

EVIDENCE TO INDEPENDENT ASYLUM COMMISSION

from ZIMBABWE ASSOCIATION, November 2007

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Zimbabwe Association – introduction

The Zimbabwe Association (ZA) was formed in October 2001. It is a charity which supports Zimbabwean asylum seekers and refugees in the United Kingdom. The ZA works to ensure Zimbabwean asylum seekers have access to fair legal representation and accurate information throughout the asylum process. The ZA shares information with solicitors, human rights groups, parliamentarians, media and relevant agencies. We raise awareness of the plight of Zimbabwean asylum seekers and difficulties with the immigration process more generally. From 2001 to the present we have been involved in the cases of around 2,000 Zimbabwean asylum seekers and have extensive knowledge of their experiences within the UK asylum process.

Factual information: The ZA has compiled a summary of some of our major concerns which is based on documentary evidence. We are also presenting a CD in which one of our members relates his experiences of the asylum process.

Executive Summary of Main Points made in the Submission

- **Measures taken over the last few years by the UK to reduce access to the asylum process in the UK have succeeded. Huge numbers of people continue to flee Zimbabwe but remain largely confined to neighbouring countries which carry the weight of the humanitarian crisis.**
- **Over 50% of Zimbabwean asylum seekers now in the UK arrived between 2000 and 2002. The overloading of an inadequate system during these years led to many injustices which the ZA is still struggling to address.**
- **The asylum appeals process cannot operate fairly if asylum seekers have no access to competent legal representation, and Immigration courts and judges lack constancy.**
- **One constant thread is the poor standard of country information and other intelligence available at every stage from the initial interview up to the High Court**
- **The detention of people who have committed no crime is not appropriate behaviour for a civilised and humane society. People fleeing persecution should not be treated as criminals.**
- **The removal of 'failed' asylum seekers to their countries of origin without adequate risk assessment or monitoring is very troubling.**
- **In conclusion, it is our considered view that the whole asylum system requires reform, at all stages starting with the very first encounter, usually with an interviewing officer.**

Recommendations for action by the Commission:

Decision making recommendations:

- *Implement more thorough training of immigration personnel leading to better initial decision-making resulting in financial savings throughout the asylum system*
- *Training on its own would be of no use without adequate supervision and this is certainly required.*

Detention recommendations:

- *stop detaining minors*
- *stop detaining vulnerable people such as torture victims, women and people suffering mental difficulties*
- *stop detaining disputed nationality cases for long periods*
- *implement administrative procedures leading to adequate nationality checks in liaison with relevant national embassies and affected organisations*
- *stop the lengthy detention of those who have already served prison sentences for working with false documents*
- *consider the Right to Work for those nationals who are not 'removable' thus doing away with the 'criminalisation' of people trying to survive*
- *recognise that if immigration detainees were released and allowed to work and pay tax, it would be possible to keep a track of their whereabouts*

Legal representation recommendations:

- *implement a system of transport vouchers to enable people to access skilled legal help from a distance if they cannot get it locally. The expense of such a scheme would be far less than the costs of many applications for reconsiderations and applications for judicial review.*
- *Introduce a system in the courts designed to check more rigorously the performance of legal representatives by monitoring examples of appalling representation, non-attendance, lack of preparation etc so such people could be disqualified from acting as legal reps*
- *Reconsider the cases of people previously represented by legal reps such as Jacob Moyo (found by the OISC to be acting as a legal rep without authorisation) and Oswald Ndanga (who has served criminal sentences for giving immigration advice)*
- *In relation to the Legal Services Commission and the Law Society, and other regulatory agencies there is a need to improve performance in relation to complaints and move to a more proactive and effective set of regulatory regimes*

1. Access to the asylum determination process

1.1 A reduction in access to the asylum process in the UK is indicated by the figures of Zimbabweans applying for asylum in the UK, which show a decrease in applications despite the worsening country conditions in Zimbabwe. It appears that measures taken over the last few years by the UK to reduce access have succeeded. This is obviously at the cost of an individual's rights, the wellbeing of their families and adverse consequences for countries neighbouring Zimbabwe.

1.2 Until recently the Home Office's motto and vision was "Building a Safe, Just and Tolerant society". It seems to us that the department and its agencies have become efficient at the expense of justice and fairness. Presumably this is why the Home Office's 'purpose' is now to protect the public and secure our future, with no mention of human rights or a just society.

1.3 The political situation in Zimbabwe has not improved since 2002, but the figures below showing applications for asylum from Zimbabweans show that the number has dropped dramatically since 2002. The question is “Why are fewer people applying for asylum despite the worsening country conditions?”

1.4 Fewer people apply for asylum because barriers have been installed to prevent access to the UK asylum process such as the November 2002 imposition of visa restrictions on Zimbabwean passport holders. People fleeing Zimbabwe are no longer able to escape easily on their own passports so some obtain different passports (ie. Malawi and South African). However, visa restrictions have since been imposed on Malawi passport holders, thus shutting off this escape route. (Agents and people traffickers appear to have benefited from the UK’s introduction of barriers to Zimbabweans.)

1.5 It has also become increasingly difficult to obtain or renew a Zimbabwean passport in recent years due to shortages of foreign exchange to obtain paper and inks required. People who cannot get a travel document are effectively stranded within the region. The huge numbers of people continuing to flee Zimbabwe are largely confined to neighbouring countries which carry the weight of the humanitarian crisis.

1.6 A small rise in applications in the first quarter of 2006 may be attributed to the sheer desperation following the catastrophic Operation Murambatsvina of mid 2005.

ZIMBABWE ASYLUM APPLICATIONS IN THE UK

YEAR	NUMBER	Q1	Q2	Q3	Q4
2000	1010				
2001	2115				
2002	7695*				
2003	3280				
2004	2045				
2005	1070	220	200	265	385
2006	1625	755**	365	280	225
2007	1145 (to Sept)	325	375	445	

(Source: Quarterly Asylum Statistics, Home Office)

* Visa restrictions introduced in November 2002

** Sharp increase in applications in the six months following Operation Murambatsvina

2. Asylum Determination Process

2.1 It would be churlish to say that the situation has not improved in some respects. However, the handling of asylum cases is still highly unsatisfactory at every stage in the process and in some respects the diminished supply of legal representatives due to the legal aid reforms has made the situation worse.

2.2 Looking at recent history, between 2000 and 2002, over 50% of the Zimbabwean asylum seekers now in the UK arrived here. At that time the asylum system was overloaded to bursting point and competent legal representatives were in short supply. Cases were handled inadequately in the initial stages leading to much suffering. The main problems were a combination of very poor legal advice and badly trained and over-stretched immigration officials making questionable decisions based on a Country Report (which was later discredited). Organisations such as the ZA are still struggling to assist those whose cases were dismissed during this period.

2.3 Poor legal advice was provided by both legal reps behaving criminally and incompetent legal reps. Some legal reps took advantage of the crisis situation and the ignorance of newly

arrived Zimbabweans to make money by charging c. £800 per case; clients were not told of the existence of legal aid. Clients who had paid large sums were not represented adequately; in some cases their evidence was not even presented. Many of these clients were in detention centres and unable to contact their legal reps easily. In a number of cases the legal reps failed even to appeal against an initial refusal of asylum, despite having told the detained client that it had been done. Some clients were given removal directions without ever having gone to an appeal hearing.

2.4 After the suspension of removals to Zimbabwe (January 2002), Zimbabweans were no longer sent off to detention centres. They ended up in hostels which appeared to attract clusters of substandard legal firms to which the Zimbabweans were directed by hostel staff. Some of these firms rewrote fictional versions of people's statements to 'improve' them; some got their clients to write statements by themselves with no legal guidance; others 'helped' their clients by changing dates etc which ultimately had the effect of destroying the credibility of the asylum seeker concerned. In most cases the asylum seeker followed the instructions of the 'lawyer' believing they knew what they were doing.

2.5 A large number of complaints were received by the ZA regarding the poor interpreting/translating by official Home Office translators at screening interview and substantive interviews. Other problems included the inadequate preparation of people who had little understanding of what was expected of them, and were shaken by the adversarial nature of the interview. Too many people signed the interview notes confirming that they were a correct record without having read them carefully first and later discovered inaccuracies and misunderstandings which resulted in adverse credibility findings at a later stage.

2.6 In one case (LP) a documented torture victim was interviewed while still traumatised and with little understanding of the legal ramifications of his comments. If he had had appropriate legal advice at this initial stage the central issue of his case concerning disputed nationality might have been dealt with in 2003. However, his case has gone through numerous court hearings, he has been detained, faced with removal more than once, and his case is still ongoing.

2.7 Initial decision making appears to have improved slightly in Zimbabwean cases but in one recent exception, TM, was refused despite being a teacher, an MDC member with a letter from Tendai Biti (Secretary General of MDC Morgan Tsvangirai faction) confirming her membership, and medical evidence because the interviewing officer wrongly thought that only Welshman Ncube was able to write MDC letters.

2.8 As with all the cases cited in this document they are but a small example of a much larger number of worrying cases. Details of these, in suitably anonymised form, can be supplied on request.

2.9 Examples of poor decision-making back in 2002 include the case of RM who was refused for correctly answering a question concerning the shadow Minister of Education (the interviewer said the answer should have been Aeneas Chigwedere, the Minister of Education at the time). One of the reasons for refusing a staunch but lowlevel MDC activist (DD) was that she said her MP was Fletcher Dlamini. The interviewer had him listed as Fletcher Ncube. In fact he is usually known as Fletcher Dlamini-Ncube. Both these cases are still ongoing five years later.

2.10 The case above and others, highlight the continuing problem of poor country information, and other intelligence coupled with poor briefing of officials. This includes information placed before the AIT.

2.11 Administrative errors and correspondence sent by the Home Office to outdated addresses has resulted in an unknown number of asylum seekers missing the opportunity to appeal against a refusal of asylum.

2.12 Lack of resources has prevented us from making a detailed study of the wider impact of the New Asylum Model, but we have followed one case. The New Asylum Model aims to take

six months from the start of an asylum claim to removal in cases where refugee status is not granted. The case, SM, we have been monitoring started in February 2007. After an initial refusal following the interview, an appeal hearing took place on 24 April. However, it took seven months before an application for reconsideration was heard at the AIT on 16 November, and was granted. The Tribunal judge indicated that SM's full appeal hearing would probably be listed within the next six to eight weeks. If the strict timetable for NAM had been followed in this case, SM would not have been able to secure much of the evidence needed to support the claim. Gathering evidence and tracking down current contact details for witnesses is very time-consuming.

3. Operation of the asylum appeals process

3.1 The asylum appeals process cannot operate fairly if asylum seekers have no access to competent legal representation. ZA is concerned that the dispersal of asylum seekers throughout the UK has resulted in many people not being able to access competent legal reps. The uneven nature of some Immigration Courts and judges is also worrying.

3.2 Lack of access to decent legal representation made it very unlikely that a person would win their appeal. The dispersal of asylum seekers resulted in a combination of poor initial representation (from substandard legal firms in close proximity to asylum seeker hostels), followed by inadequate regional representation usually resulting in the dismissal of an appeal.

3.3 In addition to the continuing problems of accessing competent legal representation faced by both asylum seekers concentrated in hostels, and those dispersed around the country there is the problem of a shortage of competent legal reps as a result of the legal aid reforms. The problems faced by dispersed asylum seekers would have been identified had the Home Office carried out a sensible risk analysis of their policies, before implementation. Even, now, it is not too late to take action.

3.4 The introduction of the New Asylum Model has attempted to deal with some of the problems of accessing legal representation. However, the speed of the process has meant that even competent legal firms are unable to spend the time required on more complex cases. In the recent case of JN, one of the most traumatised and needy Zimbabweans we have come across, it was necessary to find a top London immigration firm with sufficient experience and skill to take on such a case.

3.5 It is acknowledged that London has the largest number of experienced and reputable immigration firms taking legal aid cases. In some parts of the country such as Birmingham, it is very difficult to get represented by a reputable legal aid firm. There is a scarcity of reputable firms in the Northeast and throughout 2007, more and more firms have closed down their immigration departments as a consequence of the legal aid reforms.

3.6 ZA has tried to deal with the problem of access to competent legal representation in a limited way, by securing representation for particularly vulnerable members with London firms, and covering the costs of transport to London.

3.7 In principle we understand that Immigration Appeal Courts should operate fairly and evenly throughout the UK, but in practice some courts gain a reputation for being very severe and far tougher than others. We have also observed that some Immigration judges have such a reputation for harsh decision-making that barristers have expressed alarm at seeing the name of the judge hearing their client's case, and have done their best to get their client moved to a different hearing room, or have attempted to get the case adjourned.

3.8 We have numerous instances of members whose cases were initially lost by indifferent representation in the regions, but on securing competent legal reps the same cases were won. Unnecessary stress and anguish has been caused to individuals who have already experienced severe mistreatment and suffering. The effort and cost - in both time and financial terms - attempting to correct miscarriages of justice has been enormous.

4. Detention of asylum seekers

4.1 The detention of people who have committed no crime is not appropriate behaviour for a civilised and humane society. People who have fled from persecution and vicious treatment simply seeking shelter until the situation in their homelands stabilises do not deserve to be treated as criminals in the UK. Detainees are disadvantaged in attempting to fight asylum claims through the difficulties in accessing quality legal representation, and collecting evidence. The lengthy detention of “foreign” prisoners after completing sentences seems additional punishment. Disputed nationality cases including torture victims are spending long periods in detention at great expense.

4.2 It is often difficult to access quality legal advice from a detention centre. Over-stretched legal firms may be deterred from taking on detainees as clients as they realise the time-consuming nature of visiting detention centres and the extremely unpleasant conditions there which are not conducive to proper client solicitor relationships. Less scrupulous legal reps are able to charge large sums for legal help from vulnerable and desperate clients. It is also difficult to obtain the evidence one needs to fight an asylum claim from within a detention centre. Communication can be tricky and important messages and faxes can go astray. (We do appreciate the improvement in the system following the introduction of personal mobile phones within centres.)

4.3 Many detainees spend lengthy periods of time in detention simply because they have no friends or family in a position to stand as surety in the UK. When Zimbabweans first started arriving here in large numbers in 2000 and 2001, many hundreds were detained simply because they knew no one.

4.4 Today we are aware of a number of detainees who have served prison sentences for working with ‘wrong’ documents. After completing six month prison terms, they are sent to detention centres. A number have been in detention for in excess of 300 days. A Zimbabwean woman has been in detention for six months because of the difficulty in finding a surety. This double punishment is very disturbing.

4.5 The issue of long-term detention of disputed nationality cases is also very worrying. Between 2003 and 2005 four Zimbabwean (torture victims) who disputed that they were Malawians spent between 18 months and 2 years in detention in the UK resisting removal to Malawi. If it costs c. £1,200 per week to keep a person in detention, this resulted in a massive outlay of £345,600 plus the costs of attempting to remove them. In answer to Parliamentary Questions raised by Kate Hoey (19 Feb 2007) about how many disputed Zimbabwe/Malawi nationals were removed to Malawi the answer was:

“Fewer than three asylum applicants, who were recorded as nationals of Zimbabwe, have been removed from the UK to Malawi, from January 2004 to September 2006.”

4.6 We find these figures not credible (which fits into our experience of poor intelligence held within the Home Office) but assuming this to be true it means that in the region of £345,600 has been spent on withholding status from four people with disputed nationality. We doubt that this represents value for money even if the Home Office wished to prove a point.

4.7 The fierceness of the resistance of these individuals to removal might have encouraged the authorities to investigate their nationality claims more thoroughly in an effort to find a pragmatic solution to the problem.

4.8 Our final concern about detaining large numbers of people pending removal to a country like Zimbabwe is one of security. It is known that employees of the Zimbabwean government are in the UK, having claimed asylum in order to monitor the activities of other asylum seekers. If such a person is detained pending removal to Zimbabwe, they are in the ideal position to compile lists of those facing removal and glean information which will be useful to the Zimbabwean authorities. Such a situation occurred in January 2002, shortly before the suspension of removals to Zimbabwe, and was reported in The Daily Telegraph amongst other papers.

5. Removal of refused asylum seekers:

5.1 The removal of 'failed' asylum seekers to their countries of origin without adequate risk assessment or monitoring is very troubling. People should not be forcibly removed to countries where their return is likely to result in their torture or ill treatment. UNHCR recommendations should be taken into account concerning the safety of a country. The dishonesty and violence which accompanies many removals is extremely disturbing.

5.2 The suspension of forced removals of Zimbabwean asylum seekers was announced in January 2002. The resumption of removals to Zimbabwe was announced in November 2004, despite the deteriorating situation and increased persecution of Zimbabweans on political grounds.

5.3 From November 2004 to July 2005, approximately 200 people were subjected to enforced removal to Zimbabwe. The ZA carried out a limited monitoring programme. A significant number of cases of severe mistreatment came to our attention and were presented in witness statements in the ongoing country guidance court cases re Zimbabwe, namely AA and HS. One of the most disturbing findings of our monitoring was that a number of those removed and tortured on return, would have been legally protected by a case called SM and Others (promulgated May 2005) if they had been facing removal a few weeks later.

5.4 Since July 2005, removals of Zimbabweans (who travelled on Malawi or SA passports) have continued to Malawi and South Africa, with some removees being refouled to Zimbabwe and others imprisoned in Malawi and SA. The methods of removal have been very questionable. In some cases people have been restricted from accessing legal help; in others, cancellations of Removal Directions have 'failed' to reach the escorts in time or orders from the courts have been mislaid, misunderstood or perhaps just ignored.

5.5 An example of a case in which a person was not able to access legal help is given below. A disputed nationality Zimbabwe/Malawi woman (TS) and infant were taken from their home in the early hours of Tuesday, leaving behind a bereft husband and father who as a 'failed' Zimbabwean asylum seeker had no rights re a family life. Mother and child were taken to a detention centre in Scotland. Legal representation was secured, but on visiting the centre, the legal rep was told that they were not there. He only managed to gain access to them on Thursday afternoon. The following day they were taken to England (and out of the jurisdiction of the Scottish lawyer), and removed to Malawi on Friday evening.

5.6 In a similar case JW was detained in a police station in northern England. It was not possible to find him a lawyer until he was assigned to a detention centre. Late on a Wednesday night JW was moved to southern England meaning that his previous lawyers based in the North could no longer represent him. He had Removal Directions for Sunday. A lawyer was secured late on Thursday, but was not able to prepare a Judicial Review in the time available. JW's Zimbabwe passport was taken to the Immigration officer at the detention centre on Saturday but the only person in a position to cancel his RDs was the Immigration officer in charge of his case who wasn't working on the Sunday. JW was removed to Malawi with an escort of four on Sunday.

5.7 Numerous cases of violent, spiteful and racist behaviour by escorts towards their charges have been recorded over the years. Most recently it was sickening to know that a long-term hunger striker was taken in a wheelchair from her detention centre for removal, the medical team at the centre clearing her for travel despite the fact that she was too weak to walk. Only the compassion of the pilot concerned resulted in an order being given for the person to be removed from the aircraft.

5.8 As said earlier in this report, more detailed information is available and we stand ready to assist the Independent Asylum Commission in any possible way.

