

**IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)**

CASE NO.:

In the matter between:

MAHAMMUD MAHAMED HIRSI

First Applicant

TREATMENT ACTION CAMPAIGN

Second Applicant

and

**PROVINCIAL GOVERNMENT OF THE PROVINCE
OF THE WESTERN CAPE**

First Respondent

CITY OF CAPE TOWN

Second Respondent

GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

Third Respondent

FOUNDING AFFIDAVIT

I, the undersigned

MAHAMMUD MAHAMED HIRSI

do hereby make oath and state that:

1. I am an adult male originally from Somalia, presently of Mitchell's Plain, Cape Town. I have been living in South Africa for just over ten years. I am a member of the Mitchell's Plain Traders Association and also a secretariat member of the newly formed Social Justice Coalition ("SJC"). The SJC is a loose coalition of individuals and organizations concerned about violence in our communities against women, young children and foreigners.
2. The facts contained herein are true and correct and within my knowledge unless the context indicate otherwise. Where I rely on information provided to me by others, I believe the same to be true. Where I rely on legal submissions, I do so on the basis of advice given to me by the Applicants' legal representatives.

PURPOSE OF THIS APPLICATION

3. Since late May 2008, I have been assisting the Treatment Action Campaign ("TAC") and other civil society organizations with relief and monitoring efforts in dealing with the effects of the xenophobic violence that swept through the country at that time. I initially worked with a group of displaced people who were sheltering at the police

station in Mitchells Plain. I continued to help them with their needs after they were moved to the Blue Waters camp. Through such intervention, I became integrally involved in the humanitarian response by civil society to the displacement crisis.

4. To date, I have worked with the TAC to provide a channel of communication with the refugee community and leadership at all the camps and sites where displaced people are being kept. I have personally visited every camp and several community halls, as well as private mosques and churches that are spread across the Cape Peninsula and surrounds and are sheltering these displaced people.
5. As part of this work, I have been instrumental in forming and coordinating the SJC, which was officially launched on Wednesday 25 June 2008 in Salt River, Cape Town.
6. As I have stated, the SJC and I are particularly concerned about violence in all our communities. Of concern to us are people who have not been able to return safely to the homes from which they fled as a result of violence directed against them because of their nationality. As a consequence, displaced people are compelled to continue to rely on the emergency relief assistance being afforded to them.
7. Regrettably, the conditions at many displacement shelters are intolerable. The problems include inadequate nutrition (especially amongst young children), inadequate and/or inappropriate shelter, non-existent or inadequate health care, and non-existent or inadequate hygiene and/or sanitation. In very many instances, what relief is being provided does not even measure up to the modest standards of relief assistance that the international community views as being the absolute bare minimum of relief to be afforded in such circumstances.
8. The attached affidavits and reports describe in detail what are:

- 8.1. the bare below-minimum standards for tolerable shelter, water, sanitation, hygiene promotion, nutrition and health services;
 - 8.2. the extent to which the conditions at each of the camps and shelters do not meet even those bare below-minimum standards.
9. I do not repeat that information here. In summary, however, the following emerges from those affidavits and reports:
- 9.1. In the majority of the camps and in a significant number of the other shelters, the accommodation does not meet even bare below-minimum standards. Many of the displaced people are living with no adequate shelter from the elements, sleeping on ground which is wet when it rains, and do not have adequate blankets.
 - 9.2. Health services are either severely lacking or are non-existent.
 - 9.3. Across all camps and shelters there is hopelessly inadequate nutrition for young children, with potentially catastrophic consequences.
 - 9.4. Generally, the nutrition for camp and shelter residents is extremely poor, and the irregular provision of food aid exacerbates this problem. The nutritional content and regularity of food aid needs to be addressed urgently.
 - 9.5. Hygiene and sanitation are extremely poor, also with potentially catastrophic consequences, and need to be improved dramatically and urgently.
 - 9.6. There is a dire lack of access to transport, education, information and other services, in breach of international and constitutional obligations.

10. The Applicants accept that it was inevitable that shelter conditions would not be acceptable in the crisis situation which existed in the immediate aftermath of the xenophobic violence. However, more than two months have now passed since that crisis situation arose. Despite the several efforts which have been made by the Applicants and others to encourage and assist with the deployment of appropriate relief, the conditions in the camps and shelters still remain intolerable. Numerous efforts have been made to persuade the authorities to address this situation, but without success. The Applicants now, as a last resort, turn to this Honourable Court in an attempt to obtain relief for those suffering in such circumstances.
11. The purpose of this application is therefore to compel the First and Second Respondents, who are the authorities responsible for, and obligated to furnish, such relief, to do so at least in accordance with stipulated norms and standards accepted by the international community (and, indeed, by the Republic of South Africa itself) as being the absolute bare minimum (indeed, below-minimum) level of relief to be afforded in such circumstances, for as long as such centres are required to accommodate people who were displaced by the xenophobic violence and cannot return safely to the homes from which they were forced to flee.

THE PARTIES

12. As stated, I am the First Applicant in this matter.
13. The Second Applicant is the **TREATMENT ACTION CAMPAIGN**, a non-governmental, non-profit organization with its offices at 3rd Floor, Westminster House, 122 Longmarket Street, Cape Town.

14. I and Second Applicant are part of the Western Cape Civil Society Coalition (“the Coalition”) which is made up of trade unions, faith based organizations, the South African Human Rights Commission (“SAHRC”), and several human-, health- and refugee rights organizations including the AIDS Law Project. The Coalition was formed on 20 May 2008 to preempt, respond to, and deal with the threats and actual violent attacks against foreign nationals. The Coalition is assisting with the coordination of humanitarian assistance to people displaced by the xenophobic violence. I am a member of the Coalition’s Task Team attending to this assistance.
15. The First Respondent is the **PROVINCIAL GOVERNMENT OF THE WESTERN CAPE PROVINCE**, care of the State Attorney, Liberty Life Centre, 22 Long Street, Cape Town, Western Cape Province. The First Respondent is the authority responsible for the co-ordination and provision of humanitarian assistance to people in the Western Cape displaced through the xenophobic violence, following the declaration by the Premier of the Western Cape of a provincial disaster in terms of Section 41 of the Disaster Management Act 57 of 2002 (“the Disaster Management Act”).
16. The Second Respondent is the **CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY**, a metropolitan municipality duly established in terms of the Local Government: Municipal Structures Act 117 of 1998 (“the Structures Act”) read with the Province of Western Cape: Provincial Notice 479/1000 dated 22 September 2000, with its principal place of administration within the jurisdiction of this Court at the Civic Centre, 12 Hertzog Boulevard, Cape Town, Western Cape Province. In terms of the Disaster Management Act, the Second Respondent is primarily responsible for the co-ordination and management of local disasters that occur in the Cape Town metropolitan area.

17. The Third Respondent is the **GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**, represented by the Minister for Local Government and Development, the member of the National Cabinet responsible for the administration of the Disaster Management Act 57 of 2002 (“the Act”), care of the State Attorney, Liberty Life Centre, 22 Long Street, Cape Town, Western Cape Province. The Third Respondent is cited insofar as it may have an interest in the subject matter of this application. No relief is sought against Third Respondent.

LOCUS STANDI

18. I am advised by Applicants’ legal representatives, and do accordingly aver that, in terms of section 38 of the Constitution, those who may approach a court for relief include –

- (a) anyone acting in their own interest;
- (b) anyone acting on behalf of another person who cannot act in their own name;
- (b) anyone acting as a member of, or in the interest of, a group or class of persons;
- (c) anyone acting in the public interest;
- (e) an association acting in the interest of its member”.

19. There are multiple grounds upon which the Applicants have *locus standi* in this application. I elaborate upon these as follows:

19.1. Each of the Applicants act in their own interests in bringing this application.

19.2. Many of the displaced persons are suffering from psychological trauma as a result of the violence to which they have been subjected. They lack the ability to act in their own name. They also lack access to legal representation and

have been left destitute by this recent violence. The Applicants thus seek to act on behalf of displaced persons who presently cannot act in their own name.

19.3. The Applicants also seek to act in the interest of these displaced persons as a group. The group of displaced persons involves all those who have had to or were forced to leave their homes in and around the City of Cape Town metropole as a result of xenophobic violence or are living in insecure conditions as a result of it. These include persons who are currently in camps, those in community halls, those being sheltered in private mosques and churches or other private accommodation and those currently without appropriate shelter as a result of the xenophobic violence and the crisis of displacement it has caused.

20. The deponents to supporting-, confirmatory- and expert affidavits which are used in support of this application are listed in annexure "C" to the Notice of Motion to which this affidavit is attached. Such supporting-, confirmatory- and expert affidavits are all incorporated in this application. As regards those affidavits:

20.1. The affidavits by the displaced people and volunteers confirm the conditions in the camps and shelters forming the subject matter of this application, in particular how such conditions fall far below the bare minimum norms and standards of relief which First and Second Respondents are obliged to implement;

20.2. The affidavits by TAC and Aids Law Project officials and interns confirm their involvement in the processes dealt with in the affidavit of Mr Achmat;

20.3. The affidavit of expert Dr Astrid Berg deals with the mental health conditions

of the displaced people sheltering at Chrysalis Academy.

BACKGROUND

21. It is a well known fact that, in the second last week in May 2008, a wave of violence against foreigners and refugees, in particular those originating from other African countries, swept across South Africa. I am informed that more than 50 people were killed in this violence, of whom several were killed in the Western Cape, and that more than 100,000 people were forced to flee from their homes and the communities in which they were living. I am informed further that at the height of this crisis in the Western Cape, more than 20,000 people were so displaced.
22. Refugees from this violence around Cape Town initially took shelter at several different places – police stations, churches, community halls, even private homes. Confusion and disagreement between governmental and municipal authorities arose almost immediately as to how best to deal with this disaster.
23. Consequently, on or about 25 May 2008, and I understand against the advice and recommendation of officials of First Respondent, Second Respondent established several large camps (euphemistically called “Mega- Safety Camps”) to accommodate displaced people. These were established at the Soetwater campground adjacent the Atlantic Ocean near Kommetjie, the Silwerstroom camp ground north of Koeberg power station, Youngsfield Military Base, and Harmony Park campground in the Strand. I understand that these camps were established under the auspices, control, and management of Second Respondent.
24. I understand that it was at the instance of First Respondent that displaced people

were also accommodated at Bluewater Bay camp ground on the False Bay coast near Mitchell's Plain. Subsequently, First Respondent handed over direct management of the Bluewater Bay camp to Second Respondent.

25. Hundreds of people were, and continue to be, also housed at various community halls, church halls, mosques, and other places dotted around the Cape Town metropole.
26. As I have said, I understand that, at the height of the crisis, about 20,000 people in the Western Cape were estimated to have been displaced, most of those within the Cape Town metropole.
27. It is common knowledge that First Respondent and Second Respondent, from the beginning, disagreed on how and where these displaced people were to be sheltered. I understand that First Respondent believes that the most appropriate places would be community and municipal halls that fall under the jurisdiction of Second Respondent, whereas Second Respondent advocates the 'mega-camp' concept.
28. On 30 May 2008, the Head of the National Disaster Management Centre Mr. Lance Williams wrote to the Head of the Provincial Disaster Management Centre: Western Cape Dr. Hildegard Fast, informing Dr. Fast that, in terms of Section 23(1)(b) of the Disaster Management Act, the National Disaster Management Centre had classified the displacement of foreign nationals in the Western Cape as a provincial disaster. A copy of that letter is annexed hereto marked "**MMH1**".
29. On Tuesday 3 June 2008, following that letter and about a week after the first 'mega-camps' had been established, the Premier of the Western Cape declared a provincial state of disaster in the Province of the Western Cape. A copy of the Provincial

Gazette Extraordinary No. 6529 making such declaration is annexed hereto marked **“MMH2”**.

30. I am advised by Applicants’ legal representatives, and do so aver, that the effect of this categorization and declaration of disaster was to vest in First Respondent overall responsibility for, and control of, the disaster management response in the Western Cape Province to the disaster as declared. However, I am advised further by Applicants’ legal representatives, and do so aver, that nevertheless, in terms of the further provisions of the Disaster Management Act, irrespective whether a local state of disaster has been declared, the council of a metropolitan municipality is primarily responsible for the co-ordination and management of local disasters that occur in its area.
31. I believe this lack of certainty as to control, and disagreement as to strategy, led to what I and other civilian volunteers witnessed on the ground – a complete stand-off between First Respondent and Second Respondent, with the displaced people caught in the middle. Indeed, the dispute as to what would constitute appropriate shelter, and how and where it should be provided, became so acrimonious that the Premier of the Western Cape eventually resorted to an urgent after-hours application to this Court, to compel Second Respondent to make available 18 community halls falling under the control of Second Respondent, for the purposes of *“temporarily accommodating displaced foreigners until the (Second) respondent can settle them in a temporary settlement area”*. This application was launched under case number 9247/08 of this Court.
32. A copy of the list of halls which the Premier sought Second Respondent to open up to shelter displaced foreigners is annexed hereto marked **“MMH3”**. I am not privy to the outcome of that application, but I understand it was settled between the parties,

and that First Respondent withdrew the application against Second Respondent. Certainly, from my site visits I can confirm that refugees have been, and continue to be, sheltered at all the sites listed in “**MMH3**” hereto except at Scarborough Municipal Hall, Bellville Civic Centre, and Retreat Civic Centre.

33. However, the disagreement between First Respondent and Second Respondent has continued to pervade and influence the management of this crisis. I and other civilian volunteers are being told continually by individuals from both First Respondent and Second Respondent that their respective institutions would very much like to address the concerns such as those raised in this application, but they are unable to do so because their “*hands are tied*” by the other.
34. The application by the Premier relied heavily on the catastrophic situation that then pertained at the Soetwater ‘mega-camp’ under the control and management of Second Respondent. The founding affidavit of Ms Virginia Petersen, Director General: Department of the Premier, characterized the situation there as “*particularly volatile*”, and “*wholly untenable and undesirable*”, with the camp offering “*little protection against the harsh winter conditions*”, and there being “*inadequate ablution facilities*”. I have not annexed the founding papers in that application to this affidavit, as to do so would be prolix. A copy of such papers will be made available to the Respondents on request and will be made available for perusal by this Court at the hearing of this matter, should that be necessary.
35. In this regard, I refer to the accompanying affidavit of Mr. Stephan Kratz, which forms part of annexure “**MMH5**” hereto and to which annexure I refer to further below. Mr Kratz was a volunteer who assisted at Soetwater from late May through late June 2008. His affidavit details his experiences at that camp through that time and gives an idea of the intolerable conditions under which refugees have laboured.

THE CURRENT SITUATION

36. The further background and current overall situation is best set out in the accompanying affidavit of Mr “Zackie” Achmat of the TAC, the Second Applicant that forms part of this application. In particular, I refer to the TAC/ALP Report annexed thereto (annexure “**TAC3**” thereto). In summary:
- 36.1. The food and nutrition needs of young children are not being addressed at all, which deficiency needs to be remedied urgently;
 - 36.2. The situation as regards nutrition and food generally is very poor, and needs to be reviewed and remedied;
 - 36.3. Accommodation at the camp sites is woefully insufficient for the Cape winter weather;
 - 36.4. Across the board there is serious insufficient supply of basic necessities such as blankets, diapers, and sanitary items;
 - 36.5. At particular sites there is little or no health care, and hygiene and sanitation facilities are either extremely poor or non-existent;
 - 36.6. Lack of transportation is inhibiting, and in many instances preventing, access to adequate health care, education, and work;
 - 36.7. The dissemination of information is so poor that many are being seriously affected through the stress of an uncertain and precarious future.
37. The refugee population in the various displacement camps and shelters in and around the Cape Town metropole has diminished over the past few weeks, down from a high of over 8,000 to a current population of about 5,000. The reasons for this

are varied. To my knowledge:

37.1. A few people have managed to reintegrate into the communities from which they originally fled. The most notable example is of the people who were forced to flee from Masiphumelele, a large urban community settled on the Noordhoek flats between Ocean View and Sun Valley. Here, the Masiphumelele community itself took the initiative to make the environment safe for displaced people to return and to reintegrate them fully.

37.2. Others have moved to other areas, to escape the ongoing xenophobic attitude and threats of violence.

37.3. Still others have returned to their countries of origin, either through deportation or voluntarily; in the case of the latter the people concerned expressed the view to me, sometimes in those words, that they would rather "*die at home*".

38. There remain, however, many thousands who have no alternative but to remain in the camps and shelters, as it is still unsafe for them to return to the places from which they have been displaced.

39. It is not just Applicants and their associated organizations who have investigated the current situation in the displacement shelters in and around the Cape Town metropole. I annex hereto marked "**MMH4**" a copy of the report as just produced by the South African Human Rights Commission (SAHRC) on its investigation into this situation.

40. It will be noted that this report:

40.1. characterizes the 'mega-camps' as being "*inhumane*", describing the living

conditions as being “*intolerable*”;

40.2. concludes that “*minimum standards for water, sanitation, hygiene promotion, food security, nutrition, food aid, shelter, settlement and health services*” to ensure that “*non-nationals are receiving the appropriate services in accordance with a human rights framework*” are absent;

40.3. records government’s failure to develop and implement such minimum standards, despite repeated requests to government for it to do so;

40.4. records serious deficiencies as regards:

40.4.1. provision of information, and consultation of and participation by refugees in decision-making processes affecting their position and future;

40.4.2. a long-term plan of action from National and Provincial governments to solve the crisis;

40.4.3. access to education;

40.4.4. access to employment;

40.4.5. personal security;

40.4.6. sanitation and health;

40.4.7. food aid and nutrition, especially for infants and young children.

41. It is clear that the SAHRC report confirms the findings in the TAC/ALP Report as annexed to the accompanying affidavit of Mr Achmat. The SAHRC report is confined to the situation at the ‘mega-camps’, whereas the TAC/ALP Report covers the full

spectrum of camps and shelters in and around the Cape Town metropole.

42. It is clear from the TAC/ALP Report that the deficiencies noted by the SAHRC are not confined to the 'mega-camps', but exist across all camps and displacement shelters, to varying degrees.
43. That this is so is also evident from the series of affidavits enclosed in the bundle annexed hereto marked "**MMH5**". These affidavits are by volunteers, camp/shelter community leaders, and other camp/shelter residents. These affidavits detail the specific situation at the 'mega-camps' and at a cross section of other shelters in and around the Cape Town metropole. It will be noted from such affidavits that the full spectrum of serious deficiencies identified by the SAHRC also exists across all the camps and shelters.
44. As regards mental health in particular, I refer to the affidavit of Professor Astrid Berg filed of record herewith. That affidavit deals with the situation at the shelter at Chrysalis Academy, and shows an intolerable situation requiring urgent intervention.
45. The TAC/ALP report shows that, by comparison, the people at Chrysalis are, in general, in rather a better position than those at other shelters, especially the camps. Accordingly, the mental state of those at other camps will have been exacerbated by the more extreme conditions at those sites.

THE REQUEST FOR MINIMUM NORMS AND STANDARDS TO BE IMPLEMENTED

46. The SAHRC reported that "*minimum standards for water, sanitation, hygiene promotion, food security, nutrition, food aid, shelter, settlement and health services*" to ensure that "*non-nationals are receiving the appropriate services in accordance*

with a human rights framework” do not exist, and that, despite repeated requests, the authorities responsible for the management of this crisis (being First and Second Respondents) have failed to develop, let alone implement, appropriate norms and standards of services and relief.

47. This has also been the experience of the applicants and those who have been supporting them.
48. Since the inception of the crisis, the TAC and other organizations and individuals (including myself) have attended the meetings of the Disaster Management Centre (“DMC”) set up by the Second Respondent, and then the Joint Operations Centre (“JOC”) set up by the First Respondent, which centres were established to coordinate and manage the relief effort in this crisis. The SAHRC has also convened meetings between civil society and the authorities for this purpose. Both First Respondent and Second Respondent have had a number of representatives at the DMC and the JOC but at the SAHRC meetings it has been mainly representatives of the First Respondent. The meetings at the DMC and the JOC have been run under the auspices and chairmanship of Second Respondent and First Respondent respectively.
49. At those meetings:
 - 49.1. The various volunteer organizations and NGO’s have consistently recorded that the relief effort, whilst gratefully accepted and acknowledged, falls far short of the absolute bare minimum of appropriate and internationally-accepted benchmarks for such relief in such circumstances;
 - 49.2. The authorities have frequently been referred to benchmark policies such as The Sphere Project and the United Nations High Commissioner for Refugees

(“UNHCR”) Handbook for Emergencies, amongst others;

49.3. The authorities have consistently been notified of the details of how the absolute bare minimum benchmarks set forth in those policies are not being met, resulting in untenable conditions;

49.4. The authorities have consistently and frequently been requested to formulate and urgently implement at all displacement shelters (including the ‘mega-camps’) norms and standards of relief at least equal to the bare minimum of appropriate and internationally-accepted benchmarks for such relief in such circumstances.

50. At those meetings, representatives of First Respondent have:

50.1. acknowledged the validity and efficacy of the policies developed by bodies such as The Sphere Project and the UNHCR;

50.2. stated that it is First Respondent’s desire to implement a relief effort that exceeds those benchmarks (this being an acknowledgement that the standards set forth in such policies are, in fact, the absolute bare minimum required).

51. That First Respondent recognizes the deficiencies in the relief effort and its overall responsibilities in those respects is, I aver, evident from First Respondent’s publication, in a Provincial Gazette Extraordinary dated 27 June 2008, of proposed regulations as to the co-ordination and management of the disaster, and as to temporary accommodation for displaced persons. A copy of that Provincial Gazette Extraordinary is annexed hereto marked “**MMH6**”.

52. As appears from that Gazette, First Respondent clearly accepts that its disaster

management centre must, "***without delay***", formulate and implement a plan to coordinate and manage the disaster, which plan must:

- 52.1. provide "*suitable*" temporary accommodation;
- 52.2. provide for the "*rehousing*" of displaced persons from tents and other shelters to "*more suitable temporary accommodation*";
- 52.3. provide "*humanitarian assistance and basic needs to displaced persons, including food, clothing, blankets, and health care and sanitation services*";
- 52.4. provide "*measures to ensure the safety and security of displaced persons*".

53. The Gazette Extraordinary was published more than a month after the disaster arose, and very nearly a month after the Premier of the Western Cape had declared a provincial disaster.

54. A further month has almost passed since the urgent publication of the Gazette Extraordinary, and yet nothing has been formulated, let alone implemented.

55. Indeed, First Respondent has not replied at all to the express requests made to it as to the urgent implementation of bare minimum norms and standards of relief at the various displacement shelters around the Cape Town metropole. I refer to the supporting affidavit of Mr Achmat of the TAC filed of record herewith and the various affidavits filed in confirmation thereof, which set out the details of the DMC, JOC, and SAHRC meetings I have referred to, the requests made of First Respondent regarding norms and standards, and First Respondent's total lack of response thereto.

THE MINIMUM NORMS AND STANDARDS PER SE

56. It is clear from the TAC/ALP Report (annexure “**TAC3**” to the affidavit of Mr Achmat), the SAHRC report (annexure “**MMH4**” hereto), and the various affidavits by volunteers, camp/shelter leaders, and camp/shelter residents (annexure “**MMH5**” hereto) that there are serious deficiencies in the relief effort, which deficiencies must be addressed immediately.

57. The “*minimum standards for water, sanitation, hygiene promotion, food security, nutrition, food aid, shelter, settlement and health services*” to ensure that “*non-nationals are receiving the appropriate services in accordance with a human rights framework*” referred to by the SAHRC in its report are, I aver, based on the benchmarks set forth in policy documents in which the international community considers to be the absolute minimum conditions that should apply in refugee camps and shelters following disasters.

58. Those benchmarks are set out in the following internationally-accepted policies, amongst others:
 - 58.1. The Sphere Project: Humanitarian Charter and the Minimum Standards in Disaster Response – 2004;

 - 58.2. The UNHCR Handbook for Emergencies – 2007;

 - 58.3. UNHCR, United Nations Children’s Fund (“UNICEF”), World Food Programme (“WFP”) and World Health Organisation (“WHO”) – Food and Nutrition Needs in Emergencies (“FNNE”) – November 2002;

 - 58.4. WHO – Guiding Principles for Feeding Infants and Young Children in Emergencies – 2004;

58.5. WHO and UNHCR – Clinical Management of Rape Survivors – 2004;

58.6. UNHCR – Reproductive Health in Refugee Situations (Interagency Field Manual) – 1999.

59. I have not annexed any of the abovementioned documents to this affidavit, as to do so would be prolix. For example, The Sphere Project Charter and manual comprises 340 pages, and the UNHCR Handbook is also a comprehensive document. I tender to make copies of any of these documents – which the Respondents should in any event have if they are to do their job effectively - available to the Respondents on request.

60. In order to assist the Court, the Second Applicant with the ALP have undertaken the mammoth exercise of distilling from these internationally-accepted sources the specific benchmarks detailed therein, compiling a composite document that sets out such benchmarks in precise detail and in a convenient form.

61. I refer again to the accompanying affidavit of Mr Achmat filed of record with this application, which affidavit describes the distillation process undertaken and spell out the benchmarks in such precise detail and convenient form. That distillation is contained in the TAC/ALP Summary of Minimum Norms and Standards that is annexed to Mr Achmat's affidavit (annexure "**TAC11**" thereto), copies of which have been given to First and Second Respondents. I repeat – neither First nor Second Respondents have taken any steps to address the clear problems and implement even the bare minimum norms and standards of relief described in that report.

62. I need to emphasise that such benchmarks represent the absolute bare minimum of standard of relief that should be afforded to displaced persons in disaster circumstances. The benchmarks do not purport to represent acceptable standards,

let alone “best practice”, which standard is far higher. Indeed, I believe that organizations such as Medecins Sans Frontieres (“MSF”) caution against simple implementation of these bare minimum benchmarks, as these are considered to be too low, and therefore not acceptable or best practice.

NEED FOR RELIEF

63. That First Respondent and Second Respondent accept such benchmarks are, at the very least, the bare minimum standards of relief to be afforded is demonstrated by:
- 63.1. Their representatives receiving information from the UN and undergoing training on The Sphere Project and the UNHCR Handbook;
- 63.2. The fact that the assertion made by the TAC in correspondence with First Respondent as to the bare minimum norms and standards based on The Sphere Project and the UNHCR Handbook has not been denied.
64. Indeed, I would be extremely surprised if First and Second Respondents sought to suggest that such benchmarks were not the absolute minimum standard of relief that ought to be implemented in circumstances such as the present.
65. The regrettable fact, however, is that a comparison of the situation on the ground as reflected in TAC/ALP Report (annexure “**TAC3**” to the affidavit of Mr. Achmat) and the affidavits of volunteers, camp/shelter leaders, and camp/shelter residents (annexure “**MM5**” hereto) against the benchmarks summarized in the TAC/ALP Summary of Minimum Norms and Standards as annexed to the affidavit of Mr Achmat (annexure “**TAC11**” to the affidavit of Mr. Achmat) shows that not even such bare minimum standards of relief are being implemented in the various camps and

shelters around the Cape Town metropole for which First Respondent and Second Respondent are responsible. I need to stress that this remains the situation more two months after the crisis arose.

66. This sad fact is confirmed by the SAHRC report (annexure "**MMH4**" hereto).
67. I refer again to the accompanying affidavit of Mr Achmat filed of record herewith, which details the efforts made on behalf of Applicants to:
 - 67.1. provide First Respondent and Second Respondent with specific detail as to deficiencies and requirements at the various camps and shelters, through the DMC and JOC meetings;
 - 67.2. encourage First Respondent to formulate and implement norms and standards for relief for urgent implementation;
 - 67.3. assist First Respondent in that exercise by establishing in convenient form the absolute minimum benchmarks and requirements, and furnishing this to First Respondent.
68. In this respect, I am advised by representatives of the WC Coalition that a meeting was held on Thursday 24 July 2008 with Dr. Hildegarde Fast and other officials from the office of the Premier WC. Dr Fast, I understand, is the Head of the Disaster Management Centre, Western Cape Province. I am informed that such meeting highlighted the following:
 - 68.1. Dr. Fast and First Respondent's officials have been well aware of Sphere, and have received and studied the TAC/ALP Summary of Minimum Norms and Standards, but now believe these are "*too high*"!

- 68.2. It is their intention to “*workshop*” norms and standards sometime in the next couple of weeks (Dr Fast cannot say when);
- 68.3. the results of this “*workshopping*” will have to “*wind their way through the system*”, and
- 68.4. the final product may only be implemented after the current refugees have been reintegrated.
69. Regrettably, it is accordingly clear that, despite all of the efforts made by the Applicants to inform and assist First Respondent, First Respondent refuses to implement even the bare below-minimum requirements set forth in The Sphere Project documents and the United Nations handbooks (as summarized in the TAC/ALP Summary of Minimum Norms and Standards), in contradiction of international policy and of its own responsibilities, and to the substantial detriment and harm of the camp- and shelter residents.
70. Rather, more than eight weeks after the disaster first arose, and in the face of intolerable conditions, First Respondent’s officials still want to talk about formulating the standard and extent of relief required, and even then, implementation will be deferred until after reintegration. Second Respondent has not even delivered a response to the issue of minimum norms and standards.
71. I submit that it is manifestly clear from the SAHRC report (annexure “**MMH4**” hereto) , the TAC/ALP Report (annexed to the affidavit of Mr. Achmat filed of record herewith) and the affidavits of camp/shelter leaders and residents (annexure “**MMH5**” hereto) that:
- 71.1. For many, reintegration is presently impossible;

71.2. Camp/shelter residents do not have the luxury of being able to afford the Respondent's officials further weeks for them to come up with a plan. The proper relief is needed immediately.

72. As regards Second Respondent, I am advised, and do so submit, that:

72.1. Second Respondent has an obligation under the Constitution of the Republic of South Africa to co-operate with First Respondent in mutual trust and good faith and to co-ordinate its actions with First Respondent in government, in this instance as regards the provision of relief to refugees;

72.2. In terms of Section 54(1) of the Disaster Management Act, Second Respondent remains primarily responsible for the co-ordination and management of local disasters occurring within its area, irrespective of whether or not a local state of disaster has been declared in its area.

73. I believe that Second Respondent's uncooperative and obstructionist attitude has been demonstrated through:

73.1. The need for the Premier of the Western Cape to apply urgently and after-hours to this Court to compel Second Respondent to open up places of shelter;

73.2. The continuing failure by Second Respondent to cooperate fully with First Respondent in these respects, clearly thereby necessitating the inclusion of paragraph 3 of the regulations proposed by First Respondent (annexure "**MMH6**" hereto);

73.3. The continuing failure by Second Respondent to take any direct responsibility for the management of the camps and shelters under its jurisdiction, and of

its own accord implement at the very least the stipulated absolute minimum norms and standards, in violation of its obligations under the Disaster Management Act.

74. These failures by First Respondent and Second Respondent have now continued for two months. The First Respondent and Second Respondents have had every opportunity to comply with their obligations. Civil society members - volunteers, religious groups and NGO's including the TAC – have given substantial practical assistance to the First and Second Respondents, in some instances taking on relief tasks which are properly the responsibility of the First and Second Respondents. However, the First and Second Respondents continue to fail to carry out their most basic obligations. The civil society groups have attempted to persuade the First and Second Respondents to adopt and implement appropriate minimum norms and standards for the relief effort. Regrettably, these efforts have not succeeded. Meanwhile, the displaced persons continue to live under intolerable conditions, which show no sign of being materially improved.
75. Applicants have as a result been left with no alternative but to approach this Court for urgent relief, to compel the implementation of such bare minimum standards of relief.

URGENCY

76. First Respondent recognizes the gravity of the situation, which recognition is evidenced, amongst other things, in the promulgation of its draft regulations (annexure “**MMH6**” hereto).
77. I repeat:

77.1. In those draft regulations, First Respondent asserts that its disaster management centre must, “**without delay**”, formulate and implement a plan to co-ordinate and manage the disaster, which plan must:

77.1.1. provide “*suitable*” temporary accommodation;

77.1.2. provide for the “*rehousing*” of displaced persons from tents and other shelters to “*more suitable temporary accommodation*”;

77.1.3. provide “*humanitarian assistance and basic needs to displaced persons, including food, clothing, blankets, and health care and sanitation services*”;

77.1.4. provide “*measures to ensure the safety and security of displaced persons*”.

78. Despite such clear urgency:

78.1. The Gazette Extraordinary was published more than a month after the disaster arose, and very nearly a month after the Premier of the Western Cape had declared a provincial disaster;

78.2. A further month has almost passed since the urgent publication of the Gazette Extraordinary, and yet nothing has been formulated, let alone implemented;

78.3. First Respondent has not replied at all to the express requests made to it as to the urgent implementation of bare minimum norms and standards of relief at the various displacement shelters around the Cape Town metropole.

79. Now, despite such clear urgency, the Head of First Respondent’s Disaster

Management Centre now speaks of the possibility of First Respondent's officials "*workshopping*" appropriate standards and levels of relief in "*two weeks time*", from which appropriate relief might be benchmarked, and may thereafter be implemented. This is entirely at odds with First Respondent's stated position that its disaster management centre must "***without delay***", formulate and implement a plan to coordinate and manage the disaster, including as regards accommodation, nutrition, health and security of displaced persons.

80. Respectfully, the statement from Dr. Fast begs the question what she and First Respondent's officials have been doing in this regard at least since the promulgation of the draft regulations more than a month ago, let alone since the disaster first arose more than two months ago.
81. Second Respondent is simply waiting for First Respondent to take the lead, whilst clearly not co-operating with First Respondent, as it is bound to do.
82. There has been no suggestion from First Respondent that interim minimum relief as put forward by the TAC cannot be implemented immediately at all of the displacement shelters in and around the Cape Town metropole, neither as regards cost, nor as regards logistics, nor at all.
83. In the meanwhile, people at those shelters suffer under the intolerable conditions demonstrated above, and will continue to do so whilst the First Respondent's inaction persists, and for as long as the refugees remain displaced. Those people simply do not have the luxury of further time that Dr. Fast indicates will be needed in order perhaps to devise (not implement) a set of norms and standards. I fear that, should such intolerable situation not be remedied urgently, deaths may even occur.
84. I accordingly request that the relief as set forth in the Notice of Motion to which this

affidavit is annexed be granted.

MAHAMMUD MAHAMED HIRSI

I certify that the deponent has acknowledged that he knows and understands the contents of this declaration and informed me that he does not have any objection to taking the oath and that he considers it to be binding on his conscience and that the deponent uttered the following words *"I swear that the contents of this declaration are true, so help me God"*. I certify further that the provisions of Regulation R1258 of the 21st July 1972 (as amended) have been complied with.

SIGNED AND SWORN TO BEFORE ME AT CAPE TOWN ON JULY, 2008

COMMISSIONER OF OATHS