) where a person would face such poor conditions if returned – e.g. absence of water, food or basic shelter – that removal could be a breach of the UK's Article 3 obligations..."

255. We take a similar view to the extent that each case will fall to be decided on its own facts. In some cases we can see that it will not be difficult for an appellant to succeed on this basis. The fresh evidence now before the Tribunal demonstrates that the state is responsible for the displacement of large numbers of people so as to render them homeless and, unless the misgivings expressed in the evidence before us about the very recent lifting of the ban on the distribution of food aid prove to be unfounded, the evidence demonstrates also that there has been a discriminatory deprivation of access to food aid which, plainly, is a deliberate policy decision of the state acting through its chosen agents. But the more recent evidence indicates that those agencies involved with the distribution of food aid, separate from that available to only some from the government, have once again been able to recommence operations, although subject to registration requirements.

256. On the other hand there will be many appellants who will be unable to make out such a case. Where a family has a home and access to some food provision, either from the state or an NGO or other agency, those harsh living conditions are unlikely to establish an infringement of article 3. Many Zimbabweans have relatives living abroad to whom they can look for support. Professor Ranger told us that money transfers were now difficult to arrange. In view of the collapsed economy and the damage to the banking system on account of hyperinflation, we do not find that difficult to accept. But he confirmed also in his oral evidence that there was no reason to believe that the process by which friends or relatives living abroad were able to arrange for groceries and other provisions to be ordered and paid for in neighbouring countries and delivered to homes in Zimbabwe had been disrupted.

257. Some Zimbabweans, especially those living close to the border, will be able to travel freely across into some neighbouring countries to trade, possibly seek employment, or to buy food and provisions. Some will be able to sustain themselves adequately on the basis of food aid and other relief from agencies able and willing to provide it. Thus, the position remains that each claim must be assessed on its own facts.

Summary of conclusions: Country Guidance

258. The evidence establishes clearly that 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.

259. The fact of having lived in the United Kingdom for a significant period of time and of having made an unsuccessful asylum claim are both matters capable of giving rise to an enhanced risk because, subject to what we have said at paragraph 242 to 246

above, such a person is in general reasonably likely to be assumed to be a supporter of the MDC and so, therefore, someone who is unlikely to vote for or support the ruling party, unless he is able to demonstrate the loyalty to Zanu-PF or other alignment with the regime that would negate such an assumption.

260. The attempt by the regime to identify and suppress its opponents has moved from the individual to the collective. Thus, a person who returns to a home in an area where the MDC made inroads into the Zanu-PF vote at this year's elections faces an enhanced risk as whole communities are being punished for the outcome in an attempt to change the political landscape for the future and to eliminate the MDC support base.

261. There is clear evidence also that teachers in Zimbabwe have, once again, become targets for persecution in Zimbabwe. This is confirmed by the evidence of Professor Ranger considered at paragraph 96 of this determination and reinforced by the news reports, examples of which are given at paragraphs 130 and 148. 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.

262. 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.

263. Although a power sharing agreement has been signed between Mr Mugabe on behalf of Zanu-PF and Mr Tsvangirai on behalf of the MDC, it is too early to say that will remove 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.

264. Further international intervention or some unforeseen upheaval inside Zimbabwe itself may change the position, for example, by giving the MDC real control of the police. In such an eventuality it will be for judicial fact finders to determine the extent to which the evidence before them differs from that which is before us, pending fresh country guidance: see Practice Direction 18.2.

Findings upon the appellant's appeal

265. Should this appellant return to her home area, where she had lived all her life before leaving Zimbabwe a little more than three years ago she would be doing so as a young single woman with no effective family support to which to turn. She has explained why she could not seek work as a teacher and, in the light of the evidence we have discussed above, such is the risk to teachers in Zimbabwe today it would not be reasonable to expect her to do so.

266. We are satisfied, for the reasons given above, that as a former teacher, the appellant faces an enhanced level of risk on that account.

267. Nor could the appellant seek to support herself in the only other way she had in the past, by selling fruit and vegetables with her mother. For someone in her position there are no such products left to sell and, in any event, her mother has fled the area on account of the threat from the militias arising because the area has been identified as one that supported the MDC in the elections.

268. It is clear also from the evidence we have examined that War Veterans and youth militias are active in that area. The appellant's profile would be someone who, having previously worked as a teacher, had claimed asylum in the United Kingdom and would therefore be unable to demonstrate that she had voted for or supported the ruling party. It is reasonably likely that profile would become apparent, whether she remained in her home area or sought to establish herself elsewhere.

269. This means, for the reasons set out above, that she has established a well founded fear that she would be persecuted for a reason that is recognised by the Refugee Convention and that there is a real risk that she would be subjected to various forms of ill-treatment such as to infringe article 3 of the ECHR.

270. Persecutory ill-treatment on return to Zimbabwe may take one or more of a number of forms. On being identified as someone not able to demonstrate loyalty to the ruling party she may find herself taken to one of the camps established by the militias where there is a real risk she would be detained and molested, physically and sexually. She may face physical ill treatment in the course of being displaced from her home area and similar treatment in any other area, urban or rural, in which she seeks to re-establish herself. There is no reason to suppose that she would fare any better than her sister who fled with her family to South Africa to avoid the adverse attention of Zanu-PF supporters.

271. That is sufficient to explain why this appeal is allowed. Had it been necessary to do so we would have explained in greater detail our rejection of the appellant's claim to be at risk on return from her former boyfriend. It suffices to say that more than three years have elapsed. There has been no contact from him. There is no report from the appellant's sister, who recently left Zimbabwe, that he was still around or making enquiries about the appellant. Even if he does remain in the area, there is no reason to assume that the appellant is for him now anything more than a memory.

272. The fact that the boyfriend was violent towards the appellant at the time their relationship was coming to an end and that, soon after she left three years ago, he acted in a similarly unacceptable way toward the appellant's mother, does not establish, even to the low standard required, that it is reasonably likely that he would constitute an risk of harm to the appellant should she return home now.

Summary of decision:

273. The immigration judge made a material error of law.

274. We substitute a fresh decision to allow the appeal on both asylum and human rights grounds, (article 3 of the ECHR only).

275. In those circumstances the appellant is not entitled to the grant of humanitarian protection.

Signed

Date

Senior Immigration Judge Southern

First Appendix

Written reasons of the Tribunal for finding material error of law
16th March 2007

REASONS FOR THE DECISION THAT THERE IS AN ERROR OF LAW IN THE DETERMINATION

1. The immigration judge declined to determine the appellant's appeal on human rights grounds because the respondent was not enforcing involuntary returns to Zimbabwe at the date of the appeal hearing.
2. S.86(2)(a) of the Nationality, Immigration and Asylum Act 2002 requires that the immigration judge determine any matter raised as a ground of appeal. The appellant relied upon her ECHR rights in the grounds of the appeal to the immigration judge and so it was a material error of law for the immigration judge to fail to determine this aspect of the appeal.
3. But, there is no reason to disturb the decision of the immigration judge to dismiss the asylum claim and that part of the determination shall stand, as shall the facts found by the immigration judge set out between paragraphs 16 and 20 of the determination.
4. The immigration judge gave entirely adequate and sustainable reasons for finding that the appellant, who did not claim to be in any way politically active, was not at risk on account of any perceived or imputed political opinion. That was a finding of fact open to him on the evidence.
5. Similarly, the immigration judge was entitled to find that the appellant's claim of multiple rape by the friends of her partner and the burning down of her house were untrue and he has given clear and adequate reasons to support that finding of fact.
6. What the immigration judge has not done is to make any findings as to whether the appellant would be at risk of being subjected to ill-treatment such as to infringe article 3 of ECHR either on account of being forcibly returned as a failed asylum seeker or because she would be at risk from her abusive former boyfriend if he was able to locate her upon her return, should he be so motivated to do so, and whether there would be a sufficiency of protection from the police against any such criminal acts the appellant might be unfortunate enough to be threatened with.
7. The grounds upon which the appellant sought an order for reconsideration include a complaint that the immigration judge made no finding of fact as to whether he accepted the appellant's claim to have worked as a schoolteacher. But this was not relevant to the issues raised before him. The appellant said she ceased being a teacher in 2003, two years before she left Zimbabwe. There was no evidence at all to suggest that the appellant subsequently experienced any difficulty on this account and there is no reason to assume that any such difficulty would arise upon her return because of this former employment nor did she suggest that she would seek employment in this category on her return.
8. In those circumstances the reconsideration shall be limited to the issues set out in paragraph 6 above and shall be reviewed in the light of the current objective country evidence.

Second Appendix

Findings of fact made by Immigration Judge Phillips Determination dated 8th May 2006.

In my finding there are substantial reasons for doubting the credibility of the appellant's account. In the first place even the very basic detail of the appellant's account are inherently incredible. I do not believe that the appellant, a person who was terrified of the war veterans, having quit her job in part because of threats received from war veterans, would shortly after quitting her job begin dating a war veteran. Whereas the appellant says in her latest statement and in oral evidence that she was not aware that he was a war veteran at the start of the relationship and that when she did find out he told her he was not politically active her original statement very clearly states "*although he was a war veteran he did not seem to be violent or politically active like other war veterans*". In my finding a war veteran in Zimbabwe is defined as much by his activities as by the fact that he fought in the war. That the appellant would date Bernard for a considerable period of time before discovering that he was a war veteran is not only inconsistent with her first statement but is also utterly incredible. The change in her evidence is expedient. I do not believe that the appellant was in a relationship with a war veteran as claimed.

As far as the appellant's account of her discovery of Bernard's activities is concerned I find it to be vague in the extreme. After what she says was a happy relationship lasting two years or so the appellant claims that she found out that Bernard was taking part in violent war veteran activities including beating and torturing people and stealing from them. When asked how she found out her response was effectively that it was from local rumour. Asked when she found out she was vague eventually settling on a month or so before he was violent to her. I do not believe it. The appellant's account of being raped by her boyfriend changed from happening when she wanted to end the relationship in her statement to when she refused sex in oral evidence. As far as the gang rape is concerned the appellant makes no mention at all of seeking medical attention in her statements but in oral evidence says that she went to the clinic but there was no doctor there and thereafter she did not seek medical advice until more than six months later when in the United Kingdom. That she would not seek urgent medical treatment or at the very least testing for HIV after a gang rape beggars belief. I do not believe that it happened. As I do not believe that the event happened I do not believe that it was reported.

The appellant claims that her home was burned down. She was not there at the time and she does not know who did it but says that whereas she wanted to make a complaint to the police she was afraid to approach them as a war veterans would know she had done so. In the first place it is inconsistent that the appellant would report a rape but not report the burning down of her home. Secondly and in any event when a home is burned down, even a thatched hut in a rural village, the police are automatically involved. A home cannot be burned down without raising attention. Yet again the appellant is not in my finding telling the truth.

Third Appendix Schedule of documentary evidence considered

DOCUMENTARY EVIDENCE SUBMITTED ON BEHALF OF THE APPELLANT

Page	Document	Date
TAB A: NEWS STORIES		
1	'Zimbabwe's Morgue-Like Airport.' – Telegraph.co.uk.	22/05/2006
2-3	'Mugabe Revives Torture Camps Ahead of Election.' – Zim Online.	11/04/2007
4-5	'Mugabe Mobilises Militia Ahead of Elections.' – Zim Online.	24/04/2007
6-7	'Zimbabwe Nearly Doubling Size of Police Force Ahead of Elections.' – Voice of America News.	28/05/2007
8-10	'They Risk Electrocutation to Escape Zimbabwe.' – Telegraph.co.uk.	23/07/08
11-12	'Gordon Brown: 'It Is Right That I Make Clear My Position. We Will Not Shirk Our Responsibilities.' – The Independent.	20/09/2007
13	'Zimbabwe Vigil Supports British Trade Union Demo in Support of Trade Unionist in Zimbabwe.' – Zimbabwe Coalition Trade Union.	20/09/07
14-15	'In UN Speech, Zimbabwe's Mugabe Lashes Into US, Britain.' – Voice of America News.	26/09/2007
16-17	'Harare Accuses Britain of Plotting to Assassinate Mugabe.' – Zim Online.	19/11/2007
18-19	'Zimbabwe: Bulawayo Runs Out of Money.' – IRIN News.	25/02/2008
20	'Zimbabwe Opposition Alleges State Security Offensive Ahead of Elections.' – Voice of America News.	04/03/2008
21	'Amid Roaring Hyperinflation, Zimbabwe Sets New Cash Holding Limits.' – Voice of America News.	04/03/2008
22-23	'Zimbabwe: NGOs Struggle to Feed the Hungry.' – IRIN News.	05/03/2008
24	'With Prices Steadily Rising, Zimbabwean Authorities Arrest Executives.' – Voice of America News.	19/03/2008
25-27	'Robert Mugabe 'Unlikely to Flee Zimbabwe.' – Telegraph.co.uk.	04/04/2008
28	'Securocrats' Wield Real Power in Zimbabwe.' – Telegraph.co.uk.	04/04/2008
29	'Mugabe Unleashes His Dogs.' – Zimbabwe Today.	09/04/2008
30-31	'Vote Mugabe or You Die'. Inside Zimbabwe, the Backlash Begins.' – Guardian.co.uk.	10/04/2008
32-37	'Two Weeks After Zimbabwe's Elections, Mugabe's Thugs Are Back on the Streets.' – Mail Online.	10/04/2008
38-39	'Zimbabwe: They Dragged Me Behind a Truck to Make Me Vote for Mugabe.' – Times Online.	11/04/2008
40-41	'Terror Time Again.' – All Africa.com.	(Posted)14/04/08
42	'Zimbabwe Accuses Opposition Leader of Treason.' – Voice of America News.	17/04/2008
43-44	'Robert Mugabe Stole Zimbabwe Election, Says Gordon Brown.' – Telegraph.co.uk.	18/04/2008
45	'Should the West Intervene in Zimbabwe?' – Telegraph.co.uk.	19/04/2008
46-47	'Mugabe Trying to 'Steal Election.' – BBC News.	21/04/2008
48	'Zimbabwe Opposition Pleads for International Intervention.' – The Independent.	21/04/2008

49-50	'Zimbabwe: Humanitarian Operations Curtailed by Violence.' – IRIN News.	21/04/2008
51	'Miliband Condemns Zimbabwe Poll 'Charade.' – Guradian.co.uk.	22/04/2008
52-53	'Zimbabwe: Victims of State Brutality Speak Out.' – IRIN News.	24/04/2008
54	'Zuma Calls for Zimbabwe Talks to Avoid Threat of Genocide.' – The Independent.	24/04/2008
55-56	'Brown Demands Outcry on Zimbabwe.' – BBC News.	26/04/2008
57-58	'Zimbabwe Health Minister Accused as Terror Campaign Reaches Hospital Wards.' – Times Online.	29/04/2008
59	'More Farm Workers Evicted and Jobless.' – SW Radio Africa Zimbabwe News.	29/04/2008
60	'Britain Seeks Moratorium on Arms Sales to Zimbabwe.' – The Independent.	30/04/2008
61-62	'Botswana Sets Up Refugee Camp' – All Africa.com	03/05/08
63	'Zanu PF Paying Thugs to Kill Opposition Officials' – SW Radio Africa Zimbabwe News.	05/05/08
64-65	'Botswana – Zimbabwe: Cross-Border Fuel Lifeline Cut.' – IRIN News.	07/05/08
66-67	'Zimbabwe: Hunger Drives Post-Election Violence, Deepens Poverty.' – IRIN News.	09/05/08
68-69	'Inside Zimbabwe's Secret Torture Camps.' – Telegraph.co.uk.	11/05/08
70	'In Former Refuge South Africa, Zimbabweans Targeted By Mobs.' – Voice of America News.	19/05/08
71-72	'South Africa: Xenophobia Bad, Mugabe's Retribution Worse.' – IRIN News.	20/05/08
73-74	'South Africa: Foreign Nationals Imprisoned in their Homes.' – IRIN News.	20/05/08
75	'Inflation Hits One Million Percent as Prices Continue to Skyrocket.' – SW Radio Africa.	21/05/08
76	'Zimbabwe: Robert Mugabe Shuts Church Over Movement of Democratic Change Link.' – Telegraph.co.uk.	24/05/08
77-78	'Tens of Thousands Said to be Displaced by Zimbabwe Political Violence.' – Voice of America News.	26/05/08
79	'Brown Condemns Mugabe Europe Visit.' – Guardian.co.uk.	02/06/08
80-81	'Zimbabwe Suspends Aid Group.' – International Herald Tribune.	03/06/08
82-83	'Robert Mugabe Accuses West of Trying to Starve Him Out.' – Times Online.	04/06/08
84	'Zimbabwe Suspends Work of All Aid Groups.' – Voice Of America News.	05/06/08
85	' Zimbabwe: Restrictions on Foreigners.' – Telegraph.co.uk.	05/06/08
86-87	'British Diplomats 'Seized in Zimbabwe'.' – The Independent.	05/06/08
88-89	'British Government Questions Zimbabwe Ambassador on Detention of Envoys.' – Voice of America.	05/06/08
90	'Zimbabwe: Robert Mugabe's Military Cabal.' – Telegraph.co.uk	06/06/08
91-92	'Southern Africa: Looking For Answers to Xenophobia's Rise.' – IRIN News.	11/06/08
93-94	'Robert Mugabe's Militia Burn Opponent's Wife Alive.' – Times Online.	12/06/08
95	'Zimbabwe Ruling Party Militants Control Rural Movement With Roadblocks.' – Voice of America News.	13/06/08
96-97	'Opposing Robert Mugabe is Now 'Treason' in Zimbabwe'. – Times Online.	13/06/08
98	'Zimbabwe Army Chief Brands Opposition "Tracherous".' – Reuters UK.	14/06/08
99-100	'Brown Denounces 'Criminal' Zimbabwe Leadership.' – Guardian.co.uk.	16/06/08

101-102	'Robert Mugabe Warns Zimbabwe's Voters: 'How Can a Pen Fight a Gun?' – Times Online.	17/06/08
103-104	'Zimbabwe: Five Million People Will Require Food Assistance, FAO/WFP says.' – IRIN News.	18/06/08
105-106	'Rights – Zimbabwe: Government Blocks Aid for Six Million in Need.' – Inter Press Service News Agency.	18/06/08
107	'Politicide Warning: Zimbabwe.' – Sokwanele.	19/06/08
108	'State Agents Hunt Down MDC Supporters Who Fled Rural Areas.' – SW Radio Africa Zimbabwe News.	20/06/08
109	'Robert Mugabe Says 'Only God' Can Remove Him.' - Telegraph.co.uk.	21/06/08
110-111	'Zimbabwean Generals Have 'Taken Robert Mugabe's Power',' – Telegraph.co.uk.	22/06/08
112-114	'The Brutality That Has Engulfed Zimbabwe' – Telegraph.co.uk.	22/06/08
115-116	'Zimbabwe: Mugabe Troops Use Rape as a Weapon' - Telegraph.co.uk.	22/06/08
117-119	'Violence Spreads to Harare: 'Ring of Torture Camps' Set Up in the Suburbs.' – Independent.co.uk	22/06/08
120-121	'UK Names Clique of Six Men Behind 'Campaign of Terror.' – Guardian.co.uk	23/06/08
122-123	'Zimbabwe: It is Mugabe Versus the World, Britain Says.' – Telegraph.co.uk.	23/06/08
124	'Mugabe Calls Britain and US Liars: State Media.' AFP	23/06/08
125	'Speak Out on London Visit, Mandela Urged.' – The Independent.	24/06/08
126-127	'Comment: Intervention in Zimbabwe is the Only Solution.' – Times Online.	24/06/08
128	'Beating the Vote Out.' – Guardian.co.uk.	24/06/08
129-130	'MoD Contingency Plans for Military Action in Zimbabwe.' – Times Online.	24/06/08
131-132	'Paddy Ashdown: Military Intervention in Zimbabwe 'Could be Justified',' – Times Online.	24/06/08
133-134	'Zimbabwe: More Beatings, More Abductions As the World Watches.' – Guardian.co.uk.	24/06/08
135-138	'Invading Other Countries is Almost Always Wrong. Faced With genocide in Zimbabwe, It May Be the Only Right Thing to Do.' – Mail Online.	25/06/08
139-140	'Zimbabwe: Hundreds Seek Refuge at the SA Embassy.' – IRIN News.	26/06/08
141-142	'World Leaders Say They Will Reject Outcome of Zimbabwe Election, But Mugabe Stays Defiant.' – Guardian.co.uk	26/06/08
143	'Mugabe Tells West Leave Zimbabwe Alone.' – China View.	26/06/06
144-145	'Zimbabwe: Vote for Robert Mugabe and Save Your Life, MDC Says.' – Telegraph.co.uk	27/06/08
146-147	'Zimbabwe: I Saw Robert Mugabe's Thugs Beat a Man to Death.' – Telegraph.co.uk.	27/06/08
148	'Mugabe Calls on Britain to Stop Meddling in Zimbabwean Affairs.' – China View.	27/06/08
149-150	'Mugabe's Secret War - In Britain'. – The Independent.	28/06/08
151-153	'Fear in Zimbabwe as Voters Awake to Operation Red Finger.' – Times Online.	28/06/08
154	'African Observer: Zimbabweans Voted in Fear, Defaced Ballots'. – Voice of America News.	28/06/08
155-156	Zimbabwe Vigil UK Article.	28/06/08
157-158	'Rights – Zimbabwe Women Bear Brunt of Violence.' – Inter Press Service News Agency.	28/06/08

159-161	'Exclusive: Inside Zimbabwe's Election Nightmare of Death Threats and Intimidation.' – The Mirror	28/06/08
162	'Ministers Accused Over Return of Refugees to Zimbabwe.' – The Independent.	28/06/08
163-164	'Robert Mugabe Sworn in as Zimbabwe President.' – Guardian.co.uk.	29/06/08
165	'Brown Makes Zimbabwe Cash Promise.' – BBC News.	29/06/08
166-167	'Zimbabwe Election: Robert Mugabe's 'Operation Red Finger' Causes Terror.' – Telegraph.co.uk.	29/06/08
168-169	'Close UK Embassy in Zimbabwe, Says Arch Bishop.' – Telegraph.co.uk	29/06/08
170	'Retribution in Some Rural Areas as Mugabe Prepares for Another Term.' – All Africa.com	29/06/08
171-172	'Mugabe Begins Sixth Term After Beatings, Intimidation and Murder do Their Job.' – Guardian.co.uk	30/06/08
173	'G8 Leaders Statement on Zimbabwe.' – Hokkaido Toyako Summit.	July 08
174-175	'Inside Mugabe's Torture Camps: Beaten, Maimed and Poisoned With Weedkiller.' – Independent.co.uk.	01/07/08
176-177	'Mugabe's Aide Tells Critics to 'Go Hang.' – Independent.co.uk.	01/07/08
178-179	'UN Lines Up Big Names for Key Role in Pincer Move to Oust Mugabe.' – Times Online.	03/07/08
180-184	'Inside Mugabe's Violent Crackdown.' – Washingtonpost.com.	05/07/08
185	'Miliband Backs Tougher UN Sanctions Against Mugabe.' – Guardian.co.uk.	06/07/08
186-187	'Teenage Girls Raped at Robert Mugabe's Torture Camps.' – Times Online.	6/07/08
188-189	'Zimbabwe is Infecting the Region, Miliband says.' – Telegraph.co.uk.	07/07/08
190-191	'Zimbabwe Youth Militias Accused of Holding Women as Sex Slaves.' – Los Angeles Times.	07/07/08
192-193	'Militia Attack Zimbabwe Displaced.' – BBC News.	07/07/08
194-195	'Zimbabwe Sanctions Could Lead to Civil War, Mbeki Warns Leaders.' – Guardian.co.uk.	08/07/08
196	'Robert Mugabe Supporter Peter Mavunga is Paid by British taxpayer.' – Telegraph.co.uk.	08/07/08
197-198	'ZIMBABWE: Political Violence Surges After Mugabe Assumes Presidency.' – IRIN News.	09/07/08
199-200	'Zimbabwe: Brown Uses Shock Tactics to Secure Tough Sanctions Against Mugabe.' – Guardian.co.uk.	09/07/08
201-202	'G8 'Revulsion' at Zimbabwe Crisis.' – BBC News .	09/07/08
203-204	'Zimbabwe Brands G8 Sanctions Push 'International Racism.' – AFP.	09/07/08
205	'Zimbabwe Political Violence Takes On New Forms, Including Poisoning.' – Voice of America News.	09/07/08
206-208	'Brown Brandishes Images of Torture Victims to Unite World Leaders Against Mugabe.' – DailyMail.co.uk.	09/07/08
209	'Gang-Rapes and Murders Continue.' – The Zimbabwean.	09/07/08
210-211	'Witnesses Describe How Campaign of Violence was Designed.' – The Zimbabwean.	09/07/08
212-213	'Britain Looks to UN to Squeeze Mugabe.' – Guardian.co.uk.	10/07/08
214	'Brown Urges Zimbabwe 'Isolation.' – BBC News.	10/07/08
215	'Zimbabwe Political Violence Takes on New Forms, Including Poison.– The Zimbabwean.	10/07/08
216-217	'Zimbabwe Sanctions Call 'Racist.' – BBC News.	10/07/08
218	'Opposition Takes Up Arms as Zimbabwe Slides into Civil War.' – The Zimbabwean.	11/07/08
219-221	'Fury as Zimbabwe Sanctions Vetoed.' – BBC News.	12/07/08

222-224	'No Painkillers, No Visitors and No Way Out: Mugabe's Hospital Ward for MDC Activists.' – The Zimbabwean.	14/07/08
225	'Zimbabwean Women Face HIV Risk Following Rape as Political Violence.' – Voice of America News.	14/07/08
226-227	'Zimbabwe: Manna From Heaven For a Day.' – IRIN News.	15/07/08
228	'War Vets Remove "MDC Children" From Schools.' – The Zimbabwean.	15/07/08
229-230	'Mercenaries Join Mugabe's Ruthless Terror Campaign.' – Independent.co.uk.	15/07/08
231-232	'Manicaland and Masvingo Province Situation Reports (14 July 2008)' – The Zimbabwean.	15/07/08
233	'Official Zimbabwe Inflation Rate Reaches 2.2 Million Percent.' – Voice of America News.	16/07/08
234	'FDLR Mercenaries Now in Zimbabwe.' – allAfrica.com.	16/07/08
235	'Militia Threat Continues.' – The Zimbabwean.	16/07/08
236	'"They Treated Us Like Animals" – First-Hand Account of Militia Horror.' – The Zimbabwean.	16/07/08
237	'500 Activists Killed in Political Violence – MDC.' – The Zimbabwean.	16/07/08
238-240	'Zimbabwe: What Makes Monster Robert Mugabe Tick?' – Telegraph.co.uk.	19/07/08
241-242	'John Blair in London, War Vets Tell MDC Returnees.' – The Zimbabwe Standard.com.	19/07/08
243	'Mass Starvation Looms For Zimbabweans.' – SW Radio Africa.com.	21/07/08
244	'Zimbabwe Ruling Party Militia Demand Cash For Mugabe Victory Fetes.' – Voice of America News.	21/07/08
245-246	'Hunger in Zimbabwe.' – The Zimbabwean.	21/07/08
247-248	'Mugabe Threatens to Grab 'Western' Firms.' – allAfrica.com.	21/07/08
249-250	'Threat of Mass Starvation Looms in Zimbabwe After Latest Harvest Fails.' – Guardian.co.uk.	21/07/08
251	'Zimbabwe Ruling Party Militia Demand Cash For Mugabe Victory Fetes.' – VOA News.com.	21/07/08
252	'1500 MDC Officials Still in Jail.' – SW Radio Africa.com.	22/07/08
253-254	'A Day With a Zanu (PF) Militia Unit. – The Zimbabwean.	23/07/08
255	'War Vets Terrorise Teachers.' – The Zimbabwean.	23/07/08
256-257	'Residents Told to Support ZANU PF If They Want to Feed.' – The Zimbabwean.	23/07/08
258	'Despite Talks, Zimbabwe Opposition Says Political Prisoners Still Held.' – VOA News.com.	23/07/08
259	'Opposition Reprisals in Zimbabwe.' – BBC News.	23/07/08
260-261	'Political Violence, Intimidation Continue in Zimbabwe.' – Voice of America News.	23/07/08
262-263	'Influx of Refugees Soars From 800 to 5 000 a Day.' – ZW News.com.	24/07/08
264	'More Tortured MDC Activists in Buhera South.' – The Zimbabwean.	24/07/08
265	'Despite Talks, Zimbabwe Opposition Says Political Prisoners Still Held.' – The Zimbabwean.	24/07/08
266-268	'Green Bombers Worry About Reprisals.' – The Zimbabwean.	25/07/08
269	'MDC Activists Forced to Drink Poison.' – SW Radio Africa.com.	25/07/08
270-271	'Don't Hold Your Breath For Zimbabwe Talks.' – ABC News.	25/07/08
272	'Mugabe's Power Ploy.' – Guardian.co.uk.	26/07/08

273	'SA Border Post Swamped By Asylum Seekers.' – SABC News.	27/07/08
274-277	'Weekly Update: Harare Last Week: 19-26 July 2008.' CHRA The Zimbabwean.	28/07/08
278-279	'Zimbabwe Political Violence Continues Despite Talks.' – Voice of America News.	28/07/08
280-281	'Violence and Persecution of MDC Activists and Supporters Continues.' – The Zimbabwean.	28/07/08
282	'Zimbabwe Army Nearing Collapse As Recruits Lack Basic Training.' – Telegraph.co.uk.	28/07/08
283-284	'Service Delivery Crumbles in Harare.' – All Africa.com	28/07/08
285	'South Africa – Zimbabwe: Sex For Soap, Salt and Sugar.' – IRIN News.	29/07/08
286	'Violence Continues Across the Country.' – The Zimbabwean.	29/07/08
287	'More Violence Post MOU.' – The Zimbabwean.	30/07/08
288-289	'Violence Continues Despite Dialogue.' – The Zimbabwean.	30/07/08
290	'War Vets Invade City Land.' – The Zimbabwean.	30/07/08
291-293	'Outsourcing of Terror: Mugabe.' – The Zimbabwean.	30/07/08
294-295	'ZANU PF Terror Camps Now Brothels.' – Radio VOP.	31/07/08
269-298	'News Briefs.' – The Zimbabwean.	31/07/08
299-300	'Zanu Thugs Kill Cop.' – The Zimbabwean.	31/07/08
301-302	'Zimbabwe Bishop Warns About Mugabe's Intentions.' – The Zimbabwean.	31/07/08
303-304	'Zanu is Negotiating in Bad Faith.' – The Zimbabwean.	31/07/08
305	'Botswana Battles to Deal With Flood of Injured Zimbabweans.' – The Zimbabwean.	31/07/08
306-307	'55 Zanu Torture Bases Still Operational.' – The Zimbabwean.	31/07/08
308	'Horrific Injuries, But Wounded Go Months Without Treatment.' – The Zimbabwean.	31/07/08
309	'No Food and No Medical Care.' – Sokwanele.com.	31/07/08
310	'Basic Food Prices Rocket Out of Reach.' – TheZimbabweanIndependent.com.	31/07/08
311	'A Woman Commits Suicide Over Baccossi Goods.' – The Zimbabwean.	31/07/08
312-313	'Married women seduce men to survive.' – The Zimbabwe Times.	02/08/08
314-315	'Zanu-PF Supporters Seize MDC Flats.' – The Zimbabwe Times.	02/08/08
316-318	'Obsolete Coins Cause Chaos at Zimbabwe Tills.' – The International Herald Tribune.	02/08/08
319	'Currency Chaos in Zimbabwe.' – SW Radio Africa Zimbabwe News.	04/08/08
320-321	'Zimbabwe: Banks Run Out of Money.' – IRIN News.	04/08/08
322-324	'Zimbabwe Faced With Massive Starvation.' – The Zimbabwe Times.	05/08/08
325	'Zimbabwe Food Security "Deteriorating By The Day" – USAID Official.' – Voice of America News.	05/08/08
326	'MDC Victims Prevented from Seeking Medical Treatment.' – The Zimbabwean	05/08/08
327-328	'Millions of Zimbabweans Facing Hunger.' – Voice of America News.	06/08/08
329	'Political Violence Caught on Video, Even After Talks Deal.' – SW Radio Africa Zimbabwe News.	06/08/08
330	'War Vet Kazangarare Continues Reign of Terror.' – SW Radio Africa Zimbabwe News.	07/08/08
331	'Zimbabwe Activist Sees HIV Infections Surge Following Political Violence.' – Voice of America News.	07/08/08

332-333	'Rogue: Zanu-PF Militia Leader Cmdr Kazangarare.' – Herald Tribune.	07/08/08
334-335	'Call for Peace as Violence Persists.' – The Zimbabwe Times.	07/08/08
336-337	'Zimbabwe: Water Provision in Disarray.' – IRIN News.	08/08/08
338-339	'Thousands Face Starvation as Food Crisis Deepens in Rural Zimbabwe.' – Nehanda Radio.	09/08/08
340-341	'Zimbabwean Heroes Day Speeches Yield Political Intelligence.' – Voice of America News.	11/08/08
342	'Zimbabwe Must Lift Aid Agency Restrictions to Avoid Humanitarian Crisis.' – UN News Service.	14/08/08
343	'Parts of Zimbabwe's Manicaland Province Still a No-Go Zone for Opposition.' – Voice of America News.	14/08/08
344	'Zimbabwe: New Forms of "Money."' – IRIN News.	14/08/08
345	'Economic Hardships Worsen in Rural Areas.' – The Zimbabwe Standard.	16/08/08
346	'Extended Political Turmoil Puts Zimbabwe's HIV/AIDS Gains At Risk.' – Voice of America News.	18/08/08
347	'Tougher Time for Zimbabweans as Inflation Surges.' – SW Radio Africa Zimbabwe News.	19/08/08
348-349	'Ordinary Zimbabweans Juggle the World's Highest Inflation and Food Shortages.' – Relief Web.	19/08/08
350-351	'Farmers Can't Afford to Leave Markets – Literally.' – Inter Press Service News Agency.	19/08/08
352-353	'Zimbabwe: Bus Operators Charge Fares in Forex.' – All Africa.com .	19/08/08
354	'Manicaland Province Under Siege by War Veterans Militia.' – SW Radio Africa Zimbabwe News.	19/08/08
355-356	'Robert Mugabe Zimbabwe Food Aid Ban Sees Five Million Go Hungry.' – The Telegraph.com.	20/08/08
357	'Zimbabwe Ruling Party Officials Accused of Exploiting Rural Hunger.' – SW Radio Africa Zimbabwe News.	20/08/08
358-360	'Hungry Zimbabweans Forage to Survive.' – Institute for War and Peace Reporting.	20/08/08
361	'Rights Groups Claim Violence Persists.' – The Zimbabwe Independent.	21/08/08
362	'Zimbabwe: Large Internally Displaced Population in Growing Need of Assistance and Protection, Says Report.' – Internal Displacement Monitoring Centre Press Release	21/08/08
363	'Talks Reach Dead End as ZPF Politburo Vows No Power for Tsvangirai.' – SW Radio Africa Zimbabwe News.	22/08/08
364-365	'MDC: Brown's Trojan House.' – Mail & Guardian Online.	22/08/08
366	'Battleground Zimbabwe.' – IOL .	22/08/08
367	'Zimbabwe War Veterans Say Tsvangirai Stalling Talks.' – Reuters Africa.	22/08/08
368	'Mugabe Takes General's Advice and Abandons Deal.' – The Independent.	22/08/08
369-370	'Food Rots as Zim Aid Ban Continues.' – Mail & Guardian Online.	23/08/08
371-372	'Political Violence: Living With the Enemy.' – The Zimbabwe Standard.	23/08/08
373-374	'Why Tsvangirai Refused to Sign.' – The Zimbabwe Standard.	23/08/08
375-376	'Zimbabwe Faces Crunch Week as Mugabe Draws Battle Line.' – Reuters Africa.	24/08/08
377	'Reporter Who Saw Police Violence Freed After Several Hours.' – Reporters Without Borders.	25/08/08
378-379	'In South Africa, Zimbabweans Find Sanctuary and Contempt.' – Inter Press Service News Agency.	26/08/08

380-381 'Government Blocks Aid for Six Million In Need.' – Inter Press Service News Agency. 26/08/08

TAB B: REPORTS

382-435 'Zimbabwe: Human Rights in Crisis.' – Amnesty International. May 2007

436-438 'Trafficking in Persons Report 2008: Zimbabwe' – US Department of State. 04/06/07

439 'Political and Economic Turmoil Sparks Health-Care Crisis in Zimbabwe.' – Medecins sans Frontieres Hong Kong. 20/12/07

440-496 "'We Have Degrees in Violence": A Report on Torture and Human Rights Abuses in Zimbabwe.' – The Open Society Initiative for Southern Africa, The Open Society Institute, The Bellevue/NYU Program for Survivors of Torture. December 2007

497-499 'Human Rights Watch Researcher Says Food Has Become a Political Weapon in Zimbabwe.' – HJT Research News Reporting Service. 25/03/08

500-549 'All Over Again: Human Rights Abuses and General Flawed Electoral Conditions in Zimbabwe's Coming General Elections.' – Human Rights Watch. March 2008

550-551 'Updates on Operation Mavhoterapapi (Where You Put Your 'X')' – Kubatana.net. 14/04/08

552-553 'More Victims From ZANU PF's Operation Mavhoterapapi (Where You Put Your 'X')' – Kubatana.net. 14/04/08

554-555 'Operation Mavhoterapapi (How Did You Vote) – Tapiwa Mubwanda's Story' – Kubatana.net. 16/04/08

556-557 'Operation Mavhoterapapi (How Did You Vote) – Post-Election Violence in Penhalonga' – Kubatana.net. 17/04/08

558 'Mugabe Denounces Opposition, Britain as Attacks on Opposition Supporters Continue' – HJT Research.co.uk 18/04/08

559-560 'Zimbabwe: Zanu-PF Sets Up 'Torture Camps' – Human Rights Watch. 19/04/08

561 'Operation Mavhoterapapi (How Did You Vote) – Post-Election Violence in Dzivarasekwa, Harare' – Kubatana.net. 20/04/08

562-563 'Operation Mavhoterapapi (How Did You Vote) – Post-Election Violence in Manicaland' – Kubatana.net. 20/04/08

564-565 'Operation Mavhoterapapi (How Did You Vote) – Post-Election Violence in Mashonaland East' – Kubatana.net. 21/04/08

566-568 'Zimbabwe: Surge in State-Sponsored Violence.' – Human Rights Watch. 25/04/08

569 'Violence and Torture in Post-Election Zimbabwe – April 2008 – Power Point Presentation with Images.' – Kubatana.net. 29/04/08

570-571 'Report on Post-Election Violence (with Images)' – Kubatana.net. 30/04/08

572-593 'If You Can't Join Them, Beat Them! Post-Election Violence in Zimbabwe.' – Zimbabwe Human Rights NGO Forum. 05/05/08

594-595 'Attacks to Create No-Go Areas for MDC.' – Institute for War and Peace Reporting. 06/05/08

596-597 'Operation Mavhoterapapi (How Did You Vote) – Post-Election Violence in Manicaland' – Kubatana.net. 07/05/08

598 'Operation Mavhoterapapi (How Did You Vote) – Post-Election Violence in Shamva and Mutoko.' – Kubatana.net. 08/05/08

599-600 'Escalating Cases of Organised Violence and Torture, and of Intimidation of Medical Personnel.' – Kubatana.net. 09/05/08

601-602 'Aid Group Warn of Rural "Genocide."' – Institute for War and Peace Reporting. 09/05/08

603-604 'Zimbabwe: Violence Reaches Crisis Levels; Youths Forcibly Recruited' – Amnesty International. 15/05/08

605-606 'Zimbabwe: African Union Should Immediately Deploy Monitors.' – Human Rights 19/05/08

Watch.

607-610	'Letter to AU Chair H.E. Jean Ping on the Situation in Zimbabwe.' – Human Rights Watch.	19/05/08
611-612	'UNHCR Distributes Aid to Southern Africa's Xenophobia Victims.' – UNHCR.	21/05/08
613-672	'Punishing Dissent, Silencing Citizens: The Zimbabwe Elections 2008.' – Solidarity Peace Trust.	21/05/08
673-674	'Soaring Healthcare Costs Proving Fatal.' – Institute for War and Peace Reporting.	30/05/08
675-696	'Post-Election Violence Report No. 2.' – Zimbabwe Peace Project.	May 2008
697-698	'Teachers Fall Victim to Rural Violence.' – Institute for War and Peace Reporting.	May 2008
699-700	'Zimbabwe: Reverse Ban on Food Aid to Rural Areas.' – Human Rights Watch.	04/06/08
701-702	'Operation Mavhoterapapi (How Did You Vote) – Post-Election Violence in Zaka.' – Kubatana.net.	05/06/08
703-704	'Zimbabwe: Amnesty International Accuses Government of Using Food for Political Gain.' – Amnesty International.	06/06/08
705-706	'Cases of Systematic Violent Assault and Torture Overwhelm Health Professionals.' – Kubatana.net.	17/06/08
707-709	'Hope Fades for Free Election in Zimbabwe.' – US Department of State.	19/06/08
710-711	'Zimbabwe: Humanitarian Situation is Deteriorating.' – International Committee for the Red Cross.	19/06/08
712-713	'Tsvangirai Pulls Out of Ballot Amid Growing Violence.' – Institute for War and Peace Reporting.	23/06/08
714-715	'Urging Delay of Zimbabwe's Run-Off Election, UN Political Affairs Chief Says.' – UN Security Council, 5919 th Meeting (Night).	23/06/08
716-719	'Update on Recent Events in Zimbabwe.' – US Department of State.	24/06/08
720-722	'Zimbabwe: African Leaders Should Reject Zimbabwe's Elections.' – Human Rights Watch.	24/06/08
723-724	'Victims of Organised Violence and Torture Continue to Flood the Health System.' – Kubatana.net .	26/06/08
725-845	'Neighbors in Need: Zimbabweans Seeking Refuge in South Africa.' – Human Rights Watch.	June 2008
846-918	'Bullets for Each of You: State Sponsored Violence since Zimbabwe's March 29 Elections.' – Human Rights Watch.	June 2008
919	'Zimbabwe: 11 Youths Abducted from Displaced Persons Camp.' – Amnesty International.	10/07/08
920	'South Africa: Changing Pattern of Displacement.' – UNHCR.	11/07/08
921-922	'Billion-Dollar Poverty in Zimbabwe.' – Institute for War and Peace Reporting.	12/07/08
923-924	'Climate of Fear in Zimbabwe Persists Despite Deal.' – Amnesty International.	25/07/08
925-968	'Desperately Seeking Sanity: What Prospects for a New Beginning in Zimbabwe.' – Solidarity Peace Trust.	29/07/08
969-976	'Zimbabwe: Travel Advice for this Country.' – Foreign and Commonwealth Office.	30/07/08
977-978	'War Veterans in Manicaland Continue Attacks Against MDC Members and the General Public.' – Kubatana.net.	31/07/08
979-980	'Zimbabwe Continues to Suffer After the Election.' – US Department of State.	31/07/08
981-987	'Zimbabwe's Humanitarian Crisis.' – BMJ.	12/08/08
988-1000	'Zimbabwe: New Evictions Likely as Humanitarian Crisis Worsens.' – Internal Displacement Monitoring Centre.	20/08/08
1001-1002	'Hungry Zimbabweans Forage to Survive.' – Institute for War and Peace Reporting.	20/08/08
1003-1026	'"They Beat Me Like a Dog": Political Persecution of Opposition Activists and Supporters	August 2008

in Zimbabwe' – Human Rights Watch.

1027-1078 'The Many Faces of Displacement: IDPs in Zimbabwe.' – Internal Displacement Monitoring Centre August 2008

TAB C

C1 - 156 *Hansard* 2008

DOCUMENTARY EVIDENCE SUBMITTED ON BEHALF OF THE RESPONDENT

Page	Document	Date
1	Country of Origin Information Service report on Zimbabwe.	21/08/2008
282	Times Online "Robert Mugabe left isolated as European leaders attack his misrule in Zimbabwe".	10/12/2007
284	Zimbabwe Tourism Authority, "Tourism Statistics 1 st Half Report"	2008

BUNDLE OF NEWS REPORTS SERVED FOR HEARING ON 30TH October 2008

Date	Source	Title	Page
15.09.2008	BBC News	Zimbabwe rivals in historic pact.	1
17.09.2008	BBC News	Zimbabwe victims demand justice.	6
18.09.2008	BBC News	Deal a humiliation, says Mugabe.	10
24.09.2008	Voice of America	Political violence said rising in Zimbabwe despite political accord.	13
25.09.2008	Independent on Line	Zim deal rejected amid violence.	14
26.09.2008	Times on Line	Zimbabwe power-sharing deal faces disaster.	16
28.09.2008	Independent on Line	Asylum for Zimbabweans withdrawn – MDC angry.	18
30.09.2008	Voice of America	Zimbabwe Mayors accuse minister of meddling in municipal politics.	19
01.10.2008	Al Jazeera	Zimbabwe deadlocked over cabinet.	21
09.10.2008	Voice of America	Zimbabwe opposition dismisses ruling party accusation.	23
13.10.2008	Guardian (Wilf Mbanga)	Power sharing: not Mugabe's style.	25
15.10.2008	New York Times	Zimbabwe generals' fears of prosecution threaten deal.	27
20.10.2008	Voice of America	Zimbabwe by-elections mooted, raising fears of more political violence.	31
21.10.2008	BBC News	MDC seeks new Zimbabwe election.	33
22.10.2008	Voice of America	Zimbabwe ruling party partisans opt for government without opposition.	36
23.10.2008	Telegraph	Zimbabwe: Corruption fears over £300m UN aid.	38