IN THE HIGH COURT OF SOUTH AFRICA

DURBAN AND COAST LOCAL DIVISION

CASE NO. 4576/2006

In the matter between:

EN	First Applicant
BM	Second Applicant
DM	Third Applicant
EJM	Fourth Applicant
LM1	Fifth Applicant
MAZ	Sixth Applicant
MSM	Seventh Applicant
ND	Eighth Applicant
NS	Ninth Applicant
SEM	Tenth Applicant
TJX	Eleventh Applicant
TS	Twelfth Applicant
VPM	Thirteenth Applicant
ZPM	Fourteenth Applicant
LM2	Fifteenth Applicant
TREATMENT ACTION CAMPAIGN	Sixteenth Applicant

and

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE HEAD, WESTVILLE CORRECTIONAL CENTRE	Second Respondent
MINISTER OF CORRECTIONAL SERVICES	Third Respondent
AREA COMMISSIONER OF CORRECTIONAL SERVICES, KWAZULU NATAL	Fourth Respondent
MINISTER OF HEALTH	Fifth Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR HEALTH KWAZULU NATAL	Sixth Respondent

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APPLICANTS' REPLYING AFFIDAVIT

I, the undersigned

ANNELINE MICHELLE GOVENDER

do hereby make oath and state:

1.

I am an adult female, currently employed as a researcher at the AIDS Law Project.

2.

The facts contained herein are true and correct and are within my knowledge unless the context indicates otherwise.

3.

I deposed to the founding affidavit in this application on behalf of the First to Sixteenth Applicants and am duly authorised to depose to this affidavit on their

behalf. Confirmatory affidavits from each of the First to Sixteenth Applicants (with the exception of the Eighth Applicant) will be attached hereto marked "A1" to "A 15". As was done in my founding affidavit, the First to Fifteenth Applicants (again, with the exception of the Eighth Applicant) will hereinafter be referred to as "the Applicants". The Sixteenth Applicant will be referred to as the TAC. The reason for the exclusion of the Eighth Applicant is set out in paragraph 39 below.

4.

I have read and had regard to –

(a) The Respondents' answering affidavit, as deposed to by JABULILE ELIZABETH SISHUBA ("Sishuba's affidavit"), dated 17 May 2006, including the annexures attached thereto;

(b) The confirmatory affidavits of DE VILLIERS ZITHA ("Zitha's affidavit") and NOELEEN PHILLIPS ("Phillips' affidavit"), both dated 17 May 2006; and

(c) The confirmatory affidavit of GUSTAV ELDRID WILSON ("Wilson's affidavit"), dated 17 May 2006, which is incorrectly referred to as an answering affidavit.

5.

Before I reply to each paragraph of Sishuba's affidavit, it is necessary for me to clarify the main aspects of this case at the outset. The structure of this affidavit is therefore as follows:

(a) The issues that are common cause;

(b) The issues that are in contention, namely:

(i) Urgency;

(ii) Locus standi;

(iii) Whether the steps taken by the Respondents are reasonable and adequate; and

(iv) Costs; and

(c) Ad seriatim reply to Sishuba's affidavit.

6.

ISSUES THAT ARE COMMON CAUSE

(a) There is no dispute that the Applicants have a constitutional right to adequate medical treatment. This right is given effect in national legislation and policy, including but not limited to the Operational Plan for Comprehensive HIV and AIDS Care, Management and Treatment in South Africa ("the Operational Plan").

(b) The Respondents bear a corresponding obligation to provide adequate medical treatment to the Applicants.

(c) The Applicants meet the medical requirements, as stipulated in the Operational Plan, for receiving antiretroviral (ARV) treatment.

(d) Except for the Fourth Applicant, none of the Applicants is receiving ARV treatment.

7.

ISSUES THAT ARE IN CONTENTION

URGENCY

(a) The Respondents are aware that the Applicants have low CD 4 counts, which indicates the level to which their immune system are compromised. The Respondents are also aware that the Applicants are ill with opportunistic infections, as set out in annexure "AMG19" to my founding affidavit.

(b) The longer the delay in receiving ARV treatment the more difficult it becomes to treat the Applicants for HIV, as well as for opportunistic infections associated with HIV/AIDS. As a result, they are at risk of becoming progressively more ill and may even die.

(c) As confirmed by Dr Venter at paragraph 8 in annexure “A16”, ‘people living with HIV/AIDS who have low CD4 counts (<200 cells/ml) have been shown to be at very high at risk of sever illness and death, even when they are asymptomatic. Such people are by definition severely ill and require immediate assessment for ARV treatment. The risk if severe illness and death increases dramatically as the CD4 count drops further.’

(d) Dr Venter further states, at paragraph 23 of annexure "AMG18" to the founding affidavit, as follows:

> 'Delays in the initiation of ARV treatment also increase the risk of immune reconstitution syndrome, an inflammatory response that occurs as the immune system begins to recover. This syndrome causes significant illness and occasionally death. The risk of it occurring increases dramatically once the CD4 count drops below 100.'

(e) It is to be noted that of the 13 remaining Applicants (that is, excluding the Fourth and Eighth Applicants):

(i) Eight Applicants have CD4 counts below 100; and

(ii) Of these, five have CD4 counts of 50 or below. In one case as low as 3, and in another as low as 4.

(f) As I stated in the founding affidavit, the matter is one of life and death and therefore inherently urgent. I deal with this aspect again at a later stage in this affidavit but note that when this matter was first called on 3 May 2006, the presiding senior civil judge at the time, His Lordship Mr Justice Levinsohn was of the view that this matter warranted an urgent hearing because it is a situation of life and death. The learned Judge directed the Registrar to accord it preference and the first available preferential date was 10 May 2006. The

Respondents sought extra time and 30 May 2006 was ultimately agreed on. That extension was provided because the Respondents indicated they could resolve matters before the next hearing.

(g) An order by consent on 3 May 2006 was accordingly taken and it was ordered that this application be heard in terms of Rule 6(12). In the light of this it is not now open to the Respondents to claim there is no urgency.

LOCUS STANDI

(h) The Respondents deny that the Applicants act in the public interest or that they have standing to act on behalf of all HIV positive prisoners who need to access ARV medicines.

(i) Section 38 of the Constitution stipulates the *locus standi* requirements in such a case. These include:

(i) "anyone acting in their own interest";

(ii) "anyone acting as a member of, or, in the interest of, a group or class of persons";

(iii) "anyone acting in the public interest"; and

(iv) "an association acting in the interest of its members".

(j) In this matter it is alleged, *inter alia*, that there are infringements of constitutional rights, namely sections 27 and 35(2)(e) of the Constitution.

(k) A case that alleges violation of constitutional rights is by its nature in the public interest. This is a well established principle in our law.

(l) Furthermore, this is a case involving a response to a national public health crisis which the Department of Health has called an "incomprehensible calamity", a finding which has been confirmed by the Constitutional Court. There are at least five million people living with HIV/AIDS in South Africa, and approximately 1500 new HIV infections daily. Ensuring access to ARV treatment is necessary to give effect to the constitutional rights of those infected with HIV, as well as to curb the continued high rate of infection.

(m) The generous *locus standi* requirements in the Constitution are meant to ensure that constitutional rights are allowed a full measure of protection.

(n) The Applicants in this case are members of a group that, as a result of physical and financial constraints, are not able easily to gain access to legal counsel, let alone the courts. It is therefore unreasonable to expect that each prisoner with a similar claim makes use of the legal process separately. This is especially so since there is no dispute that the Respondents are legally and

constitutionally bound to provide adequate medical treatment to all prisoners who need it.

(o) The grounds for *locus standi* of the TAC, the Sixteenth Applicant, are clearly set out in my founding affidavit at paragraphs 25 to 27, which include a reference to the organization's Constitution that is attached to the founding affidavit as annexure "AMG17".

(p) I also note that the *locus standi* of the TAC has been confirmed and accepted by the Constitutional Court in similar matters relating to the need to stem and reverse the tide of HIV/AIDS.

WHETHER THE STEPS TAKEN BY THE RESPONDENTS ARE REASONABLE AND ADEQUATE

(q) The Respondents contend (in paragraphs 14 – 16 of Sishuba's affidavit) that they have taken "reasonable and adequate steps" to ensure that the Applicants are placed on an ARV treatment (ART) programme.

(r) However, they mislead the Court as to when and why these steps were taken. Most of these steps, including the meeting of 25 April 2006, were taken subsequent to the institution of these legal proceedings, even though the Applicants' need for ARV treatment was brought to the Respondents' attention as early as 28 October 2005. Despite repeated correspondence

between the Applicants' attorneys and the Respondents, it was only the institution of legal proceedings that resulted in action from the government. The Respondents give no reason for this excessive delay and conveniently downplay this glaring fact.

(s) Further, despite the unjustified delay, the Applicants (with the exception of the Fourth Applicant) still do not have access to ARV treatment. All that the Respondents have done is to arrange for appointments at King Edward Hospital (KEH) for the Applicants. The Respondents continue to refuse to commit to the provision of ARV treatment to the Applicants and suggest they have no control over such matters.

(t) According to Sishuba's affidavit, the Seventh Applicant's appointment was scheduled for 18 May 2006. The Seventh Applicant has informed me that he was not taken for this appointment. This bears out my detailed founding allegations as to the pattern of unfulfilled undertakings by the government officials. There is no guarantee that any of the appointments will in fact materialise which is why it is necessary that the Respondents be called upon to commit to time frames in the manner contemplated in paragraph 5 of the Notice of Motion. As the situation with the Seventh Applicant demonstrates, "an appointment" at KEH is meaningless if the prisoner is not taken there.

(u) Furthermore, the purpose of the appointments is to begin a four week period of counselling prior to the initiation of ARV treatment. While I appreciate the need to ensure that patients are ready to begin ARV treatment so as to ensure adherence, the Respondents have given no reason as to why they cannot expedite this process so that the Applicants may be assessed for readiness sooner. Each of the remaining Applicants is willing to enter the ART programme because they want ARV treatment but have no wish to have counselling issues used to draw out their access to ARV treatment unnecessarily.

(v) As it stands, some of the Applicants may only receive ARV treatment at the end of July at the earliest, assuming that they are taken for their stated "appointments". Given that the Seventh Applicant has already missed his appointment, and having regard to the history of this matter, it is reasonable to doubt that the process will move smoothly from here on.

(w) If a distinction is to be drawn between an ARV programme and ARV treatment, as the Respondents try to do, it is to be noted that this does not preclude the granting of the Orders sought. This is because being put on an ART programme is the precursor step to accessing ARV treatment. As noted in the founding papers the responsibility falls jointly on the Department of Health and Department of Correctional Services (DCS) to ensure that these policies are complied with. It cannot help the Respondents to hide behind a

"multi-disciplinary team" when the responsibilities for ARV treatment are manifestly joint obligations to be implemented by DCS and the Department of Health in co-operation with each other.

COSTS

(x) Sishuba claims that the Applicants should not have proceeded with this application because the Respondents have taken reasonable and adequate steps to provide medical treatment. However, as I state above, these steps are not reasonable or adequate and were only taken *subsequent* to our institution of these proceedings and after extensive interaction with the Respondents.

(y) Furthermore, given that the Respondents failed to ensure that the Seventh Applicant met his appointment at KEH on 18 May 2006, the intervention of this Honourable Court in this matter is imperative.

(z) In any event I am advised that it is an entrenched principle of our law that Applicants who raise *bona fide* constitutional and public interest issues are never ordered to pay costs. The Respondents' call for costs is thus deeply disturbing.

(aa) In the light of the foregoing I persist with the Applicants' and the TAC's order for costs against the Respondents.

8.

AD PARAGRAPHS 1 – 4 OF SISHUBA'S AFFIDAVIT

I note the contents of these paragraphs.

9.

AD PARAGRAPHS 5 – 6

(a) In paragraph 5, Sishuba asserts that she wishes "to set out the procedure that the Respondents follow when an offender [at Westville Correctional Centre (WCC)] is diagnosed HIV positive". In paragraph 6, however, she largely confines herself to the procedure followed when a sick prisoner is referred to the WCC hospital and, on the basis of clinical signs, the doctor on duty has reason to suspect that the prisoner may be living with HIV/AIDS. There is nothing in the answering affidavit that sets out if and how prisoners who do not exhibit clinical signs of HIV/AIDS are able to access HIV testing. If prisoners who have HIV infection are not able to ascertain their serostatus, they will not be able to take advantage of any wellness programmes, if indeed offered.

(b) In addition to this procedure, Sishuba refers to HIV-specific issues only in paragraphs 6(h), (i) and (j), none of which deal with prisoners with HIV who do not exhibit clinical signs of AIDS. The remaining paragraphs [6(d) and (f)] refer to various aspects of prison health services that have relevance for – but are not necessarily directed at – prisoners with HIV.

(c) The most alarming aspect of these paragraphs is that they demonstrate, on the Respondents' version, the gross failure of the Respondents to ensure timeous access to an ART programme (which includes ARV treatment) for the Applicants when DCS and WCC had to have known of their status as early as October 2005.

10.

AD PARAGRAPH 6(a)

I note the contents of this paragraph.

11.

AD PARAGRAPH 6(b)

I deny that there is any wellness programme (as described by Sishuba), which includes counseling and/or support from support groups.

12.

AD PARAGRAPH 6(c)

I note the contents of this paragraph.

13.

AD PARAGRAPH 6(d)

I note the contents of this paragraph.

14.

AD PARAGRAPH 6(e)

I admit that once prisoners are diagnosed HIV positive at WCC, they are taken to the prison hospital once a month where they are given their monthly supply of a product called Philani (which Sishuba refers to as a supplement). However, I deny that this constitutes a high protein diet.

15.

AD PARAGRAPH 6(f)

I note the contents of this paragraph.

16.

AD PARAGRAPH 6(g)

(a) Sishuba does not explain why WCC is only able to book an appointment at KEH for one prisoner on each of only four days a week. Neither does she explain what steps, if any, have been taken to increase the number of

appointments made for prisoners who are in need of ARV treatment, particularly those who are in most urgent need.

(b) Equally, there is no explanation at all as to why these appointments were not made for the Applicants at least as early as October 2005 when their HIV status was already known to the WCC.

17.

AD PARAGRAPH 6(h)

I deny that the AIDS Control Committee (ACC) is a support group that is supportive of all prisoners at WCC. None of the Applicants is a member of the ACC. Instead, all of them are members of an HIV/AIDS support group that has actively been involved in attempting to ensure that prisoners at WCC who are in need of ARV treatment are able to access it. This is an initiative by prisoners.

18.

AD PARAGRAPH 6(i)

I deny that the Second, Third and Fourth Respondents have dealt effectively with HIV/AIDS-related issues at either the national or regional level. Had the Second,

Third and Fourth Respondents in fact done what Sishuba claims they have done, this application would not have been necessary, and the Applicants would have been enrolled in an ART programme a long time ago and all would have had access to ARV treatment by now. The delay is inexplicable.

19.

AD PARAGRAPH 6(j)

Neither the Applicants nor I have knowledge of the training of health care workers. We note that such training was of no assistance to the Applicants prior to the institution of these proceedings.

20.

AD PARAGRAPH 7

I admit that the goals as set out in National Antiretroviral Treatment Guidelines (2004) are as stated in this paragraph. There is no explanation why these guidelines where not applied to the Applicants prior to the involvement of the AIDS Law Project (ALP) and then, despite repeated requests for treatment, appointments were made only after the commencement of these proceedings.

21.

AD PARAGRAPHS 8(a) – (g)

I note the contents of these paragraphs insofar as they deal with the procedures followed by ordinary users of the public sector who wish to access ARV treatment at KEH. Assuming that these procedures are indeed acceptable in the public sector and are not in conflict with either the Constitution or the Operational Plan, I note further that Sishuba does not explain why they are applicable to prisoners in general and the Applicants in particular. In addition, Sishuba does not set out what happens when the particular circumstances of a patient either allow or require expedited procedures. I have been advised that inflexible requirements that unnecessarily place the lives of users of the public health system at risk are indeed unreasonable and therefore unconstitutional. In any event I note again that there is no reasonable explanation why these systems were not used in the case of the Applicants prior to October 2005. The delay has meant an exponential increase in the fatality risks for these Applicants.

22.

AD PARAGRAPH 8(h)

The Applicants have no knowledge of the allegations in these paragraphs and I deny that identity documents (IDs) could ever be a necessity to book appointments for

medical treatment from a security perspective. I note however that IDs are not strictly required for treatment and have dealt with these allegations in my founding affidavit. I deal with the position of the Seventh Applicant later.

23.

AD PARAGRAPH 8(i)

Assuming that this requirement is indeed acceptable in the public sector and is not in conflict with the Constitution, I note that Sishuba does not explain why it is applicable to prisoners in general and the Applicants in particular.

24.

AD PARAGRAPH 8(j)

The Applicants have no knowledge of the ongoing consultations between the Respondents and note that the only progress on this issue was achieved after the involvement of the ALP.

25.

AD PARAGRAPHS 9(a) – (c)

(a) While the Applicants admit that Mr Mhlongo of WCC approached them in February 2006 regarding the possibility of applying for IDs, they were unable to apply because of the R35 application fee. It was for this reason that the Applicants did not put their names on the list that was circulated by WCC.

(b) It was only when the Department of Home Affairs agreed to waive the application fee requirement for the Applicants that those Applicants who required IDs made the necessary application. It is important to note that this arrangement was only made in April 2006, after the institution of the present proceedings.

(c) The Third Applicant denies that he "come forward as having lost his identity document" because he made application for an ID whilst in prison in August 2005, paid R30 for the application and received his ID by February 2006.

(d) The Applicants deny that their reluctance to make application caused any delay in accessing ARV treatment. Of the six Applicants who already had IDs in February 2006, only the Fourth Applicant was able to begin the ART Programme at KEH. Despite queries, the other Applicants with IDs were told

to wait for appointments. This will be discussed in further detail when I refer to each Applicant specifically.

26.

AD PARAGRAPHS 9(d) and (e)

I note the contents of these paragraphs. Assuming that the ID requirement is indeed acceptable in the public sector and not in conflict with either the Constitution or the Operational Plan, Sishuba does not explain why it should preclude prisoners from accessing ARV treatment now. Instead, she simply asserts that their future medical needs may be compromised if they are not in possession of IDs at the point when they are released from prison, regardless of the impact on their current medical needs of denying access on the basis of them currently not being in possession of IDs.

27.

AD PARAGRAPH 9(f)

(a) The Third, Fourth, Seventh and Thirteenth Applicants admit that they have IDs. Their applications for and receipt of the IDs occurred prior to the Respondents' "facilitation" in February 2006, and not as a result of the Respondents' actions in February 2006, as implied in paragraph 9.

(b) The Tenth Applicant denies that he has received his ID. Application for his ID was only made on 8 May 2006.

28.

AD PARAGRAPH 9(g)

The Fourth Applicant admits that he is presently on ARV treatment. He began the ART Programme at KEH on 28 February 2006, which included four adherence counselling sessions. He only began taking ARV treatment on 11 April 2006, the day before this application was filed at court on 12 April 2006. He was therefore unable to let the ALP know that he had started treatment before the filing of the papers. Counsel for the Applicants had been instructed to make this Honourable Court aware of this fact at the hearing of this matter and will seek no relief in respect of the fourth applicant.

29.

AD PARAGRAPH 9(h)

(a) I deny that the interim measures are the best measures in the circumstances. The Operational Plan was adopted by the Cabinet of the Republic of South Africa on 19 November 2003, the Respondents being aware of their obligations regarding access to ARV treatment for prisoners from this date. The actual provision of ARV treatment in the public sector began on 1 April 2004.

(b) Despite all of this the Respondents (and the Second respondent in particular) were extremely slow to act. Some – albeit wholly insufficient – movement followed the first letter sent by the ALP to the Second Respondent in October 2005. It was only at the initiation of these proceedings that the Respondents set up meetings to resolve the problems and appointments for all the Applicants were made.

(c) Save for the Fourth and Thirteenth Applicants, the remaining prisoners were only assisted with appointments after the launch of these proceedings.

30.

AD PARAGRAPH 11

I note the contents of this paragraph.

31.

AD PARAGRAPHS 12 - 13

(a) I deny that the Respondents took adequate steps before the institution of these proceedings. Since the ALP's involvement in the matter, only the following has occurred:

(i) In December 2005, a meeting was held with officials from WCC and the DCS.

(ii) In January 2006, KEH finally agreed to provide ARV treatment to prisoners from WCC.

(iii) In February 2006, WCC facilitated the ID application process.

(iv) Since February 2006, only the Fourth and Thirteenth Applicants began the ART programme.

(v) Presently, only the Fourth Applicant is on ARV treatment.

(b) I admit that the Thirteenth Applicant is currently refusing to take ARV treatment. This refusal, however, is based on advice given to him by Dr Zitha who prescribes ARV treatment at KEH and has also deposed to an affidavit in this matter on behalf of the Respondents. I deal with this issue in further detail below.

(c) The Applicants deny that it was unnecessary to bring this application. As already explained, it was only after the initiation of court proceedings that the Respondents began to take concrete steps to ensure that the Applicants access ARV treatment.

(d) I deny that the Respondents acted expeditiously to put the Applicants on the ART programme. Had they done so, this application would not have been necessary.

(e) Save as is consistent with the foregoing I dispute each remaining allegation in these paragraphs.

(f) I note that the Respondents' call for costs is most disturbing and I submit indicative of their attitude towards the medical, health and other rights of those for whom they hold custodial responsibility.

32.

AD PARAGRAPH 14 (a)

FIRST APPLICANT

(a) The First Applicant admits that he has an appointment at KEH scheduled for 27 June 2006. He admits that he does not possess an ID but denies that he has not yet applied for one. To the contrary, he asserts that he applied for an ID on 25 April 2006, when the Department of Home Affairs visited WCC and explained that he could make application without having to pay the prescribed fee.

(b) The First Applicant further denies that he was "reluctant to co-operate in the process which was initiated in February 2006". As explained earlier prisoners were initially told that they had to pay a fee of R35 in order to make application for an ID. The First Applicant did not have the money to pay for the application and was therefore unable to apply.

(c) The First Applicant denies that he is on the Wellness Programme at WCC. When I asked him about it, he did not know to what I was referring. I explained what was stated in Sishuba's affidavit and he subsequently denied

knowledge of the existence of such a programme. If it does indeed exist, he is certainly not a part of it.

33.

AD PARAGRAPH 14(b)

SECOND APPLICANT

The Second Applicant admits that he has an appointment with KEH scheduled for 14 June 2006. He denies that he does not have an ID, asserting that he has been in possession of an ID since before he was incarcerated. As with the First Applicant, he denies that he is on the Wellness Programme and has no knowledge of the existence of one at WCC.

34.

AD PARAGRAPH 14 (c)

THIRD APPLICANT

The Third Applicant admits that he has an appointment with KEH scheduled for 23 May 2006. He admits that he is in possession of an ID in respect of which he applied

in August 2005 whilst already in prison. He paid a fee of R30 for this application. He too denies being on the Wellness Programme and has no knowledge of its existence.

35.

AD PARAGRAPH 14 (d)

FOURTH APPLICANT

The Fourth Applicant admits that he has begun taking ARV treatment on 11 April 2006. He has been in the WCC hospital since December 2005 after contracting tuberculosis. He is unsure when he will be released from the hospital. He too denies being on the Wellness Programme and has no knowledge of its existence.

36.

AD PARAGRAPH 14 (e)

FIFTH APPLICANT

The Fifth Applicant admits that he has an appointment with KEH scheduled for 22 June 2006. He denies that he does not have an ID, asserting that he has been in possession of an ID since before he was incarcerated. He spoke on various occasions

to Mr Nxumalo, the head of Medium B Hospital, to find out when he could start the ARV programme at KEH. He was repeatedly told to wait. He too denies being on the Wellness Programme and also has no knowledge of its existence.

37.

AD PARAGRAPH 14(f)

SIXTH APPLICANT

(a) The Sixth Applicant denies that his CD 4 count was 244 cells/mm³ in October 2005. In April 2005, a CD 4 count done at the request of the Second Respondent by Lancet Laboratories showed his CD 4 count to be 160 cells/mm³.

(b) The ALP did not "come out" with a different result in March 2006. It arranged for further CD 4 tests to be done after receiving complaints from the Applicants that tests done by Xakaza Laboratories had shown significantly higher CD 4 counts. This complaint was confirmed when the ALP had sight of the test results contained in the medical files of the Applicants.

(c) Toga Laboratories carried out the CD 4 tests that were arranged by the ALP in March 2006. The results of these tests confirmed that the CD 4 count of the

Sixth Applicant, as with the other Applicants, had deteriorated substantially. At that point, the Sixth Applicant's CD 4 count was 96 cells/mm³.

(d) The Sixth Applicant confirms that his appointment at KEH is scheduled for 21 June 2006. He further confirms that he does not have an ID but applied for one on 25 April 2006. He denies being on the Wellness Programme and does not have any knowledge of its existence.

38.

AD PARAGRAPH 14 (g)

SEVENTH APPLICANT

(a) The Seventh Applicant admits that his appointment at KEH was scheduled for 18 May 2006, but denies that he was taken for this appointment. He has not been advised of another appointment date and is still waiting for treatment.

(b) He admits that he has an ID.

(c) He admits that he was referred to McCord Hospital in December 2005, but that apart from having his blood taken, no other health service was provided.

(d) The Seventh Applicant further admits that he attended KEH on 22 February 2006. He did not have a full consultation with the doctor because the handwritten CD 4 test results given to the doctor were not accepted. The doctor asked that Seventh Applicant return with laboratory results. He was, however, never taken back to KEH. He asserts that another CD4 test was carried out this month, some three months after his appointment at KEH, and that he has not yet been told his results.

(e) The Seventh Applicant is currently very ill. He has had a persistent cough and chest pain since December 2005. He has recently begun suffering from stomach pains and diarrhea. He has not seen the prison doctor.

(f) I have been advised that the Applicants' medical files were with the Area Commissioner (and not at the WCC hospital) and that prisoners cannot see a doctor without their files. The Applicants have advised me that these files were only recently returned to the prison hospital.

(g) The Seventh Applicant denies being on the Wellness Programme and does not have any knowledge of its existence.

39.

AD PARAGRAPH 14(h)

EIGHTH APPLICANT

I admit that the Eighth Applicant was released on parole on 11 April 2006, the day before this application was filed. He did not inform us of his release before the filing of the papers. He is therefore no longer an Applicant in this matter and no relief will be sought for him.

40.

AD PARAGRAPH 14 (i)

NINTH APPLICANT

(a) The Ninth Applicant admits that he has an appointment at KEH scheduled for 19 June 2006. He admits that he does not have an ID but that he made application for one on 25 April 2006.

(b) He admits that he was referred to King George Hospital in November 2005 where he was put on TB treatment. He was advised by the doctor to start

taking the treatment and go back for a check up after six months. On 1 May 2006, he finished taking the TB treatment. He spoke to Mr Marais from the prison hospital about being taken back to King George Hospital for his check up, but was told to wait.

(c) The Ninth Applicant denies that he attends a monthly clinic or the Wellness Programme. He does however get Philani once a month from the prison clinic.

41.

AD PARAGRAPH 14 (j)

TENTH APPLICANT

The Tenth Applicant admits that he has an appointment at KEH scheduled for 26 June 2006. He denies that he has an ID, asserting that he applied for one on 8 May 2006 when the Department of Home Affairs visited the prison. He admits that he has been on TB treatment for about six years, that there have been intervals in this treatment, and that he is also receiving Bactrim. He denies being on the Wellness Programme and has no knowledge of its existence.

42.

AD PARAGRAPH 14 (k)

ELEVENTH APPLICANT

The Eleventh Applicant admits to having an appointment at KEH scheduled for 28 June 2006. He admits that he does not have an ID but states that he applied for one on 18 May 2006. He admits that he was referred to a dermatologist in or about June 2005. He admits that he was on TB treatment in 2004 and is currently taking Bactrim and vitamins. He denies that he is taking any other prophylaxis. He denies being on the Wellness Programme and has no knowledge of its existence.

43.

AD PARAGRAPH 14 (l)

TWELFTH APPLICANT

The Twelfth Applicant admits having been given an appointment at KEH scheduled for 29 June 2006. He admits that he does not have an ID but that he applied for one on 25 April 2006. He denies that he had a CD 4 count test done since the test arranged by the ALP. He admits that he was on Bactrim but stopped this when he

started suffering side effects. He denies being on the Wellness Programme and has no knowledge of its existence.

44.

AD PARAGRAPH 14(m)

THIRTEENTH APPLICANT

(a) The Thirteenth Applicant admits that he has completed the ART Programme at KEH, should now be placed on ARV treatment and that Dr Zitha in fact prescribed ARV treatment on 6 April 2006.

(b) However, Dr Zitha warned him that he had to eat a balanced high protein diet in order to take the medicines, emphasizing that the ARV medicines being prescribed could be dangerous if not taken with a balanced diet. He cannot remember the names of the ARV medicines but remembers seeing them.

(c) The Thirteenth Applicant spoke to the Second Respondent and Mr Nxumalo, the head of the prison hospital, and explained that his diet had to change. He showed them the letter that Dr Zitha had written explaining this. The Second Respondent told the Thirteenth Applicant that what he was asking for could not be done immediately.

(d) The Thirteenth Respondent was referred back to KEH twice since 6 April 2006 but on both occasions he could not start taking ARV treatment because his diet had still not been sorted out.

(f) The Thirteenth Respondent has no intention of being uncooperative. Nevertheless, he would rather not risk taking ARV treatment in the absence of a balanced high protein diet if it could be dangerous to his health, as he has been advised by Dr Zitha .

(g) He denies being on the Wellness Programme and has no knowledge of its existence.

45.

AD PARAGRAPH 14 (n)

FOURTEENTH APPLICANT

(a) The Fourteenth Applicant admits having been given an appointment at KEH scheduled for 20 June 2006. He admits that he does not have an ID and that he applied for one on 25 April 2006. He admits that he is on Bactrim.

(b) He denies attending monthly clinics, though he does go to the prison clinic once a month to collect his supply of Philani.

(c) He denies that a dermatologist is currently attending to him. His last consultation with a dermatologist was in or about January this year.

(d) He denies being on the Wellness Programme and has no knowledge of its existence.

46.

AD PARAGRAPH 14 (o)

FIFTEENTH APPLICANT

Save for the Fifteenth Applicant being unaware that his appointment at KEH is scheduled for 20 June 2006, he admits the contents of this paragraph.

47.

AD PARAGRAPH 15

The Applicants deny that they failed to mention that the Respondents had initiated the application for IDs. They further deny that some of them have already received their

IDs. While some Applicants admit to having IDs, these were in their possession before the Respondents contacted the Department of Home Affairs in February 2006. Those Applicants who made application after the institution of these proceedings (after the fee requirement was waived) are still awaiting their IDs.

48.

AD PARAGRAPH 16(a)

I note the contents of this paragraph and that Sishuba fails to disclose that the appointments referred to were only secured after the filing of this application.

49.

AD PARAGRAPH 16(b)

(a) I note the contents of this paragraph. I further note that Sishuba fails to explain why the process cannot be expedited, particularly given the Respondents' delay in placing the Applicants on the ART programme.

(b) I refer to the affidavit of Dr Venter on these issues.

(c) I dealt in my founding affidavit with the fact that the policy of the Department of Health sees ART Programmes as a precursor to ARV treatment and that these are joint responsibilities of the DCS and the Department of Health.

50.

AD PARAGRAPH 18

(a) In paragraphs 9, 10, 80, 81, 82 and 83 of the founding affidavit I set out – in detail – the difficulties we experienced in securing a legal consultation with the Applicants in order for them to be updated on the changes made to the previous draft of that affidavit.

(b) The earlier draft was fully canvassed with the Applicants at a legal consultation held on 16 March 2006. On that date, the Applicants signed their confirmatory affidavits.

(c) Subsequent to this legal consultation, unforeseen events occurred. Because we were (and remain) of the view that these events needed to be brought to the attention of this Honourable Court, they are addressed from paragraph 76 onwards of the founding affidavit.

(d) As already mentioned, we attempted – unsuccessfully – to secure another legal consultation with the Applicants before the filing of the papers. As a result, when we were able to consult with the Applicants, they deposed to supplementary affidavits after the changes to the previous draft of the founding affidavit were explained. These supplementary affidavits were filed in court and served on the Respondents on 10 May 2006.

51.

AD PARAGRAPH 19

(a) I refer to my allegations in paragraphs 80- 83 of the founding affidavit and the annexures referred to therein.

(b) I refer to paragraph 44 above.

(c) I deny that we were able to consult with the Eighth Applicant. A legal consultation between the ALP and the Applicants took place on 16 March 2006. The Eighth Applicant was released on parole on 11 April 2006. This Application was filed on 12 April 2006. The ALP was unaware of his release at the time of filing. We were only made aware of his release at our next legal consultation with the Applicants which took place on 19 April 2006.

(d) We were only made aware of the fact that the Fourth Applicant had started taking ARV treatment at the legal consultation held on 19 April 2006. This consultation occurred after the filing of the founding affidavit. At the time of the consultation, the Fourth Applicant was not present because he was very ill and in high care at the prison hospital. I was informed by the other Applicants that the Fourth Applicant was receiving ARV treatment. At no point did any official from WCC inform me of this fact.

(e) While the deponent states that the Applicants have been given appointments at KEH, these appointments were only made after the institution of these proceedings and were suddenly made within two weeks. Given the fact that the Seventh Applicant was not taken for his appointment on 18 May 2006, it cannot be assumed that the other Applicants will actually be taken for these appointments.

(f) I refer to paragraph 32 of my founding affidavit, which is confirmed by Dr Venter. The requirement of a CD 4 count of 200 cells/mm³ is not meant to be a rigid exclusionary requirement in terms of the Operational Plan.

52.

AD PARAGRAPH 21 (a) – (c)

(a) I have dealt with *locus standi* issues earlier.

(b) The Respondents are evasive about the date at which they started "executing the Operational Plan with regard to the inmates of WCC". As stated earlier, prior to the involvement of the ALP in the matter, the Respondents were aware of their responsibilities in terms of the Operational Plan, yet they did nothing to provide ARV treatment for the inmates at WCC.

(c) When the ALP wrote its first letter to the Second Respondent in October 2005, they were still slow to start implementing the policies of the First Respondent. At this point, only one of the Applicants is on ARV treatment, and one has completed the ART Programme. The other Applicants are all still awaiting appointments that were only arranged after the institution of these proceedings.

(d) Obstacles identified with regard to the ID requirement (that is, the stated inability to put those prisoners with no IDs on treatment and the inability to resolve the fee requirement) were suddenly resolved after the institution of these proceedings. It was only with the intervention of the ALP that it came to light that the Department of Health did not strictly apply the ID requirement and were willing to use prisoner numbers, as a temporary measure, to identify prisoners. It was further only the threat of litigation that resulted in a fee waiver in respect of the IDs.

(e) Had the Respondents taken these steps from the beginning of the ALP's involvement, all the Applicants would likely be on ARV treatment by now. Furthermore, the Respondents have not stated what steps they have taken to ensure that other prisoners who also qualify for ARV treatment receive it.

(f) In light of the fact that steps were only undertaken after the initiation of these proceedings, we believe that this Application was indeed necessary.

(g) Save as is consistent with the foregoing I dispute each remaining allegation in these paragraphs.

53.

AD PARAGRAPH 22

(a) I dealt with issues of urgency earlier and that an order by consent was taken that this application be heard in terms of Rule 6(12).

(b) The Applicants have all along indicated a willingness to receive counselling and treatment and understand that counselling precedes treatment. However, the requirement of counselling cannot be used to indefinitely delay treatment as has happened with the Seventh Applicant.

(c) As stated in paragraph 7 (e) above, of the 13 remaining Applicants (that is, excluding the Fourth and Eighth Applicants):

(i) Eight Applicants have CD4 counts below 100; and

(ii) Of these, five have CD4 counts of 50 or below. In one case as low as 3, and in another as low as 4.

(d) As is evident from "AMG35", the DCS advised us on 23 January 2006 that 78 prisoners in Medium B alone at the WCC died of AIDS-related illnesses last year.

(e) I consequently dispute that the matter is not urgent and dispute each remaining allegation in these paragraphs.

54.

AD PARAGRAPH 23 (a) – (c)

(a) I do not, and have not, alleged that pre-treatment counselling is not necessary.

(b) Psychosocial support should not be used as a barrier to accessing ARV treatment once a patient has shown that he/she is ready. The Respondents have provided no evidence to support this claim. The Operational Plan does

not require this. It is an especially high burden to impose in a prison context where it may be extremely difficult for a prisoner to form trusting and secure relationships. In any event, in this case, the Applicants have already joined an HIV/AIDS support group.

(c) To the extent that this may be medically indicated, I agree with the contents of paragraph 23 (c).

55.

AD PARAGRAPH 24 (a) – (f)

(a) It is categorically denied by the Applicants that prisoners receive prompt medical attention. I have been advised by the Applicants that the part of WCC known as Medium B is made up of fifteen sections. Each section has six cells. Each cell has between 56 and 58 inmates. The prison hospital sees only one section per day. This means that prisoners in each section only have access to the prison hospital every fifteen days. Only prisoners from the designated sections can go to the prison hospital on any given day. If you are sick on a day that is not designated for your section, then nothing can be done.

(b) As explained earlier, the Applicants deny that they are a part of any Wellness Programme as described by the Respondents.

(c) The Applicants deny that they have easy access to medical treatment. When the doctor prescribes medication, it is usually a long wait before the prisoners actually get the medicines. For example, the First Applicant informs me that he was prescribed medication by the prison doctor, Dr Maharaj, on 8 May 2006. He only received this medication on 18 May.

(d) I deny that the ALP ever received a letter from Mr Marais dated 22 December 2005, nor were we ever referred to it in subsequent correspondence with the Respondents. All our correspondence in regard to our attempts to contact WCC during this period has been attached to the founding affidavit. This correspondence illustrates a contrary story. In particular, the letter dated 19 January 2006, show that Mr Mhlongo had not received the files at this time.

(e) The Applicants consequently had great difficulty obtaining the medical files despite the agreements at the December meeting.

(f) I dispute each remaining allegation in this paragraph.

56.

AD PARAGRAPH 27

There is no evidence to support the claim that the Respondents have "always referred inmates who qualify for the ART programme to the accredited sites of the Department of Health". WCC in particular only reached agreement with KEH in January 2006. As far as I am aware, before this, none of the inmates were referred for the ART Programme prior to October 2005, and save for the Fourth and Thirteenth Applicants prior to the launch of these proceedings.

57.

AD PARAGRAPH 30

I deny that the Respondents have "always" referred prisoners to accredited sites or public hospitals and this case demonstrates that.

58.

AD PARAGRAPH 31 (a)-(c)

I note the contents of this paragraph, but question the relevance of the disclosure requirement in a prison context. In any event, the Applicants' membership of a HIV/AIDS support group, their disclosure to each other and to their legal representatives means that the counselling referred to in subparagraph (a) is no longer necessary.

59.

AD PARAGRAPH 31 (d)-(e)

(a) The Respondents misconstrue paragraph 46 (h) of my founding affidavit. I do not suggest that toxicity only occurs when there is a low CD 4 count, but that the risk of toxicity is significantly higher at that time.

(b) Paragraph 46 of my founding affidavit does not deal with the issue of peripheral neuritis. I assume that it is addressing paragraph 22 of Dr Venter's affidavit. In that paragraph Venter asserts that there is an increased risk of peripheral neuropathy associated with the late initiation of treatment. This is

just one example of a number of possible side-effects that could occur as a result of delayed initiation of ARV treatment.

60.

AD PARAGRAPH 32

(a) Paragraph 14 of Sishuba's affidavit is not a response to paragraphs 47 to 54 of my founding affidavit. She merely denies that those events took place and relies on her paragraph 14 in support. However all that paragraph 14 asserts is that appointments have been made for the Applicants. The arrangement of these appointments only occurred after we had instituted legal proceedings.

(b) The interim measures in respect of the identity documents were only adopted after we instituted legal proceedings.

61.

AD PARAGRAPH 33

The ALP was able to confirm that inmates were not getting access to ARV treatment from the inmates themselves.

62.

AD PARAGRAPH 34

(a) The correspondence in the founding affidavit marked "AMG 21" to "AMG 25" is self-explanatory. As is evident, the ALP required consultations with 26 inmates and not "every inmate". Security and logistical concerns were never raised as concerns with us when we requested the legal consultations. I refer specifically in this regard to the letter from the Fourth Respondent, attached to the founding affidavit, marked "AMG 24". Furthermore, as indicated in paragraph 6 of annexure "AMG23" to the founding affidavit, the Fourth Respondent specifically said that he wanted to seek legal advice before allowing us access to our clients. I refer in this regard to our letter, dated 17 November 2005, annexed to the founding affidavit, marked "AMG 23".

(b) It is admitted that the legal consultation with the inmates in October 2005 was arranged with little difficulty. This meeting was arranged by our correspondent attorneys at the time, the Campus Law Clinic, directly with officials from WCC. After this meeting, we sent the first letter, dated 28 October 2005, to the First Respondent. We requested the second legal consultation after this letter had been sent. We made it clear that an attorney would be present at the consultation. However, our request was met with resistance and our request was forwarded to the Fourth Respondent.

(c) It is therefore quite clear that the Respondents resisted our request when they became aware of the reasons for our consultations from the letter dated 28 October 2005.

63.

AD PARAGRAPH 35

I have dealt with issues of urgency previously.

64.

AD PARAGRAPH 36

(a) At the meeting between the ALP, TAC and the Respondents in December 2005, it was conveyed to us that the accredited public health facilities in the area, being KEH and Addington Hospital, had refused to treat the prisoners. It was never suggested that they were in negotiations to resolve the problems. To further support this point, I refer to point 2.1 of the letter from Mr Kumalo (from DCS) to Ms Dlamini (from Department of Health) dated 20 December 2005, attached to the founding affidavit, marked "AMG 35".

(b) We note the contents of subparagraphs (e) and (f) but question its relevance to these proceedings.

65.

AD PARAGRAPH 37

With regard to the commitments made at the meeting that the Respondents claim to have met:

(a) The ALP and TAC were never informed of their plan of action.

(b) The problems around the ID issue were only resolved after the institution of these proceedings.

(c) The meeting between all the Respondents was only arranged after the institution of these proceedings.

(d) Most of the Applicants were only given appointments to begin the ART Programme at KEH after the institution of these proceedings.

(e) The Applicants deny that that it would have been impossible for the Respondents to respond to the time frames requested by the ALP. We asked

for dates on which the Applicants would be given appointments at KEH. If the Respondents were in fact addressing the issues expeditiously, they should have been able to respond to this request at least in relation to those appointments that they had succeeded in setting up. The Respondents did not respond at all.

66.

AD PARAGRAPH 38

While the Applicants and the ALP were aware that KEH would be the accredited site that would provide ARV treatment to prisoners, it was never clear when prisoners would begin on the ART programme, if at all. At this point, apart from the Fourth Applicant, it is still not clear when the other Applicants will begin ARV treatment. At this stage only appointments have been made for the Applicants. It is not clear what arrangements have been made for other prisoners who need ARV treatment, if arrangements have been made at all. It is further not at all clear that the Applicants will in fact be taken to KEH on the dates of their stipulated appointments, given that the Seventh Applicant was not taken for his appointment that was scheduled for 18 May 2006.

67.

AD PARAGRAPH 39 (a) – (b)

I deny that we were disingenuous in not referring to particular aspects of Annexure "AMG 35" of the founding affidavit. The reason we annexed the document is so that it properly forms part of the record for this Honourable Court.

68.

AD PARAGRAPH 39 (c)

(a) I deny this allegation insofar as it relates to the Applicants. I was only informed that ten prisoners from WCC had appointments at KEH during that period. I did not know which, if any, of the Applicants were amongst the ten.

(b) Further, this allegation is not supported by a confirmatory affidavit by Ms Moodley.

69.

AD PARAGRAPH 39 (e) – (g)

The purpose of the letter to the Third Respondent was to seek a meeting with him to discuss the details of this case, and to explore a resolution that would dispense with the need for litigation. It was not necessary at that stage to lay out the sequence of events in the letter.

70.

AD PARAGRAPH 39 (h)

I persist in my allegation that our request for a legal consultation with the Applicants was met with resistance. As stated in paragraph 77 of the founding affidavit, our difficulties in getting access to our clients are set out later in that affidavit (at paragraphs 80-83).

71.

AD PARAGRAPH 40(a) – (e)

(a) I signed the founding affidavit and its annexures on 10 April 2006. We were under extreme pressure to finalise the document and have it couriered to our correspondent attorney in KwaZulu-Natal for filing and service by 12 April 2006. We had to meet this deadline because we believed the matter was urgent and we had tried to resolve the matter with the Respondents to no avail. We further had to take the availability of our counsel and this Honourable Court into account.

(b) Adv. Gounden contacted me on the same day and requested that I send through a few dates on which we were available to consult with the Applicants. The founding affidavit was therefore signed before I sent the letter to Adv. Gounden. At any rate, we realized that the consultation would not take place before we had filed the Application. There was indeed no way of consulting with the Applicants before filing the Application if we wanted to meet the time frames of this Honourable Court.

(c) As it turned out, the consultation was only arranged for 19 April 2006, which would have put us severely out of time and would have further compromised the health of the Applicants.

72.

AD PARAGRAPH 40(f) – (g)

(a) A reading of the attachments referred to does not support the conclusion drawn by Sishuba. As stated in the letter marked "AMG 41", annexed to the founding affidavit, our principal concern has always been to ensure access to ARV treatment for prisoners at WCC.

(b) The ID issue was only addressed after the institution of legal proceedings. Any steps taken before then were wholly inadequate.

73.

AD PARAGRAPH 41

(a) We deny that there was no compliance with the Respondents procedures relating to arrangements for consultations. The letter annexed as "AMG 49" is dated 15 February 2006. The letter annexed as "AMG 50" is dated 21 February 2006. The second letter was necessary because there was no response to our earlier request for a medical consultation, which had allowed sufficient notice in the circumstances.

(b) We were never advised of security concerns with regard to setting up the consultations. We deny that there were "huge numbers" of prisoners with whom we had to consult.

(c) The point made in paragraph 41 (e) makes no sense. The reference in annexure "AMG 54" of the founding affidavit clearly supports the fact that the prisoner referred to was advised that he was no longer eligible for ARV treatment because of the deterioration in his health. It should also be noted that this client was eventually released on medical parole because he was so sick, and died about a week after his release.

74.

AD PARAGRAPH 42

(a) I note the contents of subparagraph (a) but question its relevance to the necessity of this application.

(b) I deny that the Eleventh Applicant is on ARV treatment. Subparagraph (c) is in direct conflict with paragraph 14 (k).

75.

AD PARAGRAPH 43

I note the contents of this paragraph.

76.

AD PARAGRAPH 44

(a) I again refer to the fact that the steps taken by the Respondents with regard to resolving ID issue were wholly unacceptable. On 17 March 2006, the Respondents said that the Department of Home Affairs would be available at the prison for those prisoners who were able to pay the R35 application fee to make application. Most prisoners, including all the Applicants who did not already possess an ID, did not have this money and had no means of getting it.

(b) While I admit that Mr Mhlongo personally paid for IDs for some of the prisoners, I deny that the Applicants were amongst these prisoners. Further, it is disingenuous for the Respondents to say that they have done everything in their power to ensure that those who required IDs received assistance. Had they done so, there would have been no need for Mr Mhlongo to pay out of his own pocket.

(c) The proof of the deterioration in the health of the Applicants is evident in a simple comparison between the results of the CD 4 count tests conducted by Lancet Laboratories between November 2004 and March 2005, and those conducted (at the ALP's instance) by Toga Laboratories in March 2006. This comparison is set out in annexure "AMG19" to my founding affidavit.

77.

AD PARAGRAPH 45(a) – (d)

The evidence on the record does not support Sishuba's assertion that the Applicants are not seriously ill and therefore in need of ARV treatment. In particular:

(a) Annexure "AMG19" to my founding affidavit, as discussed in paragraph 63(c) above, clearly indicates that the CD 4 count of each of the Applicants is very low and/or has dropped significantly in a relatively short period.

(b) The same annexure also provides details of the opportunistic infections that each of the Applicants has experienced. This information is based on the Applicants' medical records, which can be made available to this Honourable Court if so required.

(c) Dr Venter's affidavit deals specifically with the fact that people living with HIV/AIDS with CD 4 counts of below 200 are in urgent need of ARV treatment. At paragraph 21 of his affidavit, he expressly states that "[p]eople with CD4 counts below 200 cells/ml are by definition severely ill".

None of this evidence has been disputed by the Respondents.

78.

AD PARAGRAPH 45(e)

I believe that the institution of these proceedings is a clear demonstration by the Applicants that they are committed to saving their own lives and are therefore willing to start taking ARV treatment.

79.

AD PARAGRAPH 46

The "defects" in the confirmatory affidavits have been explained and addressed in paragraphs 80 to 83 of the founding affidavit, as well as in paragraphs 50 (a) - (d) above. Further, as explained earlier, the Eighth Applicant was released a day before the application was filed and I was not aware of his release prior to the filing. As he is clearly no longer an applicant, there was no need for him to depose to a supplementary affidavit.

80.

AD PARAGRAPH 47

I note the contents of this paragraph.

81.

AD PARAGRAPH 48

(a) I admit the contents of subparagraphs (a), (b) and (c). However, they do not provide a comprehensive picture of the undertakings agreed to by the

Respondents at the meeting held on 25 April 2006, almost two weeks after this application had been initiated. In particular, they undertook to commit – in writing – to a timeframe according to which the Applicants would be placed on ARV treatment. This was not done.

(b) I deny that the fulfillment of the undertakings referred to in paragraph 48(a) of Sishuba's affidavit means that the Applicants should not have proceeded with the application. First, the undertakings were only made after this application was initiated. Second, Sishuba fails to make reference to the correspondence between the ALP and the Respondents following the meeting of 25 April 2006. This correspondence, attached hereto marked annexures "A17" to "A21", explains why the Applicants have no choice but to continue with this application.

82.

In the circumstances, it is prayed that this Honourable Court will grant the Orders sought in the Notice of Motion.

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ANNELINE MICHELLE GOVENDER

I certify that the deponent has acknowledged that he/she knows and understands the contents of this affidavit duly signed and sworn to before me at on this day of 2006, the regulations contained in Government Gazette No. R1258 dated 21 July 1972, as amended, having been complied with.

_____

COMMISSIONER OF OATHS

Full name:

Address:

Designation:

Area: