

REVIEW OF COUNTRY OF ORIGIN REPORT “ZIMBABWE”

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Introduction:

This review provides a commentary on the July 2012 *Country of Origin (COI) Report on Zimbabwe* (COI), produced by the Home Office (UK Border Agency). It is commissioned by the Independent Advisory Group on Country Information, and is therefore drafted in line with instructions received through the IAGCI Chair, Dr Laura Hammond.

This review aims to assess the COI report in terms of its accuracy and balance, with the objective of ensuring that it offers an up-to-date and comprehensive summary of the most relevant available source material reflecting the human rights situation in Zimbabwe, and relating to the key issues raised in asylum claims made by Zimbabwean nationals. It does so by checking the citations in the report as well as the original documents from which they are drawn, by evaluating their continued relevance, and by identifying more recent, alternative, readily available sources that will usefully supplement the substantive content of the report. The scope of the review also includes a more general assessment of the report's coherence and format, commenting on the methods used in its compilation, and offering suggestions on how its structure and/or organisation might be improved to deliver the content more effectively in the context of the report's goals.

Author

Dr Oliver Phillips spent much of his childhood and youth living in Zimbabwe, and since then his academic research has been constantly engaged in researching and analysing legal and political developments in Zimbabwe. Since starting the research for his PhD (Cantab.) in Zimbabwe in 1990, he has contributed most specifically to the scholarship on sexuality, gender and the law in Zimbabwe, but has researched, published and lectured on broader human rights related issues in Zimbabwe, at Universities across the world. He has been writing expert reports for courts dealing with asylum cases from Zimbabwe for the past 12 years, and has appeared in person as an expert witness for the Upper Tribunal on three different occasions, and his evidence was extensively cited in the Country Guidance case of *LZ (homosexuals) Zimbabwe* CG [2011] UKUT 00487 (IAC) – available at: <http://www.unhcr.org/refworld/pdfid/4f2279192.pdf>). He has been engaged as a

consultant by the Foreign Office, the Swedish Dept of Foreign Affairs, the French Ministère des Affaires Etrangères, and the World Council of Churches. He has also worked closely with Human Rights Watch (www.hrw.org), and is on the board of the International Gay and Lesbian Human Rights Commission (www.iglhrc.org).

GENERAL COMMENTS:

Structure, Format, and Substance:

The report is compiled from excerpts from a wide range of relevant human rights reports, press sources and other documentation – a few suggestions are made in this report as to how these sources might be further supplemented to greater effect. There is much of value in this report, and most topics are covered very effectively, but there are obviously additions needed to bring the report up to date, particularly in relation to the passage of a new Constitution and the holding of an election in 2013.

Bearing in mind the aims and purpose of the COI, the structure and substance of the report are both extremely effective and they reflect the benefits of rigorous testing through repeated editorial review and constant practical application and adjudication. However, nothing is perfect and there is always room for improvement. While there are clear and cogent reasons behind the structure of the report, which are agreed to be consistent with its use and purposes, the present structure (with its categories and cross-referenced sections) inevitably leads to a certain fragmentation of the contextual explanation of each category. Recognising that this (current) structure does seem to be the best way of presenting the information in a way most suited to the report's purpose and accessibility, this review makes two strategic recommendations that might further reduce fragmentation and support the report's ability to best fulfil its specific purpose; greater use of cross-referencing, and some more integrated contextualisation of how the politics (most relevant to asylum) inform the substance of other sections.

As is exemplified in more detail below, the Background section (Paras 1-7) seems not to take full advantage of the opportunity for contextualising that it offers. This could be over-come by greater use of cross-referencing to later related ("Human Rights") sections that offer more current and specific detail. While there is some cross-referencing between sections at present, it does seem that there is considerable opportunity to use this mechanism to link the "background" and the main body of the report more frequently and more directly, making the report far more user-friendly and comprehensive. This would also mean that the later sections devoted to specific Human Rights issues would be more effectively informed by the introductory sections (1-6) relating to Background, which ought to offer a more integrated analysis of context.

This “more integrated contextualisation” of the Background section is best illustrated and might best be realised in relation to section 2 (Economy): at present, this section contains little explanation of the politics underlying the economic policies, relations, and problems outlined in the report. As is made clear in more detail below, the Zimbabwean economy is intricately bound up in the political imperatives of Government, and economic policies and developments are as hostage to political power dynamics as the political fortunes of government are hostage to their ability to feed the economic demands of their political support networks and constituents. While this may seem trite, it is particularly the case for ZANU-PF which has a history of surviving through the economic reward of political patronage (as is made clear in paras 2.17, 8.02, 10.09, 14.03). This dynamic, as well as the need for the report to reflect the issues most relevant to the factors likely to arise in relation to asylum claims, means that the report needs to reflect more directly the political imperatives that shape and frame Zimbabwean economic policies and interventions. As things stand, the section on the economy does not adequately reflect this interaction – this is illustrated in more substantive detail in the analysis below – and this is one manifestation of the inevitable “fragmentational” effect arising from a structure that is (necessarily) designed to facilitate easy access to data on specific issues, and that therefore cannot be presented as a more coherent unbroken narrative. Thus, where it is possible to deliver a more integrated contextualisation of the substantive data, this could work to reduce “fragmentation” further and would make the report more effective both in relation to its specific purpose of informing asylum adjudications, and as a more accurate reflection of the reality of life in Zimbabwe. Greater cross-referencing between the ‘Background’ section and the ‘Human Rights’ section will help towards this broad goal, but a further remedy may be the more explicit integration and articulation of the political forces that shape the substance of other sectors (eg the economy) as a whole.

Current Sources :

On the whole the COI report makes careful use of a range of authoritative sources, whether academic, journalistic, institutional or organizational. However, some of the sources relied on fairly extensively in the report are only available on subscription (eg The Economist Intelligence Unit, Europa, Jane’s) – such restricted access excluded this reviewer and must exclude any individual asylum applicants and (more problematically) a significant proportion of their legal representatives. Assuming that adjudicators and Home Office representatives have unimpeded access to such subscriptions services, the question remains whether this impeded access matters? It does not undermine the veracity or authority of these sources – they remain useful in that regard. But it does mean that it is not possible (for me or other users) to assess the extracts used from these sources in the context of their publication or original production.

Additional Sources:

There are a number of sources that are cited in the Abbreviation index, or infrequently in the body of the COI report, that could be more frequently cited as sources offering more authoritative and detailed research and more developed and insightful analysis than the news reports relied on so frequently. These sources are neither so difficult to access nor so theoretical as academic journal articles, but they do have equally rigorous research ethics and methodologies, and tend to offer a more practical and policy-oriented analysis. All of these factors make them of greater potential value to the COI, and consequently this report recommends that greater use is made of the following sources;

Africa Confidential

<http://www.africa-confidential.com/browse-by-country/id/55/ZIMBABWE>

Global Witness - <http://www.globalwitness.org/>

Research & Advocacy Unit (www.researchandadvocacyunit.org): this is an independent think tank situated in Zimbabwe that publishes regular reports of particular value for IACGI in view of their constant focus on human rights, democracy and governance in Zimbabwe. While this source has been used (infrequently) in the 2012 report, their forensic analysis of the electoral roll and procedures in the 2013 elections, as well as their historical analysis of Constitutional matters and the Government of National Unity (GNU) will be particularly useful for a review of the period since July 2012. In general, RAU is strongly recommended as an authoritative site that offers key research and insightful analysis that should be more frequently cited in the COI.

Africa Portal (a project of the Africa Initiative - <http://www.africaportal.org/africa-initiative/research>) – offers original research on policy issues and drawing from a wide range of well-established academic participants, with a focus on conflict resolution, energy, food security, health, migration, though with a special focus on climate change.

PASSOP (People Against Suffering, Oppression and Poverty - <http://www.passop.co.za/>) is “a not-for-profit human rights organisation devoted to fighting for the rights of asylum-seekers, refugees and immigrants in South Africa”. While PASSOP is explicitly focused on issues relating to Zimbabweans in SA, it produces authoritative and rigorously researched reports on a range of topics that are of relevance to Zimbabweans seeking asylum elsewhere (eg. See comments on Remittances below). This source will be of particular relevance to section 27 of the report dealing with relocation and migration.

While Transparency International is listed in the index of abbreviations, it does not appear as a cited source. Far greater use could be made of Transparency International as an authoritative source – both for easy access to broader overview information on corruption, the rule of law, judicial independence, governance etc. available from the central website (<http://www.transparency.org/country#ZWE>), as well as for the more detailed reports on specific activities and events that can be found from the website of its Zimbabwean Chapter (<http://www.transparency.org.zw/#>).

Sokwanele (www.sokwanele.com) and the Zimbabwe Human Rights NGO Forum (www.hrforumzim.org) are already well used in the report. As they offer such a wide range of publications and are two of the few consolidated indices of source material most relevant to this report, they could still be relied on to a greater degree.

The newspapers in Zimbabwe have long been so polarized that their reporting tends to reflect their ownership closely, whether governmental or non-governmental. Thus, the Herald should be treated with extreme caution, and its reporting should not be assumed to be reliable. In fact, there is evidence to suggest that it sometimes offers as “news” complete fabrications in that these stories are not only impossible to corroborate, but appear never to have happened¹. Such cases illustrate how, in general, the utility of The Herald as a source is limited to its reflection of the preoccupations and intentions of government than of any actual occurrence. Having said that, in their attempts to counter such blatant propaganda non-government owned newspapers tend to be so skeptical of government claims that they are inevitably positioned as “oppositional” and this is clearly manifest in their reporting. “Newsday” tends to be the most reliable of newspapers at present.

The national census is carried out every ten years, and a preliminary report of the latest edition (Census 2012) was released in December 2012²; the final reports will only be released in February & March 2014. But a number of statistics extracted from the latest census have been published and these should be used to update the COI.

SPECIFIC COMMENTS:

Paras 1.02 & 1.03 - GEOGRAPHY

Many of the statistics here remain relevant (in that more recent calculations are not readily accessible), but the table excerpted from the *Encyclopaedia Britannica* that is

¹ A cursory read of the paper invites immediate skepticism, but the extent of actual fabrication has been made clear to me through personal communications (August 2013) with the Director of Gays and Lesbians of Zimbabwe (GALZ), supporting the account published in <http://www.gaystarnews.com/article/activists-claim-zimbabwe-media-invent-gay-shock-stories080912>

² Zimbabwe National Statistics Agency *Census 2012; A preliminary report* Harare. 2012. Available at <http://www.zimstat.co.zw/dmdocuments/CensusPreliminary2012.pdf> (accessed 12 December 2013).

used as a guide, and the other figures relating to population numbers and distribution, should be replaced by the most recent figures of the 2012 Census, which also offer relevant breakdowns by region, sector, etc.³.

SECTION 2 - ECONOMY

Para. 2.01 – 2.11- The US State Dept no longer publishes “Background Notes” of the type cited here, and now offers more peremptory “Fact Sheets” in their place; reference might more usefully be made to the US Bureau of Democracy, Human Rights and Labour’s “Country Report on Human Rights Practices”, the most recent of which was published in April 2013⁴. Similarly, there does not appear to be a more recent UNICEF Annual Report for Zimbabwe, and the Civil Society Monitoring Mechanism has not published any periodic reports since the election ended the Government of National Unity that the CSMM was established to monitor. However, the quotes extracted from these sources remain useful as they outline the key activities of the economy, introduce the transition to dollarization as possibly the most important determinant of the halt to hyperinflation and economic meltdown, and reflect its continuing role as a key stabiliser of the economy – all important developments leading up to 2012. It is however necessary to update this section to reflect economic developments that have taken place since then. For example, in 2013 the African Development Bank published a detailed report on the economic challenges and opportunities that Zimbabwe faces; this is a useful source of detailed economic analysis, though admittedly it offers rather optimistic growth projections despite their fall from 10% to 5% over 2012. “The Government expects economic growth to stabilize around 5 percent in 2013 and 2014 and slightly increase to 6 percent in 2015, underpinned by improvements in mining and agriculture. This follows average growth rates of about 10 percent in 2010 and 2011, albeit from a low base”.⁵

More importantly, for an effective overview of the economy that is of specific relevance to the COI and asylum applications, there are a few key defining issues that deserve far greater emphasis than is reflected here. These are important because they shape the broader relation between Zimbabwean politics and economics (and therefore deliver an analysis of economic issues relevant to the politics behind asylum applications).

First, adopting the US dollar as the main currency became an inevitable necessity by February 2009 as (even hourly) changes in prices could not keep up with the

³ Ibid. p.1

⁴ “2012 Human Rights Reports: Zimbabwe” available at <http://www.state.gov/j/drl/rls/hrrpt/2012/af/204183.htm> accessed 29 Dec, 2013.

⁵ African Development Bank *Zimbabwe – Country Report 2013-2015* p.2 & <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/2013-2015%20-%20Zimbabwe%20-%20Country%20Brief.pdf> (accessed 11/12/13)

exponential fall in the value of the Zimbabwe dollar, making even the most commonplace transactions very difficult, and forcing people to resort to other currencies that could hold their value. At the same time, having the US dollar as the national currency inhibits government from *any* potential intervention through monetary policy, let alone the extensive interventionism that had characterised the Zimbabwean government's management of their economy since independence. So there is a key tension between dollarization as the economic saviour of the economy (and therefore the government), and its role in blocking governmental ability to implement and drive economic policy. This is manifest in the acute shortage of cash at present in Zimbabwe that is causing banks to close or to limit withdrawal amounts⁶. More pertinently, it places the significant informal sector of the economy yet further from Government taxation and regulation.

Second, while the establishment of a stable economic and political context remains central to sustaining economic growth, this stability will remain elusive so long as indigenisation programmes are touted as imminent (disturbing foreign investors and inhibiting the confidence of local capital to make long term investments), the issue of 90 year old President Mugabe's succession remains unresolved (fueling divisions within government about indigenisation and economic policy) and Zimbabwe is unable to restore full access to IMF and World Bank lending⁷.

Most analyses are not quite so optimistic as the African Development Bank and are currently preoccupied with the Indigenization and Economic Empowerment Act, which stipulates that any company whose net asset value exceeds \$500 000 must have 51% "indigenous" ownership – and this cannot be any Zimbabwean ownership (eg one cannot simply form a worker's cooperative), but "indigenous" owners have to be officially so recognised by ZANU-PF-PF⁸. This programme has been aggressively touted for a domestic audience by ZANU-PF Cabinet Minister Saviour Kasukuwere (in a manner reminiscent of the menacing rhetoric that preceded the land appropriations ten years ago), whilst other senior members of government have explicitly tried to mitigate the threat that the Act poses to foreign investments, and even been critical of it. Thus, the one-time highly interventionist Governor of the Reserve Bank, Gideon Gono dismissed the programme as "unworkable" and "a shambles"⁹, whilst the newly appointed Minister of Finance, Patrick Chinimasa has

⁶ eNCA.com "Zimbabweans Smash Bank After Cash Runs Out" 16th Dec 2013
<http://www.enca.com/africa/zimbabweans-smash-bank-after-cash-runs-out> (accessed Dec 17, 2013)

⁷ Financial Times, "IMF holds talks in Zimbabwe amid signs of thaw on company ownership" 5 Nov 2013, <http://www.ft.com/cms/s/0/d93ec320-4606-11e3-9487-00144feabdc0.html#axzz2pShmEcln> accessed 19 December 2013.

⁸ The Indigenization and National Empowerment Act 2007 can be downloaded from
http://www.sokwanele.com/files/Documents/PDFs/indig_econ_emp_act_080307.pdf (accessed 11/12/13)

⁹ Mail & Guardian, 22 Feb 2013 "Row Over Indigenization Deals" <http://mg.co.za/article/2013-02-22-00-row-over-zim-indigenisation-deals> (accessed 11/12/13)

tried to address the concerns of foreign investors by talking of a “flexible” approach to its implementation.¹⁰

Following Zimbabwe’s dire economic problems over the previous 10 years, and their partial recovery since dollarization and the GNU, ZANU-PF went into the 2013 harmonised elections with a manifesto that promised significant economic growth and reform, and included the outright cancellation of debts that voters accrued from Feb 2009 to June 2013 in electricity bills and rates owed to local authorities¹¹. However, their electoral victory was greeted with questions about how ZANU-PF would finance such extravagant promises – Harare City Council has scrapped \$330 million of debt and Bulawayo City council has written off \$46 million¹² – particularly as Zimbabwe already suffers severe power cuts and shortages that are predicted to worsen considerably as the country imports most of its power and requires an investment of billions of dollars to resolve this¹³. ZANU-PF has also been obliged to issue reassurances that they do not have plans to return to the Zimbabwe Dollar¹⁴, and it remains to be seen how they will reconcile their promises to increase public servant pay (key to political patronage) with demands from international bodies such as the IMF that they reduce it (key to badly needed investment). This evinces precisely the same tension as is inherent in the Indigenization Act, between the political importance of domestic patronage and the economic necessity of international investment.

In October 2013 Government published a five year economic plan in the form of the *Zimbabwe Agenda for Sustainable Socio-Economic Transformation (Zim Asset)*(<http://www.zimtreasury.gov.zw/zim-asset> accessed 12 December 2013)¹⁵. However, the extent of the crisis of liquidity currently dominating the Zimbabwean economy means that the implementation of ZimAsset will be impossible without substantial investment, and it is not easy to see where this may be sourced¹⁶. For over a decade Zimbabwe has not been able to access loans from the IMF or World

¹⁰ Zimbabwean Independent, 13 Nov 2013, “Government Further Softens Indigenization” <http://www.theindependent.co.zw/2013/11/15/govt-softens-indigenisation/> (accessed 12/12/13)

¹¹ Mail & Guardian, 29 Nov 2013, “Mugabe’s 100 days of Turmoil” <http://mg.co.za/article/2013-11-29-00-mugabes-100-days-of-turmoil> (accessed 11/12/13)

¹² Mail & Guardian, 13 Sept 2013 “Battle Lines have been drawn between ZANU-PF-PF and the MDC as the ruling party pushes to gain control of city councils” <http://mg.co.za/article/2013-09-13-00-ZANU-PF-pfs-attempt-to-create-an-urban-foothold> (accessed 11/12/13).

¹³ Mail & Guardian, 11 Oct 2013 “Power Play Casts Zim in the Dark” <http://mg.co.za/article/2013-10-11-00-power-play-casts-zim-in-the-dark> (accessed 11/12/13)

¹⁴ Mail and Guardian, 6/11/13 “No Zim dollars yet, says Reserve Bank” <http://mg.co.za/article/2013-08-06-no-zim-dollars-yet-says-reserve-bank> (accessed 11/12/13)

¹⁵ The executive summary is most easily available at http://www.kubatana.net/html/archive/econ/131031zimasset.asp?sector=ECON&year=2013&range_st art=31 (accessed 12/12/13) and critical reviews can be seen at <http://www.financialgazette.co.zw/zim-asset-to-suffer-stillbirth-analysts/>

¹⁶ Zimbabwe Independent, 29 Nov 2013 “Zimbabwe: After Elections, Reality Sets in” <http://www.theindependent.co.zw/2013/11/29/zimbabwe-elections-reality-sets/> accessed 16 December 2013.

Bank, on account of its defaulting on previous loans from these Bretton Woods institutions¹⁷. Foreign investment is inhibited by government's talk of indigenisation and its continuous focus of developing an economy premised on State intervention, though without the reliable infrastructural facilities (24 hour electricity¹⁸, clean water etc.) habitually ensured by the State. These contradictions sit directly in the nexus of the economy and the political realm, and their impact is further compounded by Government's very limited ability to exercise any monetary policy intervention since the shift to a US dollar economy¹⁹.

This dismal picture of the economy at the end of 2013, and the seriousness of the present liquidity crunch, are both clearly evident in the cash shortage that has obliged banks to reduce the amount that depositors can withdraw, the fact that city council workers have not been paid at all for October and November 2013, and that all workers are facing similar problems in the form of retrenchment, non-payment of expected thirteenth cheques, and other manifestations of scarce capital²⁰.

The COI section on "Economy" needs to be more explicit about these elements, as they are definitive to its trajectory and explain the fundamental economic role of the very same politics that have driven people from the country.

Para 2.12 - 2.16 – Remittances:

This section of the COI seems comprehensive and suitably detailed, reflecting the extraordinary impact that remittances have had on the Zimbabwean economy. At the height of the economic crisis when the Zimbabwe dollar was in free-fall, remittances became a vital survival tool for many, with the exchange rates enabling extraordinary gains to be made through shrewd manoeuvres. The adoption of the US dollar has naturally reduced the scope for the latter, but as is clear in COI 2012, remittances remain an important part of the economy.

Since July 2012, there are a few key things to add to the content here, which is that key institutions (eg. First National Bank and Standard Bank in South Africa, as well as the Zimbabwean mobile network EcoNet) have recently developed money transfer services that are specifically designed to facilitate remittances to Zimbabwe from South Africa. The likely impact of the convenience and immediacy of these services, plus the fact that they allow at far lower cost the transfer of far smaller amounts than was previously possible, is anticipated to significantly increase

¹⁷ Zimbabwe Independent, 15 Nov 2013 "Unravelling IMF sanctions myth" <http://www.theindependent.co.zw/2013/11/15/unravelling-imf-sanctions-myth/> (accessed 11/12/13).

¹⁸ Mail & Guardian, 11 Oct 2013 "Power Play Casts Zim in the Dark" <http://mg.co.za/article/2013-10-11-00-power-play-casts-zim-in-the-dark> (accessed 11/12/13)

¹⁹ Zimbabwe Independent, 22 Nov 2013, "Zimbabwe Economy fails to shed gloom" <http://www.theindependent.co.zw/2013/11/22/zimbabwe-economy-fails-shed-gloom/> (Accessed 11/12/13)

²⁰ Financial Gazette, 5 December 2013 - <http://www.financialgazette.co.zw/uncertain-future-for-zim-workers/> and also Newsday, 12 December 2013 http://www.zimbabwesituation.com/news/zimsit_economics-101-chinamasa-s-first-acid-test/ both accessed 11/12/13.

(possibly even treble²¹) the amount of money remitted to Zimbabwe²². Another factor of potentially enormous significance to the volume and role of remittances is the extent to which they are transacted through the formal economy (and so within the purview of government) or remain in the informal sector²³.

An authoritative and well researched article on “Formal and Informal Remittance Systems in Zimbabwe” published in August 2013 can be found through the Africa Portal at <http://www.africaportal.org/articles/2013/08/16/formal-and-informal-remittance-systems-zimbabwe> (accessed 19/12/13). This is particularly useful in considering the different advantages of formal and informal methods of remittance, whether for the parties involved, the revenue of the government of Zimbabwe, or the economy as a whole.

An analysis more focused on the specific dynamics of and economic relations surrounding Zimbabwean remitters in Botswana has recently (December 2013) been published by the same author (Riley Dillon) as “Remitting to Zimbabwe: Migrant experiences and remittance strategies in Botswana” at <http://www.africaportal.org/articles/2013/12/11/remitting-zimbabwe-migrant-experiences-and-remittance-strategies-botswana> (accessed 19/12/13).

PASSOP did an excellent analysis of remittance flows between SA and Zimbabwe that includes useful information on remittances to Zimbabwe in general and so includes much of relevance to this COI (“Strangling the Lifeline” April 11th, 2012 - <http://www.passop.co.za/wp-content/uploads/2012/04/Strangling-the-lifeline-PASSOP-Report-on-Remittances-to-Zimbabwe.pdf> accessed 19/12/13).

These also illustrate the importance of both the Africa Portal and PASSOP as relevant sources that the COI does not appear to be using at present.

Para 2.17 – Military Involvement in the Economy

The Crisis Coalition of Zimbabwe is a credible and authoritative source, but it may be wise to support it further with citation of more recent research and news reports, (such as those by Global Witness). There should also be a cross-reference between this paragraph and the later section on Corruption, both of which should make far greater use of the authoritative sources dedicated to these specific issues such as Transparency International (<http://www.transparency.org.zw/#>), Africa Confidential, and the massive resource of collated works that are available through Kubatana and Sokwanele.

Para 2.18 - 2.20 Sanctions:

²¹ New Zimbabwe 29/08/13 “EcoCash looks to treble SA remittances”

<http://www.newzimbabwe.com/business-12205-EcoCash%20looks%20to%20treble%20SA%20remittances/business.aspx> (accessed 19/11/31)

²² TWeb Africa, 29 August 2013, “September launch for Econet’s SA-Zimbabwe remittance service” <http://www.itwebafrica.com/mobile/323-zimbabwe/231540-september-launch-for-econets-sa-zimbabwe-remittance-service> (accessed 19/12/13)

²³ Mail & Guardian, 19 April 2013, “Zimbabwe needs you, or your cash” <http://mg.co.za/article/2013-04-19-zimbabwe-needs-you-or-your-cash> (accessed 19/11/13)

This section of the COI report needs to reflect two key things that remain unsaid, and that relate to the fundamentally political scope and impact of “sanctions”, most particularly within the country (ie as may be most relevant to asylum applications).

First, the targeted sanctions that have been in place recently underwent some significant changes. Following the referendum on the new constitution in March 2013, the EU suspended sanctions against a further 81 officials and eight firms in Zimbabwe, leaving them in place against 10 individuals and 2 firms (<http://www.bbc.co.uk/news/world-africa-21928152>). Subsequently in September the EU lifted its “asset freeze” on the Zimbabwe Mining Development Corporation (which operates the Marange diamond fields), but it is noteworthy that the US maintained its restrictions on around 100 Zimbabwean individuals and the changes in the EU position was criticised by organisations such as Global Witness.

However, in terms of the COI report (as well as a proper understanding of the full impact of any sanctions), it is more important to reflect the domestic politics surrounding the issue of sanctions, which is the second (but more important) key point here. As part of the GNU the MDC called for (and subsequently welcomed) the lifting of the targeted sanctions that make up the restrictions on trade with key people in Zimbabwe. A key reason for this was that Mugabe and ZANU-PF have managed quite effectively to deflect popular discontent with their handling of the economy by attributing the blame for Zimbabwe’s economic problems (including the economic crash in the years preceding dollarization) to “sanctions”. This not only serves to fuel Zimbabweans perceptions that their troubles are the result of yet more “imperialist” measures by Britain (Europe) and the USA, but it also enables ZANU-PF to persuade people that the economic crisis is not ZANU-PF’s responsibility, just as their failure to relieve the real suffering of Zimbabweans is not their responsibility. Zimbabwe’s lack of access to such resources as the IMF and World Bank is attributed to “sanctions” rather than a history of defaulting.

This section of the COI should make some reference to the actual political impact of sanctions, and the fact that they have inadvertently but significantly fuelled resentment towards the EU, GB and USA amongst ordinary Zimbabweans. The statement of Navi Pillay’s that is quoted includes a reference to the consensus amongst Zimbabweans that “sanctions should be lifted”. This is quite true but it needs to be explained why this consensus exists; for even those Zimbabweans conscious of ZANU-PF’s economic ineptitude and ordinarily resistant to ZANU-PF propaganda (like the MDC), recognise sanctions (however “targeted”) as counter-productive and ultimately only effective in strengthening the political hand of ZANU-PF whilst having minimal real impact on the economic situation. This has implications for the COI in that it more accurately reflects the true role of “sanctions” in the economy and actively feeds antagonism towards the UK, potentially impacting on people associated with the UK (including as recipients of remittances, failed asylum seekers, opposition members etc.).

SECTION 3 - HISTORY

Para 3.09 – 3.13 Economic Crisis, Referendum and National Elections; 1998-2000

Para. 3.11 cites The Economist Intelligence Unit's Zimbabwe Profile 2008. A visit to the Economist Intelligence Unit's site indicates that the EIU no longer publishes such Country Profiles, but it does publish a "Country Report" one of which is available for Zimbabwe. However, as this is only available to subscribers it is not possible to assess the content for its relevance or date of publication.

Similarly, the footnote [24n] does not exist in Appendix F (References to Source Material).

The passage cited in footnote 24n seems to be extracted from the EIU's Zimbabwe Report 2008 and refers to the fact that the referendum of February 2000 rejected amendments to the constitution that "included controversial clauses on land reform". This claim is certainly true and relevant to both the result of the referendum and the consequences of that result (land seizures that proceeded without the law in any case), as well as being relevant to this section of the COI; but it is also important to note that the electorate rejected the amendments put forward by the government because they failed to reduce or contain the increasingly centralised powers that had been gathering in the office of the executive (President Mugabe), and because the proposals were mistrusted as emerging from an entirely government driven process²⁴.

This section would benefit from a cross reference to Section 5 "The Constitution".

All and any information relating to the Constitution (including as relates to the Referendum of 2000) can be sourced from the extensive range of material that exists on the Sokwanele website (<http://www.sokwanele.com/zimbabweconstitution> - accessed 19/12/13), including a section that is devoted to Constitutional matters (including all constitutional reforms, proposals and procedures, key commentaries, and the "Constitution Watch" reports) over the last 12 years, from the Referendum of 2000 and the National Constitutional Assembly Draft of 2001 to the most recently adopted Constitution (COPAC 2013).

Further www.kubatana.net is a site on which all publications from the Sokwanele as well as many other organisations can be found, and as it was established in 2001, it will also be a good source for material from that date onwards.

Para 3.20

This paragraph quotes Europa attributing the split in the MDC to a difference in opinion over participation in the newly formed Senate. It is true that the MDC was deeply divided over this issue, that Tsvangirai opposed Senatorial participation and that those who chose to participate in the Senate were the break-away faction led by Ncube and then Mutambara. However, the split was not simply about participating in the senate, but was precipitated by an issue of democratic process and accountability, that was said to follow a year of power-struggles between different factions competing for control of the party. The reasons behind the split reflect bigger issues in opposition politics than mere participation in the Senate and a brief explanation is key to a proper understanding of the development of opposition politics (and Zimbabwean politics in general) in the last 15 years. This split remains a

²⁴ Kubatana and other sites contain many articles that will support this, including Sokwanele, 14 Feb 2013 "Draft Zimbabwe constitution diverted attention from crucial reforms" <http://www.sokwanele.com/thisiszimbabwe/draft-zimbabwe-constitution-diverted-attention-crucial-reforms/14022013> accessed Dec 29, 2013.

source of tension and conflict that could be directly relevant to asylum claims from members of the different MDC factions, and so is deserving of fuller explanation. The MDC properly canvassed its membership on the issue of participation in the Senatorial elections before the MDC National Executive Council voted (narrowly by 33-31) to participate in the Senate elections. However, Tsvangirai was in the minority group resisting participation and immediately following this decision he gave a press conference where he lied about both the result of this process and the debate that preceded it –thereby attempting to force a decision for the MDC to remain outside of Senate. While Tsvangirai rationalised his actions as reflecting *vox populi* (and it soon became clear that most people did oppose participation), they were seen by others as a demonstration of his authoritarianism and his disregard for democratic process and dissent. Tsvangirai was accused of lacking accountability and integrity (not for the first time) by a number of key MDC figures who could not reconcile a commitment to the rule of law and democratic process with such authoritarian leadership. Thus, while Tsvangirai’s position on non-participation in the Senate turned out to be the populist one, he asserted it at the cost of some of the basic principles that distinguished the MDC from ZANU-PF (democracy and the rule of law vs totalitarian authority and expedient opportunism). Worse still, this split led to months of extremely violent conflict between supporters of the different factions of the MDC, primarily waged by the majority pro-Tsvangirai faction and targeted at the “pro-senate” faction. Injuries were serious and the violence was brutal, but Tsvangirai (and other leaders) were perceived to be slow in condemning it or restraining their supporters. There were suggestions that the violence was exacerbated by the machinations of ZANU-PF looking to regain ground from the MDC who had been making real headway into their support base and their ability to govern unchallenged. Certainly the reporting of the issue in the Zimbabwean press was extremely partisan, with the independent press largely backing Tsvangirai and condemning the minority faction as “turncoats and sell-outs” (The Zimbabwean’s reporting consistently failed to explain the minority position other than to condemn them virulently as “sell-outs” who wanted to get on the ZANU-PF gravy train), while the government press used the split to lambast Tsvangirai as undemocratic and immature. These approaches simply exacerbated the tension and violence that accompanied the split, fomenting MDC differences further egregiously and favouring only government. There was extensive reporting of this split in the local and international media, so much of it has been published and is easy to locate; but the most concise and balanced summaries of the entire saga were those produced by Sokwanele²⁵ and others also available on Kubatana.

It is important that this should be reflected in the COI, particularly as it situates the MDC split and offers accounts of violence between the different MDC factions that may be directly relevant to some applications. While it does not seem that there is still violent conflict between the different MDC factions, it does remain a source of tension (enough to scupper electoral pacts between them) and violence could possibly reignite as the MDC’s recent electoral loss (2013) has sown significant seeds of discontent and disagreement, particularly around the leadership of Tsvangirai.

²⁵ Sokwanele, 11 November 2005 “Violence is the real enemy; Sokwanele comment on events surrounding Zimbabwe’s senate elections”
http://www.sokwanele.com/articles/sokwanele/violenceistherealenemy_11nov2005.html (accessed on 20/12/13)

Paras 3.21 – 3.47 Elections 2008 & GNU etc.

A good variety of sources are used to support this section (including HRW, Amnesty, etc.) and suitable reliance is placed on Sokwanele as a local organisation that monitored both the election and the GNU closely and rigorously. A similarly close and rigorous approach was taken by the Research and Advocacy Unit (<http://www.researchandadvocacyunit.org>), which does seem distinctly underrepresented in the sources used by the COI. This is because RAU produced the most forensic analyses of the electoral process (especially relating to the electoral roll). These offer the most comprehensive iteration of the precise machinations that went into producing first the 2008 election result²⁶ and second, the constitutional/legal platform that underpinned the consequent (and often unfulfilled) terms and conditions of the Global Political Agreement that shaped the Government of National Unity. Third, the RAU reports are equally effective in their analysis of the subsequent impact these things had on the 2013 elections²⁷. It is suggested (here and again below) that the COI could make far greater use of RAU as an authoritative source on the 2008 and 2013 elections, as well as the constitutional process.

Para 3.28 does mention violence but still offers a rather anodyne description of the period surrounding the 2008 elections in view of the extensive violence that was clearly and widely identified as characterising it, and that had dominated the political landscape in the periods leading up to 2008 and following the 2002 election.

Para 3.29 offers more explicit numbers of people impacted by violence, and provides a link that refers back to the March 2009 COI report for a detailed account of the violence and its political implications during this turbulent time. Following that link through to the relevant section (s.6) of the March 2009 report, it is clear that primary reliance was placed on news sources and journalism from the time to present a vivid account of incidents of violence and political manoeuvrings. This would have been most appropriate for 2008/9, but as 5 years have now passed there are far better sources that offer a more concise, collated, and reflective account of that same period and its troubles. It seems particularly useful to draw on these newer sources here as that not only pre-empts the need to link through to an older edition of the report, but it also delivers a more reflective and considered analysis than was possible in contemporary journalism, such as can only emerge subsequent to events. And finally, this more mature work should be cited here as it also includes an historical understanding of how these events (between 2002-2008) developed over the next few years to deliver the particular circumstances prevailing at the 2013 elections, and to inform the conditions under which they were contested. In other words, to understand the 2013 elections fully and the conditions under which it was

²⁶ Numerous relevant reports can be found at http://www.researchandadvocacyunit.org/index.php?option=com_docman&view=list&slug=2008-elections&Itemid=158 accessed 12/12/13

²⁷ A large number of relevant reports are available at http://www.researchandadvocacyunit.org/index.php?option=com_docman&view=list&slug=2013-elections&Itemid=159 accessed 12/12/13

held, it is important to have an effective understanding of the GNU, how it came into being, its short-comings, its value, and its disagreements.

An overview of these conditions can be found in the report “Crisis in Zimbabwe” by the International Coalition for the Responsibility to Protect (<http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-zimbabwe>). But far more detailed and accurate reports of the incidents of violence can be garnered from the vast number of reports produced by the Zimbabwe Human Rights NGO Forum (<http://www.hrforumzim.org/>). More extensive reference to these sources would more accurately depict which people were most targeted and most affected by violence across the country, the form that the violence took most commonly, its geographical distribution, the impunity with which it was meted out or not, and any resources victims could rely on in defending themselves or through which they could gain access to treatment and support²⁸. These are compiled by records collated from and through all member organisations of the Zim HR NGO Forum, so it will also include material gathered and disseminated by the RAU which is a member organization; nevertheless it remains useful to look specifically at the RAU website (<http://www.researchandadvocacyunit.org>), as that contains reports that are not available on www.hrforumzim.org, including many on the GNU and the constitutional and electoral issues that bedeviled it.

As suggested more generally (in relation to structure), it would also seem relevant to cross-reference the above paragraphs (3.21-3.29) with the later (numerous) sections relating to political violence and affiliation etc..

Para. 3.42 -

The discussion in this paragraph (as well as those preceding and following it) draws from a good range of sources, but in addition to making reference to COPAC and the CSMM, an equally useful source for numerous articles containing detailed but well supported and authoritative commentary on the Constitution and the GNU is the Research and Advocacy Unit (<http://www.researchandadvocacyunit.org>).

See also Dzinesa, G.A. “Zimbabwe’s Tortuous Road to a New Constitution and Elections” Institute for Security Studies; Pretoria; August 2012 <http://dspace.cigilibrary.org/jspui/bitstream/123456789/33059/1/17Aug2012Zimbabwe.pdf?1>

These sources are similarly relevant to the further sections on the Constitution later in the report, and while this is cross-referenced in some paragraphs (eg 3.32) far more frequent cross-referencing between relevant sections of the Report would serve its purpose well in general.

SECTION 4 – SECTION 6: RECENT DEVELOPMENTS, CONSTITUTION & POLITICAL SYSTEM

²⁸ The RAU is linked to the Tree of Life – an organization that offers psychological support and counseling to victims of torture and trauma arising from political violence; the Tree of Life has produced numerous reports relating directly to the physiological and psychological effects of political violence, persecution and torture, which could therefore be of relevance to some asylum applications. These are available at http://www.researchandadvocacyunit.org/index.php?option=com_docman&view=list&slug=tree-of-life-1&Itemid=126 accessed 12/12/13.

While the rationale given in previous reviews for a section on Recent Developments to appear at this point of the report is accepted, the inclusion of “the election” (and a sub-section on the Constitution) in this section may understate the significance of the political intimidation and machinations that took place in the lead up to the adoption of the new Constitution and the holding of elections (both in 2013), including police sweeps of civil society organizations²⁹. The centrality of these factors to the return to power of ZANU-PF, and the extensive procedural critiques that continue to surround both constitution and election may warrant the devotion of each of these to their own sections. In the present COI, section 5 refers to the Constitution exclusively – that clearly remains necessary and might be usefully matched by a section that analyses the broadly accepted critique of an election generally agreed to be (relatively) free of violence, but not “fair”. In view of their chronological order, as well as the questions that remain valid about the legitimacy of the constitutional and legal framework of the elections, it would seem useful for a section dedicated to the 2013 elections to follow an updated section on the Constitution.

The sections on the Constitution and the Election are clearly related in that many civil society and human rights organizations in Zimbabwe were explicit in their insistence that major institutional reforms needed to accompany a new constitution prior to any possibility of a fair election, only the minimum of which were reflected in the SADC conditions which were not fully met in any case³⁰. A full understanding of how constitutional and legal gaps were exploited, as well as how the failure to implement the necessary reforms (whether institutional or procedural), resulted in the delivery of an incredible 110% increase to Mugabe’s electoral support, can be gained from sources familiar to the COI (Sokwanele, ZESN, SAPES, etc.), but most particularly include the RAU³¹. This is because RAU (at time of writing) clearly offers far more numerous and detailed post-election analysis than most of the other sites, and there are a large number of press reports and commentaries that are instructive and can be accessed through Kubatana³².

“Recent Developments” needs still to include a section dedicated to the succession battle within ZANU-PF as this has only intensified since the elections and remains fundamental to the dynamics of national politics, though whether Mnangagwa

²⁹ See statement by UN Office of the High Commissioner for Human Rights (27 Feb 2013) ““Zimbabwe must respect fundamental freedoms in run-up to constitutional referendum” warn UN rights experts” – available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13055&LangID=E> accessed Dec 29, 2013.

³⁰ HRW “Zimbabwe; Rights Reforms Needed Before Elections” (10 Jan 2013) available at <http://www.hrw.org/news/2013/01/10/zimbabwe-rights-reforms-needed-elections> and “The Elephant in the room: reforming Zimbabwe’s security sector ahead of elections” (4 June 2013) available from <http://www.hrw.org/reports/2013/06/04/elephant-room> (both accessed 29 Dec 2013).

³¹ See for example RAU reports “An audit of the 2013 voters role”, “Of Camels, Constitutions and Elections”, or “Fairly Fair? The 2013 Election” and others, all available at http://researchandadvocacyunit.org/index.php?option=com_docman&view=list&slug=2013-elections&Itemid=159 accessed Dec 29, 2013.

³² Kubatana however offers a full index of a massive volume of published articles on the 2013 elections at http://www.kubatana.net/html/archive/archspecialentry_index.asp?sector=ELEC&spec_code=130510elecindex&year=0&range_start=1 (accessed Dec 29, 2013)

remains a favourite is highly questionable following Joice Majuru's seizure of 9 out of 10 provinces in the ZANU-PF provincial elections in November 2013.

However, speculations about the health of President Mugabe remain just that. It is not clear whether this is a topic of merit for this report, in that the paucity of authoritative accounts is only surpassed by the deluge of rumours and speculation that surround it. It may be advisable to omit this section (4.11) altogether and simply recognize elsewhere that the man is of an age and position where his health is a matter of constant speculation.

HUMAN RIGHTS:

SECTION 8 – SECURITY FORCES:

The sources used and the balance of information in this section seems clear, detailed, and simply in need of updating from a similar range of sources.

However, in relation to para 8.17 it is worth noting that Police Commissioner-General Augustine Chihuri, whose re-appointment has been (contentiously) confirmed for a 14th time to continue into 2014 has occupied this post since 1994. This is an extraordinarily long term of office for any Police Commissioner, and yet it would be very surprising if his term is not further renewed in 2014. This is particularly unlikely as he is a long standing member of the Joint Operations Command (JOC).

The only additional comment that may be useful in regard to this section is to note that the clear politicization of the police, both as facilitators and beneficiaries of impunity, continued throughout (and despite) the GNU. It needs to be clear that the formation of the GNU and the MDC's participation in government, did not mean an end to either prosecution of their members or impunity for attacks committed against them. A clear pattern whereby police fail to follow up allegations of violence committed (eg. against MDC members) by ZANU-affiliated agents, but will enthusiastically arrest and/or detain opponents on ZANU-PF however spurious the allegations against them, continued. This is clearly evident in the patterns of arrest and detention, and the bringing of cases to trial (with the connivance of the Director of Public Prosecutions), and the fact that the courts, while tending to the supine, frequently find themselves obliged to dismiss charges so patently specious. This is best (and most recently) illustrated by such high profile cases as the acquittal following lengthy trials of Beatrice Mtetwa and "the Glen View 29" (see para 14.67), but far more comprehensive data is available in the latest edition Biannual Human Rights Report of the Zimbabwe Human Rights Forum³³. (This is highly recommended as a useful and authoritative source for the COI in general).

It may be useful to cross-section discussion of these and other issues relating to police politicization and impunity to the more extensive discussion in section 14 (eg. paras 14.02 & 14.04).

³³ "Courageous human rights defenders, disappointing compromises, but progress in Zimbabwe" (7 Jan 2013) available at <http://www.hrforumzim.org/publications/courageous-human-rights-defenders-disappointing-compromises-but-progress-in-zimbabwe/> accessed 5 Jan, 2013.

SECTION 10 – JUDICIARY

Under the new Constitution, the country now has a Constitutional Court in addition to the Supreme Court – this will require some amendment to paras 10.02-03 (see <http://www.sokwanele.com/zimbabweconstitution/sections/359>).

It may be worth noting in the initial paragraphs of this section that a selection of key judgments of the High and Supreme Courts from 2010 to the present (which are regularly updated and already include the Constitutional Court) can be found through either the Zimbabwe Law Society (<http://www.lawsociety.org.zw/>), the Legal Resources Foundation (www.lrf.co.zw) or Zimbabwe Lawyers for Human Rights at http://www.zlhr.org.zw/index.php?option=com_alphacontent&view=alphacontent&layout=alphacontent&Itemid=76.

Over the last 10-15 years, the publication of the Zimbabwe Law Reports has been erratic and complicated, and while the Legal Resources Foundation (www.lrf.co.zw) was until recently the site through which one could access digital copies of the key case law, at time of writing this site does not appear to be functioning at all.

It would therefore seem sensible to advise access through either the ZLHR (whose filter may be more appropriate for COI) or the ZLS which has a more comprehensive (though less filtered) database. These two sites do appear (at present) to be more reliable for access than the LRF. The African Legal Information Institute has also begun building an internet-based law reporting system for Zimbabwe, which will be known as ZimLII.³⁴ However, this does not yet appear to be operational.

Since the publication of the July 2012 report, there have been many attempts to use the courts to prosecute people for “insulting the president”, and though this provision of the Criminal Codification and Reform Act has finally been suggested by the Supreme Court to contravene the new constitution³⁵, the Minister of Justice Emmerson Mnangagwa is strongly defending the provision and has challenged this ruling³⁶. While this might well appear more appropriately in the section on Freedom of Political Expression, two things are noteworthy here. First, it does not appear that the COI report makes any significant reference to this law which has been used regularly and egregiously to imprison critics of Mugabe, and even people making fairly benign comments. And second, it would seem useful to cross-reference discussion of this provision between this section and other relevant locations (eg Freedom of speech) .

³⁴ Southern African Litigation Centre (30 April 2011) “ZimLII: Free Access to Legal Information from Zimbabwe” <http://www.southernafricanlitigationcentre.org/2011/04/30/zimlil-free-access-to-legal-information-from-zimbabwe/> accessed 5 Jan 2014.

³⁵ BBC (31 Oct 2013) “Zimbabwe court says Robert Mugabe ‘insult law’ invalid” – available at <http://www.bbc.co.uk/news/world-africa-24757351>; and see for more detailed account Radio Netherlands Worldwide (1 Dec 2013) “Zimbabwe’s controversial presidential insult law ruled unconstitutional” available at <http://www.rnw.nl/africa/article/zimbabwe%E2%80%99s-controversial-presidential-insult-law-ruled-unconstitutional>; both accessed 5 Jan 2014.

³⁶ SW Radio (21 Nov 2013) “Zim man sentenced as Mnangagwa fights to defend insult laws” (<http://www.rnw.nl/africa/article/zimbabwe%E2%80%99s-controversial-presidential-insult-law-ruled-unconstitutional>). See also “Mnangagwa challenges Mugabe insult ruling” <http://www.newsdezimbabwe.co.uk/2013/11/mnangagwa-challenges-mugabe-insult-law.html> – both accessed 5 Jan 2014.

Similarly, there are (ongoing) and have been a significant number of prosecutions of leaders of civil society organizations that are alleged not to be “properly registered” – an example of the form such prosecutions take (usually spurious in law, but effective as tools of intimidation and resource wasting) is the recent acquittal of Abel Chikomo of the Zim HRNGO Forum;,, but similar tactics are (not for the first time) also being deployed against Gays and Lesbians of Zimbabwe (GALZ) and the Zimbabwe Peace Project (ZPP)³⁷. (This should be cross-referenced with section 16 Civil Society, where its detail may more usefully appear).

While these cases may appear to demonstrate some promise of the judicial independence that is theoretically guaranteed through the new Constitution, it would be dangerous to assume that this is dependable or predictable. As is evident in the 2012 COI, the same sources (as cited there) will show that there are many more cases that suggest otherwise, and that are consistent with the results one would expect from a judiciary that has been so deliberately reshaped by ZANU-PF in a long line of (often violent or menacing) interventions from the forced resignation of the Chief Justice in 2000, to the public vilification of Justice Hungwe and the “illegal” appointment by Mugabe of several High Court Judges in 2012³⁸.

Para 10.12 appears to have the heading of “Penal Code” and a reference to the ILO website. This seems rather obscure in reference; would it not be better to refer to a Zimbabwean site (eg. www.kubatana.net) where all/any Zimbabwean legislation can be accessed (including all laws and statutes relating to crime and criminal procedure and evidence, and so are not limited to one “penal code”), and the reader will be sure of reaching the most recent statutes, including any amendments etc.. However, it remains the case that all these (laws, provisions, statutes) remain subject to the *practices* of arrest and detention accurately depicted in Section 11, and that it will be some time before most of the laws and procedural regulations are amended to bring them in line with the new Constitution

SECTION 11 – ARREST & DETENTION:

The new Constitution delivers some change in the rules of criminal procedure relating to arrest and detention, but these have not yet been enacted let alone come into force, and the practice of the police and prosecutors remains that which was outlined in this section of the COI. As they failed so frequently to acknowledge the procedural limits on their powers of arrest and detention that existed previously, it seems highly unlikely that they will readily and conscientiously abide by any new regulations (once these are in place, which is likely to still be some time away as the legislative process will take both considerable time and political will).

³⁷ Zimbabwe Human Rights NGO Forum (25 Nov 2013) “Sigh of Relief to CSO’s as Abel Chikomo is acquitted”

http://www.kubatana.net/html/archive/hr/131125hrf.asp?sector=CACT&year=0&range_start=1
accessed 5 Jan 2014.

³⁸ Crisis in Zimbabwe Coalition (9 April 2013) “Prejudice...Remove that, and there’s no case against Justice Hungwe” <http://www.sokwanele.com/thisiszimbabwe/political-interest-and-prejudice%E2%80%A6remove-and-there%E2%80%99s-no-case-against-justice-hungwe> accessed 6 Jan 2013.

“Clauses 50 and 70 of the new constitution confer rights on persons who have been arrested or are up for trial, and many of these rights are not yet recognised under our law. For instance, arrested persons will have a right not to answer questions, and will have to be informed of their right not to do so, and will have to be brought before a court within 48 hours or else released; and accused persons in criminal trials will have to be informed of their right to legal representation and, like arrested persons, will be entitled to remain silent” (<http://www.sokwanele.com/thisiszimbabwe/bringing-new-constitution-operation-veritas/10052013>)

SECTION 12 – PRISON CONDITIONS

While this section draws from a good range of sources (primarily international), there are a few notable absences, the inclusion of which would undoubtedly add strength to the section, and one key change.

First, there is no reference at all to the Zimbabwe Association for Crime Prevention and the Rehabilitation of the Offender (ZACRO), which is the primary independent organization monitoring prison conditions from within Zimbabwe. ZACRO produces regular “Field reports” and other publications that will better inform this section (and most particularly will contextualize the arguably misleading comments quoted in para.2.08) and can be downloaded from <http://www.zacro.org.zw/>.

One key report that may be of specific relevance to the COI is “An Analysis of Prisoners’ Rights in Zimbabwe” published by ZACRO in conjunction with the Zimbabwe Human Rights NGO Forum, and available from <http://www.hrforumzim.org/publications/monthly-human-rights-bulletin/prisoners-rights/>. This report considers the actual conditions in Zimbabwean prisons in direct relation to the UN Basic Principles for the Treatment of Prisoners and was published in March 2012. However, it does seem that even since then, there has been a considerable decline in the conditions faced by prisoners.

While the interventions of the ICRC (Red Cross) between 2009-2011 did make a significant difference to prison conditions in Zimbabwe, the impact appears to have dissipated and a severe shortage of funding (while \$1.2 million dollars is needed for food each month, ZPS only receives \$300 000) means that conditions are now reverting to the critical state of 2008³⁹. The claims made in paras 12.07 & 12.08 of the COI are now overshadowed by widely reported statistics (confirmed by the Zimbabwe Prisons Service and the Ministry of Justice) of over 100 deaths (from a lack of nutrition) across all prison facilities during the last year⁴⁰.

³⁹ SW Radio (3 Dec 2013) “100 die from hunger in Zimbabwe’s prisons” <http://www.swradioafrica.com/2013/12/03/100-die-from-hunger-in-zimbabwes-prisons/> accessed 6 Jan 2014.

⁴⁰ Reuters (3 Dec 2013) “Zimbabwe inmates starving in cash-strapped jails” <http://uk.reuters.com/article/2013/12/03/uk-zimbabwe-prisons-idUKBRE9B20BF20131203> both accessed 6 Jan 2014.

SECTION 13 - DEATH PENALTY

This section remains accurate except for the speculation in para 13.03 that the new constitution may abolish the death penalty. The new Constitution retains the death penalty (in clause 48) but only as a sentence that can be imposed on men (and not women) convicted of aggravated murder. (see Sokwanele)

SECTION 14 – POLITICAL AFFILIATION

This entire section will of course need to be updated to reflect the dynamics leading up the more recent 2013 election and the constitutional process that preceded it; the comments made above (in relation to ss.4-6) about this process and the failure to reform institutions and conditions for a “fair” election are again relevant. More extensive cross-referencing between these sections seems necessary to ensure effective and easier access to the information directly relevant to users of the Report investigating these particular issues. It will also serve to integrate the “Background” section more closely with this more detailed section on “Human Rights”.

The space for Freedom of Association and Assembly still remains as constrained as detailed here, as is most clearly illustrated by the widespread arrests of civil society leaders in the run up to the Constitutional referendum (see footnote 30), and more recently, the violent treatment and mass arrests of WOZA members in September 2013 and again in November 2013⁴¹. These are not isolated incidents, but are simply used to illustrate that the prevailing context remains much the same.

Paras 14.42-14.44 Limitations of Quantitative Data

In view of the amount of data that follows, it seems very wise to include these paragraphs outlining the limits of quantitative data, and they are, on the whole, commendably carefully crafted. Yet there does remain a danger that this alert ends up isolating the ZPP for special caution as a source, when no other source cited is subjected to as much methodological scrutiny.

It is completely acceptable and indeed necessary to acknowledge the limits of any quantitative dataset that relates to rates of (ordinary) crime or violence of any kind (including political) as these will always include a “grey area” of “unknowable” incidents that remain unreported, and the “motivations of perpetrators” can never be conclusively affirmed. Furthermore, the cautionary counsel (in para 14.44) about how to treat this data as indicative but not comprehensive, is suitably nuanced. But for clarity and to avoid impugning the reliability of ZPP as an organization, it should be made explicit that these are problems inherent in any dataset that deals with rates of crime and violence, an unknowable proportion of which will inevitably go unreported, and a notably small proportion of which will offer absolutely conclusive evidence of motivation. There is little one can do about the first problem other than to mitigate it as much as possible by relating official records of crime rates to self-report

⁴¹ Zimb HR NGO Forum (19 Spet 2013) “Police Quash WOZA peaceful protest” <http://www.hrforumzim.org/alerts/police-quash-woza-peaceful-protest/> and also “Alert: WOZA arrests 29 November 2013” <http://www.hrforumzim.org/alerts/alert-woza-arrests-29-november-2013/> both accessed 5 Jan 2014.

victimization surveys, and it would seem that ZPP does have a “verification process” and that if ZPP’s records were inaccurate this would have evinced a lack of fit with other relate-able sources (both press and organizational) over the many years that they have been in operation. The issue of a perpetrator’s motivation can only be weighed up as fully as possible from the evidence available in the context. But it will rarely be absolutely beyond question and an informed judgment will need to be made; this is true in any country and relating to any motivation whether homophobic, racist or party political. Compared to many such sets of data (eg relating to gender based violence including in the UK) ZPP’s data seems more fully attributable, with methods that appear to be as rigorous, earnestly verified, and carefully collated as one might expect in the circumstances (particularly as it includes monitoring the malfeasance of a state that has powerful mechanisms of surveillance and retribution).

Overall, this section is commendably nuanced, but it may well be prudent to emphasise that some of the reservations expressed include those inherent in any quantitative dataset relating to acts of violence (and are not specific to the ZPP). This may counter the impression that ZPP is being singled out for unique skepticism in a report that includes “anonymous” sources, and a large number of other publications whose analysis is not explicitly and clearly supported with citation of a verifiable authoritative source, none of which are subjected to such a cautionary alert.

That aside, the rest of this section seems extremely well structured and offers suitable detail for a representation of the distribution, volume and types of political violence in a way that is accessible and no doubt extremely useful for the adjudication of related asylum claims.

SECTION 15 – FREEDOM OF SPEECH AND MEDIA

While Television broadcasting remains the preserve of the ZANU-PF controlled ZBC, the last few years did see a significant distribution of low-cost decoders (including in Zimbabwe’s rural towns and high density suburbs) that transmitted SABC stations and other free-to-air programmes from SA and Botswana, as well as a short-lived Zimbabwean independent channel (Sentech) broadcasting from outside the country. However, fortuitously for ZANU-PF these broadcasts were discontinued (for commercial and licensing reasons determined outside Zimbabwe) just prior to the 2013 elections. Nevertheless, these were in operation at the time of the 2012 COI, and ought therefore to be referenced in paras 15.17 & 15.18⁴²

Para 15.20 – there are some reports that suggest increasing capacity and activity in CIO monitoring of internet activity⁴³.

⁴² Mail and Guardian (5 July 2013) “No more SABC for Zimbabwe” <http://mg.co.za/article/2013-07-05-00-no-more-sabc-for-zimbabwe> and also News Day (20 Dec 2012) “Shamu attacked over Internet control” <https://www.newsday.co.zw/2012/12/20/shamu-attacked-over-internet-control/> both accessed 5 Jan 2014.

⁴³ Nehanda Radio (27 March 2013) “Iran helping Zimbabwe snoop on internet” <http://nehandaradio.com/2013/03/27/iran-helping-zimbabwe-snoop-on-internet/> accessed 5 Jan 2014.

It is also important to mention the appearance of Baba Jukwa, writing on the internet but penetrating far further into the Zimbabwean consciousness. A highly critical, satirical and anonymous character who claims to be reporting secretly from within the higher echelons of ZANU-PF, and who appears to be well-informed of many of the party's inner workings (including predicting assassinations), Baba Jukwa took the country by storm from his initial appearance in 2013 (primarily through Facebook, but also available on the internet)⁴⁴. His reports really electrified popular discussion about ZANU-PF and incensed senior members of ZANU-PF, constantly the object of his derision, and this appears still to be the case. He can be accessed through facebook or through Baba Jukwa and Sahwira online at <http://zimbabwean-at-heart.com/>

One notable absence from this section is any discussion of mobile phone usage, monitoring, control and provision. As the technology develops, and the already extensive use of mobile phones in political organization and monitoring by the opposition grows, this would seem in need of remedy. The battles for licenses to provide mobile services in Zimbabwe also seems to be a story of political battles at the highest levels, supporting and challenging patronage.

Reports from Freedom House⁴⁵ and Reporters without Borders are well used, though it may also be useful to draw from the work of the effective local media organizations, such as Media Monitoring Project Zimbabwe (MMPZ), and Zimbabwe Union of Journalists, both accessible through Kubatana.

SECTION 16 – CIVIL SOCIETY AND HUMAN RIGHTS DEFENDERS

Para 16.09 on Human Rights Defenders should include more explicit reference to the violent attacks, arrests, harassment, threats and obstructions faced by lawyers in the course of their duties attempting to represent clients who have been arrested, detained or are on trial. These continue to take place regularly, and have a considerable impact on the ability of lawyers to offer representation, the willingness of people to take on “difficult” cases, and the recruitment of people into the legal profession in the first place, let alone the fortunes of those clients left without effective representation. This is most vividly illustrated by the trial of Beatrice Mtetwa and is clearly articulated in her comments after her acquittal⁴⁶.

Through personal communication, I am aware of the ZLHR having to repeatedly replace the legal counsel representing two men charged with (consensual) sodomy in November 2011. At each appearance in court violent threats were directed at the lawyers; these threats were so severe and their proximity so menacing that the trial was disrupted and lawyers had to take shelter in the Magistrate's office for the rest of the day (until the crowd finally dispersed). No action was taken against those issuing the threats and ZLHR was obliged to replace legal counsel four times during the course of the trial to ensure their safety.

⁴⁴ NewsDay (21 June 2013) “Take BabaJukwa seriously” <https://www.newsday.co.zw/2012/12/20/shamu-attacked-over-internet-control/> accessed 5 Jan 2014.

⁴⁵ Zimbabwe http://www.freedomhouse.org/report/freedom-net/2012/zimbabwe#_ftn18 accessed 5 Jan 2014.

⁴⁶ ZLHR (3 Dec 2013) “Beatrice Mtetwa speaks out” http://www.kubatana.net/html/archive/hr/131203zhr.asp?sector=WOMEN&year=0&range_start=1 accessed 4 Jan 2014.

More information on such instances can be located through ZLHR and the Zimbabwe Law Society.

SECTION 20 – SEXUAL ORIENTATION AND GENDER IDENTITY:

Para 20.02 – there are a number of concerns about the use of Annex E, that mean it should either be omitted from the next report, or (if retained) it should be accompanied by some strong recommendations:

1. It is notable that WAG and WOZA's responses to a number of questions differ significantly from those of GALZ and CONNECT. This reflects the limited knowledge that the two former organizations (women's organizations with no focus on LGBT issues or membership) are likely to have of the experience of LGBT people living in Zimbabwe. While they are creditable organizations and may be supportive of their formal alliance with GALZ (through Zim HRNGO Forum etc.), the socio-cultural context is such that they will not have the specialized knowledge of the LGBT scene (politically or socially) that gay or lesbian people themselves will have. It should be made clearer that the responses of these organizations should be treated with caution and there should be a clear recommendation that they should certainly not be given equal weight to the responses of GALZ or CONNECT. WAG and WOZA may be suitable sources for information about gender issues (and more specifically women's issues) but they are not suitable sources for authoritative information on issues of sexual orientation, or gender identity as it intersects with sexual orientation, or with transgenderism. Neither WOZA nor WAG have any transgendered members, whereas GALZ certainly has/had. This reflects clearly the distinction between their investment in the issues relevant to this section.
2. The ZLHR responses are clearly most relevant in relation to legal issues. However, ZLHR comments on broader social perspectives and attitudes should also be recognized as reflecting a generalized opinion that is not informed by the personal and collective experiences that qualify GALZ and CONNECT's responses, giving them greater authority.
3. Furthermore, these interviews are either redacted (CONNECT), or offer very brief responses to the questions asked (GALZ). They explicitly exclude many of the elaborative follow-up questions that arise from the initial responses and are necessary for a fuller understanding of these responses. This is particularly relevant when it comes to the further step of associating the responses to claims for asylum, where disputes about their meaning and interpretation will elicit a need for that further elaboration. The recommendation to read these interviews alongside information in the sections of the main report should be far stronger.
4. These interviews were now conducted nearly three years ago, and there have been a number of important incidents and publications since then. These relate to police activity (mass arrests in August 2012), legal charges (pending against GALZ officers), and the publication of reports (GALZ "Violations Report 2011" (published in August 2012), and GALZ "Report on Discrimination against Women in Zimbabwe based on Sexual Orientation and Gender Identity" (submitted to Committee on the Elimination of Discrimination

against Women, Jan 2012)⁴⁷. While these will no doubt be incorporated into the main body of the section, it emphasizes yet again the importance of a strong recommendation that this Annex (if retained) should be clearly identified as a mere annexure to the more substantive and recent information appearing in the main text.

Para. 20.05 & 20.09 & 20.24 Sexual Orientation and the New Constitution – it is worth noting that there were considerable battles over the inclusion of sexual orientation (through oblique reference to eg. “natural difference”) in the draft Constitution. These enabled ZANU-PF to use the issue as a device for ensnaring the MDC in the awkward position of either supporting the indivisibility of rights at the cost of popular support, or agreeing with Mugabe’s rejection of gay rights to maintain popular support. This led ZANU-PF to look for ways to bring the LGBT issue to the fore, while the MDC made contradictory statements on the issue depending on whether they were addressing a domestic audience or an international one. It is useful to bear this in mind when considering press reports and statements on the issue in the period leading up to the new Constitution.

In the end the new Constitution not only omitted any term that could be identified as including sexual orientation in their grounds of prohibited discrimination, but also included a provision specifically prohibiting same-sex marriage⁴⁸. However, there is a clear and persuasive (albeit little known or acknowledged) view that the non-exhaustive phrasing of the grounds on which discrimination is prohibited, leaves clear scope (that is legally grounded and supported in case law) for the inclusion of sexual orientation⁴⁹. However, such a ruling is highly unlikely to be delivered by the Constitutional Court in the current socio-political context, and the timing of any constitutional challenge to the present law would need to be carefully considered.

Para 20.22 – It is important to repeatedly recognize that articles on the GALZ website are often “undated” as there are frequently sections of the website that are not updated for years, and this particular quote is an example of the dangers of this. I am aware that this quote was originally made by Keith Goddard (the then Director of GALZ) some years before his death in October 2009.

Similarly in para 20.70 reference is made to the affinity groups that GALZ attempted to establish in 2004. While this did happen in 2004, the groups did not survive long and have not been in existence for much of the last 10 years. I have verified this with Keith Goddard (then GALZ director) in 2008 and because of its constant reappearance in the COI report I have twice more verified their termination with the present GALZ Director Chesterfield Samba in July 2012 and 2013.

⁴⁷ Downloadable through IGLHRC at <http://iglhrc.org/sites/default/files/559-1.pdf> accessed 5 Jan 2014.

⁴⁸ Alex Magaisa’s remarks are extremely useful here, in his interview with Violet Gonda in New Zimbabwe 23/7/2012 “All you need to know about the draft Constitution” <http://www.newzimbabwe.com/opinion-8575-New%20constitution%20the%20key%20changes/opinion.aspx> accessed 5 Jan 2014.

⁴⁹ Derek Matyszak (RAU) “Human Rights and Zimbabwe’s Draft Constitution” March 2013 http://www.researchandadvocacyunit.org/index.php?view=download&alias=235-human-rights-and-the-draft-consolidatedfinal-edit-for-posting&category_slug=general-reports&option=com_docman&Itemid=160 accessed 6 Jan 2014

It is however true to say that in any given place, lesbians and gay men will get to know each other and so, aside from the largest cities of Harare and Bulawayo, Mutare also has a small community of gays and lesbians and GALZ is in touch with its members some of whom live outside Harare.

This paragraph should be removed as the affinity programme no longer exists. It highlights once more the danger of relying on information that is “undated” on a website that is not regularly edited aside from the posting of new articles.

Para 20.45 & 20.66 – the suggestion that Bulawayo is more gay-friendly needs to be qualified considerably. It does not seem possible to source any further support for the contention that Bulawayo is therefore free of the significant homophobia that clearly exists in the rest of the country, even if it does appear to be relatively more tolerant. My own research has failed to reveal any dedicated openly gay club in the centre of Bulawayo (although ordinary (heterosexual) night clubs that admit gay people do exist), but it does appear that the Sexual Rights Centre in Bulawayo attracts far less hostility than GALZ (though this could well be because the name of the SRC does not make explicit allusion to the challenging words “gay and lesbian” as GALZ does).

However, the relativity of this “tolerance” is best illustrated by the very recent report (5/1/14) of 5 senior ZANU-PF Youth League members in trouble (suspension/expulsion is threatened) for attending a “gay party” in Bulawayo just before Christmas 2013. Police arrested 5 members of GALZ during the party (two of whom “suffered serious injuries during the arrest”) for wearing T-shirts displaying a rainbow flag and the words “same love”⁵⁰.

The suggestion that Bulawayo offers a distinctly different opportunity for open gay living in contrast to the rest of Zimbabwe, needs to be significantly qualified; it is important to recognize that notions of what represents “tolerance” in Zimbabwe are not likely to be the same as in the UK. This paragraph needs qualification.

Para 20.65 – this seems rather misleading, as the article uses the adjective “flourishing” in passing while focusing on yet another example of Mugabe’s homophobic diatribes. Nor is it clear why they use the adjective (what support do they have for this claim?), and whether they are referring to a “flourishing” community at large, or one simply centred around GALZ. This needs to be clarified or removed.

Overall, however, this section seems extremely comprehensive and offers an effective account of the key elements that determine and reflect the treatment of sexual orientation and gender identity in Zimbabwe. Much of this material will need to remain as its relevance continues, though the accounts of specific incidents will of course need updating.

SECTION 22 – WOMEN

⁵⁰ New Zimbabwe (5/1/14) “Zanu PF officials at Byo gay shindig” <http://www.newzimbabwe.com/news-13756-Zanu+PF+officials+at+Bulawayo+gay+shindig/news.aspx>

Para 22.13 starts “The same report noted” – this seems (from the reference cited later) to refer to the CEDAW report that is cited some paragraphs earlier, but not immediately before as there are other sources cited in the intervening paragraphs. The initial sentence is therefore confusing, and needs some amendment.

Paras 22.24 & 22.25 appear to replicate the exact same content.

Paras 22.40 and 22.41 should be extended to include sexual rights (that are not LGBT specific), and so should refer to the work of the Sexual Rights Centre in Bulawayo which includes useful articles on sex work (<http://www.sexualrightscentre.com/sexworkers.html>, offering far more detailed information than the COI has at present) and information on other related topics.

The home site www.sexualrightscentre.com appears to be “under construction” and inaccessible at present. But much of their material is online and accessible through <http://www.sexualrightscentre.com/aboutus.html>

Or <http://www.sexualrightscentre.com/currentprojects.html>

or <http://www.sexualrightscentre.com/progproj.html> (all accessed on 6 Jan 2014).

One final recommendation for this section is that a paragraph containing a list of key Zimbabwean women’s organizations, or at least referring users of the COI to a site (eg Kubatana) where such a list is available, and where further documents/data may be reliably and readily accessed. Paragraph 22.70 & 71 does this with specific reference to domestic violence, but it would surely be useful to offer something wider and more comprehensive of all issues relating to womens’ rights. (eg similar to that for Children in paras 23.24 & 23.26).

SECTION 26.03-12 LAND REFORM

This section accurately represents some of the key elements of the attacks on and evictions of white commercial farmers (that appear to continue sporadically despite the small number of remaining white commercial farmers), but it neglects to highlight the significant violence, displacement, and disenfranchisement suffered by the far more numerous black workers on these farms, who were characterized as “foreign” and (following the 2000 referendum) as opponents of ZANU-PF on account of the actions of their farm union. The devastating impact of the violence meted out to farm workers and their eviction from their homes and jobs (particularly between 2000-2005) is well documented in many reports available from Sokwanele and Kubatana. Some reference is made to these workers in the section (28) on internally displaced persons, but that should be cross-referenced to this section. It is important that these workers are also included in this section on land reform, as it misrepresents the objectives and nature of the land reform process to suggest that it was entirely about white farmers. More pertinently, asylum applicants are likely to include people who come from this community of ex-farm workers.

On the issue of land reform and food shortages, it may be relevant to refer to the controversial book by Ian Scoones and Blasio Mavedzenge “Zimbabwe’s Land Reform: Myths and Realities”, which aimed to reframe the analysis of land reform by contesting numerous “myths” including that productivity had been so massively and irreversibly reduced as a result of the land redistribution. While the book is a

welcome intervention into this contested field, it is not without its critics and skeptics (most particularly centering on whether one can accept that Scoones' findings in one region can be extrapolated across all agricultural sectors and disparate farming lands). This is a complex debate that is potentially difficult to incorporate here, but the real proof of any "myths" or counter-arguments will be in the agricultural production figures that are still emerging.

SECTION 29 MARANGE DIAMOND FIELDS

An additional source that may be of great value here is the Sokwanele publication "The Marange Diamond Fields of Zimbabwe – An Overview" (2011) available at <http://www.sokwanele.com/node/2340>

SECTIONS 30-33 & ANNEXES

I have no specific remarks to make on these sections but would draw attention to my comments relating to Annex E made above in relation to Section 20.

CONCLUDING REMARKS:

Overall, and in conclusion, I believe that this report is commendably detailed and usefully comprehensive, and draws very effectively on a wide range of suitable and credible sources. It is clearly structured in a way that best matches its purpose and objectives, and proper use of the cross-references should facilitate its fullest effectiveness as a source book, and help to integrate and contextualize related information that must (necessarily) appear in separate sections.

END