

13 October 2008

United Nations High Commissioner for Human Rights (UNHCR)

Attn: Mr. António Guterres

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And to:

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RE: Formal Investigation into UNHCR Pretoria, South Africa

Honorable High Commissioner: Mr. António Guterres

Introduction

1. On 11 May 2008, xenophobic attacks swept across the Republic of South Africa, leaving at least sixty-two people dead and displacing thousands of individuals and families- made up of undocumented persons, refugees, asylum seekers and documented foreign nationals.
2. The attacks broke out in Alexandra Township outside of Johannesburg and quickly spread across the rest of the country, to all but two provinces. At the height of the crisis, about 100 000 people were displaced from their homes and

communities, many losing all / most of their possession and / or businesses.

3. Needless to say, these attacks were condemned by many individuals and civil society organisations in South Africa and were a source of great pain and embarrassment to all of us in South Africa.
4. Civil society groups, churches and concerned citizens were the first to respond to the crisis. It took the UN a staggering 2 weeks to organise a “rapid assessment”. When government finally acted, they implemented an ill-conceived plan to establish safety sites (including camps) in Gauteng and the Western Cape for people who had lost their homes and belatedly dispatched the military in an effort to ensure the safety of affected communities.
5. Humanitarian aid was provided by various civil society and faith based groups in SA. Aid was also sent through multiple UN organizations and government bodies.
6. We acknowledge that the UNHCR has provided funding for programmes of both Lawyers for Human Rights (LHR) and the University of Cape Town Law Clinic, who have always provided legal assistance to refugees and asylum seekers and continue to do so. Although these two organizations have worked consistently and effectively, the volume of requests for assistance as a result of the crisis itself and a dysfunctional Department of Home Affairs meant that there were insufficient lawyers to deal with the crisis. We believe that LHR and UCT have played a significant role in this crisis by also taking our government to court.
7. From the outset of the attacks, displaced people constantly requested intervention from the UNHCR, which is the international body recognised and accepted as having the mandate and experience to deal with such crises. Unfortunately, to date, such intervention has been inadequate.

Mandate

8. The *United Nations General Assembly Resolution 428 (V) of 1950*, which established the Office of the United Nations High Commissioner for Refugees,

does not confer a specific mandate for displaced people on the organization. However, *Article 9 of the Statute of the Office*, annexed to the Resolution, authorizes the High Commissioner to “*engage in such activities (...) as the General Assembly may determine, within the limits of the resources placed at his disposal.*”

9. Consistent with this provision, the General Assembly has, over the years, broadened the competence of the UNHCR to include groups of forcibly displaced persons who do not fall, individually or collectively, within the scope of the refugee definition in the Statute¹.
10. In this way, the UNHCR has evolved over time to accommodate those individuals who would be legally classified as “IDPs”, as the scope and complexity of humanitarian crises around the world has evolved over the last several decades.
11. In particular, Zimbabweans who came to South Africa before and after the election run-off are not regarded as refugees by our government, but rather as “economic migrants.” The UNHCR it appears supports this position, thus rendering many Zimbabweans non-eligible for UNHCR help.
12. Civil society, and international organizations such as Amnesty International have called on our government to use section 31 (2)(b) of the 2002 Immigration Act to introduce a new “temporary immigration exemption status for Zimbabweans”, (TIES), which allows Zimbabweans to legally enter South Africa, regularizes their status, ends deportation of Zimbabweans, and grants them the right to work in South Africa. This would aid in protecting Zimbabweans from persecution and violation of civil and political rights.
13. The UNHCR's argument, then—that those displaced as a result of xenophobic violence in South Africa are not entitled to UNHCR protection because they do not fit the classic definition of a ‘refugee’—is incorrect. This approach neglects the core component of humanitarian response to a crisis by ignoring the groups made

¹ Informal Consultative Meeting: *The Protection of Internally Displaced Persons and the Role of UNHCR*, 27 February 2007

most vulnerable by that crisis; further, the argument serves to undermine the wider principles and goals of the United Nations.

14. The *UN Guiding Principles on Internal Displacement* defines internally displaced persons as “*persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.*” (Introduction, para 2)

Assistance

15. According to the UNHCR in Pretoria, it has provided “several thousand tents, blankets and mats” to the displaced in the Western Cape and Gauteng. Further, the UNHCR “brokered an agreement with Department of Home Affairs to allow all undocumented victims of the xenophobic attacks temporary legal status under the Immigration Act”. However, this process is fraught with tension and uncertainty. We return to this later.
16. Much of UNHCR in Pretoria's excuse for its poor management of the situation is that initially they did not receive a formal request from the government for anything more than material and site planning assistance.
17. Despite this, the consensus among civil society organizations in South Africa is that the UNHCR has failed to fulfill its mandate with regard to the protection of refugees and displaced people in South Africa.
18. However, the UNHCR's mandate does not require that they receive permission from member states in order to care for and protect refugees. Under Article II(1) CSR67, the UNHCR has the duty of supervising the obligation of Contracting States (as described in Article 35(1) CSR51) “*to co-operate with the Office of the United Nations High Commissioner for Refugees . . . in the exercise of its functions.*”

19. As a contracting State to the Convention and the Protocol, South Africa also has a duty to co-operate with the UNHCR should it so require its assistance in regard to the protection of refugees. This is further supported by Article 56 of the UN Charter on the Obligation of Member States to cooperate with the UN.
20. In addition, Article II (1) CSRP67 gives the UNHCR a supervisory role in overseeing such cooperation. It is clear that far from having to wait for an official governmental request for assistance, the UNHCR is mandated to meet its protection responsibilities and is also responsible for supervising government cooperation.
21. We believe that the UNHCR has neglected to adequately and appropriately manage the humanitarian crisis that resulted from the mass displacement of foreigners in South Africa; they have failed to meet their mandate as prescribed by Statute of the UNHCR of 1950; they have ignored the litany of suggestions and input given by civil society; but most importantly, they have failed to support the very people they are mandated to help.
22. In the last few weeks week, UNHCR Pretoria stated that it has “worked closely” with our government in order to meet their mandate in regard to addressing the problems of displaced persons.
23. Worryingly, in response to a press conference held by civil society on 18 September 2008, where the UNHCR local office was criticized for its role in this crisis and for supporting government led processes that have resulted in human rights violations, the UNHCR stated to the media on 19 September 2008 that civil society organizations have played a “negative role” in the xenophobia crisis.
24. This accusation is hard to justify given that it is an undisputed fact that civil society provided an enormous amount of humanitarian, human rights, monitoring, legal, health and advocacy support in the immediate weeks and months following the xenophobia crisis.

25. Civil society has, *inter alia*:

- a. Mobilised and distributed vast amounts of humanitarian aid, in terms of food and non-food items to camps and safety sites.
- b. Carried out continuous site assessments to ascertain the numbers of people requiring humanitarian aid, and pinpointed areas where this aid has been insufficient.
- c. Drafted lengthy reports making practical and urgent recommendations to government and the UN.
- d. Monitored human rights within the camps and sites, and made recommendations to government and the UN where rights to protection against violence, food, shelter and dignity have been compromised.
- e. Assisted displaced people by providing access to legal advice and health assistance (see memo attached).
- f. Put pressure on government to ensure that displaced people are protected during reintegration.
- g. Organised and consulted with representative refugee leadership throughout the crisis, always prioritizing the requests and needs of displaced people as communicated to civil society by camp and safety-site leadership.
- h. Provided legal support, in the form of advice, written memorandums, affidavits and other legal documents and direct intervention where displaced people have been arrested.
- i. Financially assisted displaced people with shelter and basic necessities and reintegration.
- j. The TAC also sheltered people, and fed and clothed people during the crisis, spending over 3 million rands (ZAR) on humanitarian relief alone.

26. The UNHCR, by contrast, has remained uncooperative and has isolated itself from requests from civil society for input and consistent information regarding their action in the aftermath of the xenophobia crisis².

² UNHCR attended civil society meetings in the Western Cape, but to either observe, listen or defend its' positions. In Gauteng, it formed a Protection Working Group. Neither of these actions represents any real engagement and consultation on the part of the UNHCR, as evidenced by the lack of response to requests in the Western Cape, and the complete collapse of all meaningful protection for displaced people in Gauteng.

27. Further, the UNHCR has consistently treated those individuals it is here to protect with enormous contempt and disrespect. In addition to a 7 June 2008 meeting (minutes of meeting attached) with civil society and refugees, UNHCR representative Arvind Gupta sat in on several meetings with refugee leadership across the Western Cape. In that meeting he was aggressive, rude and abrasive in dealing with their concerns. At a meeting in Cape Town with Soetwater leadership, he walked out and refused to continue a dialogue with refugee leadership, clearly frustrated and unwilling to work with or offer explanations to the refugees. After this set of meetings at several private shelters and government run camps—including Soetwater and Bluewaters—he did not return to further consult with refugees.

28. Between 3 June 2008 and 20 July 2008 (World Refugee Day), civil society sent memorandums to the UNHCR, calling on them to clarify their stance on repatriation and resettlement, to intensify their level of intervention in the humanitarian crisis, and to escalate their efforts to advise and consult with refugees and IDPs affected by the xenophobic attacks (See table below). UNHCR responded with one undated memo distributed to all the large camps and several community halls in the Western Cape. In the Western Cape, the UNHCR has otherwise failed to respond to such letters and memos sent by civil society.

29. Furthermore, despite the intense amount of work and effort civil society organisations have put in responding to the humanitarian crisis surrounding the xenophobic attacks in the Western Cape, the UNHCR stated that civil society in the Western Cape played a “negative role” in the xenophobia crisis since May 2008. The UNHCR press statement was in response to a Joint Civil Society Report which, *inter alia*, detailed the failure of the UNHCR to act according to its’ mandate during the crisis. Civil society consequently called on the UNHCR to “produce their own report documenting their involvement during the crisis, and their claimed adherence to international principles and human rights law.”³ The

joint civil society report is attached. The UNHCR remarks to the media are also attached.

30. In our view, the UNHCR has been perhaps the least effective office and organization on the ground in South Africa in terms of protecting and promoting refugee rights and that of displaced people since this crisis commenced.
31. For example, on many occasions, the UNHCR hotline was not answered, and the office and its staff were not reachable after hours. It failed to issue regular information sheets in multiple languages. It refused to meet with all people who sought its' assistance, it supported the consolidation of intolerable camps and provided little or no meaningful oversight over the rapid status determination process. It has not stepped up humanitarian relief in the camps. It stood by and watched as many violations of rights continue.
32. There is no doubt that such conduct constitutes a violation of the UNHCR's primary mandate, which is to provide international protection for refugees and displaced people and to seek permanent solution for the problems of refugees, whether by means of voluntary repatriation, reintegration or resettlement.
33. With regard the protection of refugees and displaced people and the promotion of their rights under international and South African law, we believe that the UNHCR has neglected to meet its mandate on six major levels:
 - a. **Camp consolidation and camp conditions:** The UNHCR has failed to adequately pressure the South African government to maintain the camps at a level that meets international humanitarian standards. Despite worsening conditions in the camps, UNHCR did not intervene, leaving the management of humanitarian relief to government, even though this has been the biggest humanitarian crisis experienced in South Africa in the last 14 years, and government has lacked the experience and political will to cope with such an event properly. Further, the UNHCR failed to adequately consult before relocating people, and the consolidation process took place

in one of the worst storms the Western Cape has seen all winter. Despite the UNHCR claiming to monitor these situations, in reality the two staff members who were occasionally present during consolidation performed a completely passive role, and refused to engage with people in the camps and halls.

- b. **Reintegration:** The UNHCR failed to consult on a comprehensive, realistic plan for reintegration. It has merely implemented a reintegration package designed with government that is inadequate and insufficient. In Gauteng, it has been part of the process that provided a small amount of money to people for reintegration purposes- which then resulted in people being removed from the camps. In other words, the UNHCR paid people between 500 – 2500 ZAR, upon which they were told to leave the camps by government. As a result the government closed the camps in contempt of a Constitutional Court ruling and without any proper plan for shelter for people who still need it. Reintegration assistance was used in many instances to coerce and force people to leave the camps without adequate protection - to the knowledge of the UNHCR.

- c. **Undocumented people:** Throughout the crisis, the UNHCR has insisted that they 'may only act within their mandate, and only upon the invitation of government' and that they can only advise and help 'refugees'. This allowed the UNHCR to ignore many situations affecting displaced people, since they were not formally documented refugees. Civil society in South Africa is aware of the role played by UNHCR in contexts such as Northern Uganda – where the organisation has played a role in the protection of displaced people. South Africa was a unique context in terms of the mix of both refugees and undocumented displaced people. We are of the opinion that UNHCR would have been well positioned to exercise its expanded mandate to address issues of internal displacement. Instead, UNHCR's rhetoric was to focus on refugees alone and preclude those who were not refugees (in spite of the obvious inadequacies of the DHA). These inadequacies have been documented repeatedly by Human Rights Watch

and Amnesty International and are known to the local office. In any event, there was no real effort by UNHCR to establish the proper status of people in the camps in the beginning of the crisis – something that it should have done.

- d. **Refugee advocacy:** There has been a general lack of effort on behalf of the UNHCR to advocate for the rights of refugees in the face of a South African government that has become increasingly ignorant, abusive and careless in regard to the legal rights refugees, asylum seekers and displaced persons have under both South African and International Law. Repeated requests for information in the Western Cape to be disseminated were not complied with. Civil society took it upon itself to provide regular newsletters, information sheets and rights workshops, holding over twenty weekly meetings with displaced people. Zimbabweans in particular, have not received the type of assistance needed from the UNHCR on protection and status issues.
- e. **Resettlement:** The UNHCR has said that none of the countries ordinarily working in partnership with the UNHCR for resettlement have offered assistance during this time. The UNHCR rejected resettlement as an option from the beginning in the absence of individual consultations, and despite many refugees being legitimately too afraid to stay in South Africa and unable to return to home countries due to armed conflict or the threat of persecution. This again indicates the passive attitude of the UNHCR, as they should not wait for offers of assistance, but motivate resettlement partners to accept relevant cases. The UNHCR has also claimed that South Africa is “safe”. While this may be the official position, the reality (as reported daily in the media) is that foreign nationals are frequently targeted as part of systemic hate crimes and incidences of xenophobic violence are on the increase, as evidenced by the recent attacks on Somalis in Western and Eastern Cape. The UNHCR’s primary function is to provide international protection for refugees and seek permanent solutions for the problem of refugees, namely voluntary repatriation, integration, and

resettlement – it should not be concerned with tourism to South Africa – as they have stated to people in briefings. In recent years the UNHCR has indicated a preference for combinations of solutions and flexible approaches to resettlement. Nevertheless, resettlement to a third country occurs in only a small number of extreme cases, due to budget and resource limitations in addition to, as noted by several commentators, institutional failures and lack of political will. Further, given UNHCR press statements, the UNHCR has attempted to shirk responsibility for many of the displaced by categorizing these persons as falling outside of the definition of refugee under its Statute. UNHCR officials have been aggressively dismissing resettlement as an option during the crisis, and have actively advised displaced people against exercising their rights to seek it.

- f. **Lack of communication:** UNHCR has not communicated effectively with displaced people, they have walked out of meetings and have shown an ignorance of the South African context in terms of civil society / government interaction, and have therefore been reduced to bystanders of human rights violations.

34. For the above reasons, we would like to lodge a formal complaint against the UNHCR in Pretoria and we call upon your offices in Geneva to conduct an extensive investigation into the failure of UNHCR in Pretoria to fulfill its mandate with regards to the humanitarian and protection needs of the displaced in this crisis.

Camp conditions and consolidation

35. In the Western Cape, UN agencies and others advised our government against moving refugees into camps without adequate consultation; the government acknowledged these concerns but sought to facilitate the relocation process so people might live in more “suitable conditions.”

36. Since people were moved in to camps and halls at the end of May and beginning of June 2008, there have consistently been problems with conditions that are unresolved in the remaining camps. This despite the fact that the UNHCR knew from the beginning that camp conditions might be a problem and that the initial relocation process was rushed. The UNHCR failed to adequately advise the government on issues related to site planning. One site in Gauteng, Wadeville, had to be closed due to poor planning (the soil was found to be contaminated), and one site, Vickers Road, was never utilised due to a court interdict, obtained by civil society and humanitarian organisations, mandating government not to relocate the displaced there because it was unsuitable and unsafe. During this time, UNHCR had employed a full time Site Planner to advise the government. Three of the camps in the Western Cape were established on the beach, in remote areas, in the middle of the winter.

37. Throughout the crisis, site assessors in the Western Cape camps and sites carried out detailed assessments.

The following links contain reports on conditions in camps and other places of safety.

<http://www.tac.org.za/community/files/file/xenophobia/IntlNormsStandards.pdf>

TAC/ALP "Western Cape Displaced People Report" (18 July 2008)

http://www.tac.org.za/community/files/file/xenophobia/TAC_ALP_Report_Displaced_People_Crisis_18_July_2008-1.pdf

TAC/ALP "Follow-Up Western Cape Displaced People Report" (24 July 2008)

<http://www.tac.org.za/community/files/file/xenophobia/Microsoft%20Word%20-%20Updated%20Western%20Cape%20Displaced%20People%20Report%2024%20July%202008%20Final%20Updated%2030%20July%2020h00.pdf>

Updated Western Cape Displaced People report (13 August 2008)

http://www.tac.org.za/community/files/file/xenophobia/FINAL%20WC_Displaced_People_Report_13_August_2008.pdf

Report of Requests Made to the Joint Operation Center (JOC) for the Month of July (31 July 2008) (of which none were answered).

http://www.tac.org.za/community/files/file/xenophobia/JOC_REPORT_31_JUL_08.pdf

Joint Compiled Reports on the Current Status of the Refugee Crisis by Civil Society (18 September 2008)

<http://www.tac.org.za/community/files/file/xenophobia/Compiled%20Refugee%20Status%20Reports.pdf>

38. The UNHCR has attended meetings in Gauteng and a handful of meetings with the Joint Refugee Leadership Committee in the WC, government and civil society. They have also been provided with voluminous assessments conducted by civil society volunteers on camp conditions—detailing problems with provisions of food and health care, education for children and youth, and with general camp conditions.
39. Further, reports by UN observers and NGO monitors indicated that with the exception of some limited health services by the government in the sites, there were very few visible effects of improvement of conditions at the camps when they were first consolidated in early July 2008.
40. There has not been a significant amount of pressure put on the government by the UNHCR to improve these conditions. Civil society had to engage in legal action to get international norms and standards adopted in the Western Cape (which have since not been fully implemented).
41. While the UNHCR has provided several thousand tents, blankets and mats to refugees, many of these shelter/tents were incapable of withstanding rain, wind and other meteorological variables. In June 2008, one of the coldest months of the year in South Africa, the UNHCR stated it “did not have tents capable of withstanding cold/Arctic conditions.” Following this statement, they supplied tents to the three camps into which the displaced population were being consolidated in the Western Cape, despite weather forecasts indicating impending storms. These tents were destroyed during the consolidation process in the storms, leaving people exposed to the elements and destroying what little they had left. This exhibits the lack of willingness to take this disaster seriously, and to adapt normal humanitarian assistance conditions in South Africa.
42. Furthermore, residents interviewed in Pretoria and Gauteng—in the middle of June—reported being very cold at night due to a shortage of blankets and mattresses, which was reported in nearly every camp.

43. In the Western Cape, Site Assessments conducted by civil society organisations pinpointed areas where humanitarian aid was insufficient, and fell short of international norms and standards. Consistently, many camps were also remotely located, far from transport, healthcare, education and jobs.
44. Nutrition: This was consistently below acceptable levels. Recommended daily requirements were not met, on average meals consist of bread and juice at mid-morning (usually without spreads for the bread) followed by one meal in the evening, often delivered late after children had gone to sleep, which consisted of a vegetable stew and some rice. International standards also provide for a greater need for calorie-rich food during winter- this was not supplied.
45. When food was supplied, it was often inappropriate for displaced people in terms of cultural needs and without regard for the usual diet of displaced people. Having to eat food which the displaced were not used to, caused digestion problems.
46. Water: At most sites, there were insufficient taps per capita, and no facilities for boiling this water to ensure its' purity.
47. Babies often had no formula. There were no facilities for warming and refrigeration of formula bottles (when formula was available). Civil society was forced to continue supplying baby formula as government, despite assurances to the contrary, neglected to supply formula.
48. No additional measures were put in place to ensure that infants, children, the elderly or infirm were given specific attention with regards to dietary requirements.
49. At almost all the sites, toilet facilities were inadequate to support the per capita population. Toilets were not segregated for men and women, and were too big for small children. These toilets were often in dark areas, which meant that women and children were and are afraid to use them at night.

50. There are too few showers. Occasionally, some sites reported no showers being available. Showers were either always cold, or the hot water ran out very quickly. Separate showers for men and women were not always available.
51. Non-food items such as nappies and sanitary napkins were either insufficient or not supplied at all.
52. Blankets and mattresses were insufficient, or were of poor quality, causing widespread rashes and other skin and chest irritations.
53. In the Western Cape, the tents provided leaked and were incapable of withstanding weather conditions.
54. Access to education and healthcare was not present at all sites. Displaced people were often refused treatment at local clinics, or verbally abused by clinic staff. For many months, learners either had erratic access to education, or none at all. At some camps and sites, volunteers were prevented from delivering donated supplies. There were also frequent reports of humanitarian supplies allegedly being hoarded, locked away or even stolen by camp staff and management.

The above represents some of the common complaints from camps and sites in the Western Cape, as referred to in the Reports on the Conditions in the Camps. These reports were widely circulated, including to government and the UNHCR.

55. *The Statute of the UNHCR* states that the agency shall work with member states' governments to "improve the situation of refugees and to reduce the number requiring protection."⁴

56. As such, the UNHCR has the responsibility under international law to make sure refugees receive any humanitarian support necessary for their immediate survival. But even a month into the crisis, the UNHCR could not ensure conditions matched

4 UNHCR Statute of the Office of the United Nations High Commissioner for Refugees, p. 6 (<http://www.unhcr.org/excom/EXCOM/3e6dc6182.pdf>)

minimum humanitarian standards. A government-led inter-agency assessment (including the UN) in the Western Cape noted that “critical conditions remain at the largest sites.”⁵ The UN understood as far as a month into the crisis that conditions at the camps were still poor, yet it failed to adequately advise and pressure the government to address these issues with any seriousness.

57. *The Guiding Principles of the UNHCR* demand that where the local authorities have failed in this respect that the *UNHCR assume* the management of camps and shelters.

58. The *Statute* of the UNHCR further mandates the organization to “establish contact in such a manner as he may think best with private organizations dealing with refugee questions.” However, the UNHCR and partner organisations, with government, have not been involved in meaningful consultation with refugee representatives, whether in terms of trying to address the conditions in the camps or a strategy for safe and successful reintegration of displaced persons in to their home communities. They have now sought to criticise civil society groups.

59. Recent reports are that the UNHCR (in partnership with UNICEF) has offered refugees an amount of R750 – R1 500 to reintegrate, despite this figure being insufficient in terms of securing continuous accommodation, and without the guaranteed safety or legal status of those wishing to be reintegrated.

60. Also of concern is that the Cape Town Refugee Centre (CTRC), a UNHCR social implementing partner, is alleged to be involved in some financial impropriety. For example: providing the displaced with money to reintegrate and then forcing as many as twenty people to sleep in one room, while charging them for rent. The CTRC has been largely unable to assist the displaced to the extent required. Despite complaints being lodged against the CTRC to the UNHCR, we have yet to receive a response from the UNHCR as to whether they are investigating these allegations or not, and what steps it will take should these allegations be found to

5 UN South Africa- Situation report 2 (11 June 2008)

be true.

61. As far as 'camp consolidation' is concerned, the process was a complete failure. In the Western Cape, the UNHCR could not provide tents that would withstand winter and rainy conditions and people were moved during a massive storm in which many of the tents were destroyed. The UNHCR did not appear to be monitoring this process or assisting during the storm and its' aftermath. (Two officials reportedly arrived at one of the camps briefly after the storm, but refused to engage with displaced people). In Gauteng, consolidation was done in a manner reminiscent of forced apartheid era removals causing even more mental anguish and trauma.

Refugee Reintegration

62. As previously stated, the UNHCR failed to properly consult with people affected by the violence. This is due in large part because the UNHCR has failed to consult with government and other relevant humanitarian agencies on any sustainable, comprehensive or effective reintegration plan for refugees. UNHCR has not assisted those wishing to reintegrate in any meaningful way, save for very little money for rent and a food pack provided by the Red Cross.

63. Throughout the crisis, there have been regular media reports about displaced people attempting reintegration and subsequently being victims of murders, violent attacks, hate crimes and intimidation. These reports indicate the necessity for serious management of the reintegration process, ensuring that the rights to safety, security and dignity of people are protected.

64. Ultimately, it is the responsibility of the UNHCR to encourage implementation of a planned, safe and dignified reintegration of displaced persons in to their home communities. However, there have been no monitors provided to gage levels of hostility in the former communities of refugees so as to ensure the safety of those returning home.

65. While the UNHCR has conducted repatriation assessments over the past few weeks for refugees and displaced people, they still have yet to engage a plan that encourages sustainable reintegration, meaning that the UN involvement must ensure that foreigners and South Africans are able to live together peacefully over the long term.
66. The government has consistently advocated that the displaced opt for reintegration above repatriation or resettlement, a position which has been adopted by the UNHCR, despite all recommendations being that circumstances (including the lack of resources and the threat of xenophobic violence) indicated that this option was and is not appropriate for all displaced people.
67. As indicated above, **resettlement** has been abandoned during this crisis, despite many refugees having a clear argument for it being an applicable option. In any event, the UNHCR should have conducted individual assessments in the first weeks of the crisis to establish facts on the ground.

Refugee Advocacy

68. The Executive Committee of the High Commissioner's Programme—of which South Africa currently is a member state—has determined that refugees and asylum seekers have the right to direct contact with the UNHCR and must be informed of this. Yet often, this had to be negotiated, never occurred or was delayed.
69. The UNHCR consistently refused to respond to written and public queries about its role and has consistently refused to deploy officials to conduct individual consultations with those people who requested such assistance.
70. There have been many times during the crisis when the local officials of the UNHCR and the office in Pretoria have been unreachable by telephone, fax or email particularly the first few weekends of the crisis (when civil society was available 24 hours) meaning that displaced people and volunteer organisations

had been unable to approach the agency for assistance. This despite the institution of a UNHCR hotline, which was rarely answered. This is clearly in violation of the UNHCR mandate to provide information to displaced people.

71. Civil society has also sent appeals, letters and a memorandum to the Pretoria office of the UNHCR to which there have been no formal responses. Below we set out in table form such correspondence.

DATE OF CORRESPONDENCE OR MEMORANDUM	FROM WHOM TO WHOM	DESCRIPTION OF CONTENTS
1 June 2008	Soetwater Leadership to various bodies	Appeal for Assistance
Undated	Open Letter from the Joint Refugee Committee of the Western Cape To the Premier of the Western Cape	Details requests, complaints and appeals from refugees and displaced people living in the camps
20 June 2008	Civil Society Memorandum to UNHCR on World Refugee Day	On the Failure of the UNHCR to respond meaningfully during the crisis
(undated)	UNHCR Message to Refugees and Asylum Seekers in South Africa	Single page document distributed to the displaced covering the UNHCR role and position on reintegration, resettlement and repatriation
3 July 2008	Stateless Refugee Community of South Africa to Members of Parliament	Appeal for Assistance During Crisis
9 July 2008	Civil Society Response to UNHCR undated circular	Calling for clarity on UNHCR position on Zimbabwe, Repatriation, Reintegration and Resettlement
3 June 2008	Joint Civil Society Appeal to UN and UNHCR	Detailing the lack of continued humanitarian support offered by UNHCR in opposition to its' mandate

13 June 2008	Civil Society Memorandum to UNHCR	A DEMAND FOR CLARITY ON THE ISSUES OF Repatriation, Reintegration and Resettlement
16 June 2008	Civil Society Memorandum to UNHCR	Addresses UNHCR's obligation to act with urgency in South Africa
	TAC and PASSOP Letters about Cape Town Refugee Centre	Calling for investigation into practices of CTRC.

72. The UNHCR has not used the considerable influence it has with government to sufficiently or meaningfully advocate for and protect the rights of people displaced in South Africa. While it is understood that the UNHCR must respect the sovereignty of South Africa and that it must walk a delicate political line, it is simply unacceptable that the UNHCR sit back while the government fails—at every level—to provide the adequate resources and services necessary to alleviate the desperate situation of people who need UNHCR legal or humanitarian assistance.

73. The government has provided little assistance in this way to the refugees; in fact, when camp residents were applying for a temporary ID card that would exempt them from deportation for six months after the attacks, the government demanded all camp residents register for one of these cards or they would not be given access to camps and deported.

- (1) The UNHCR supported the government to the point of supporting deportation of persons with refugee/asylum status who refused to cooperate with this ID card procedure.
- (2) There was no adequate explanation from the government or the UNHCR on the implications of the ID cards or what would be done with the refugees after the six months expired.
- (3) The government even presented residents with documents in which they would give away rights to apply for South African

residency, citizenship, housing and social grants.

- (4) The permits were not made available to those people who had already reintegrated thus punishing them. Far from protecting the rights of these refugees, the UNHCR put no pressure on the government to provide sound, legal advice to refugees and to advise refugees of their rights under the South African constitution and international law.

- (5) At Rifle Range/Glenanda a UNHCR protection officer was approached and asked 'what was going to happen to these individuals after six months'. He said, "They will be deported—but of course, you can't tell them that."

74. UNHCR guidelines on operational protection in camps states that the legal authority of refugee identity documents *"should protect refugees from refoulement, enable them to access refugee status determination procedures, allow for lawful residence in the host country, ensure identification and protection by law enforcement agencies as well as guarantee access to essential services such as primary education and basic health care."* Refugee registration has the aim of *"protecting and documenting them [refugees] and of implementing durable solutions."*⁶

75. It is clear that the registration reflected none of these guidelines. Further, residents of the camps were genuinely fearful that the registration process could be misused and manipulated so the DHA might use the information to track and deport individuals.

76. The UNHCR has also failed to make recommendations to government regarding refugees who have requested to be repatriated but who cannot return to their home country. These people have indicated that they would rather return to home countries than face xenophobic violence in South Africa. The UNHCR is unable to

⁶ UNHCR Handbook on Registration: Procedures for Registration, Population Data Management and Documentation, p. 5-6

repatriate these refugees under the principle of *non-refoulement*, as they are requesting to return to countries regarded to be in a state of war. These particular refugees are thus without realistic options, as they cannot reintegrate and the camps sheltering them have closed or will be closed.

77. According to the UNHCR website, repatriation of people began in August 2008, more than three months after the attacks.

Lack of Documentation

78. The UNHCR's response to allegations from civil society—which alleges that the UNHCR has not done enough in regard to refugee advocacy—is based largely around their definition of a refugee. They have argued that many of those affected by the xenophobic attacks in South Africa do not fall under the traditional definition of a refugee as per the UNHCR statute. In this way, the UNHCR in Pretoria has been trying to abdicate its responsibility to protect some of the most vulnerable people involved in this crisis—what the UN would call Internally Displaced Persons (IDPs) (even though they did not assess at the beginning who would qualify for such status). This despite the well known fact that the South African Government is unable to process vast numbers of applications for refugee and asylum seeker status, creating a backlog of applications that numbers in thousands and stretches back over two years. Thus, when undocumented people were displaced by xenophobic violence, they were unable to enjoy the protection of the UNHCR because they had not been documented.

79. However, according to the *Guiding Principles on Internal Displacement*, “international humanitarian organizations and other appropriate sectors have the right to offer their services in support of the internally displaced (Principle 25, Paragraph 2)...the UNHCR...also [has] an expanded mandate to ensure durable solutions for 'peoples of concern.'” IDPs are on the list of the UNHCR's “people's of concern”. Further, an internal UN report states the following in regard to individuals—such as IDPs—who do not fall within the traditional definition of a refugee:

80. The 'Rapid Status Determination' process conducted by the Department of Home Affairs (DHA) has been a complete sham: Of nearly five thousand applications fewer than two percent have received status. Those rejected applications include those persecuted by opposition governments, women raped by rebel soldiers, homosexuals unable to remain in their own countries for fear of imprisonment or worse and those whose families have been murdered in various conflicts throughout the African continent. This figure is inordinately low, and is of great concern, particularly because the interviews conducted lasted for a few minutes, and no translators were provided by the DHA. The UNHCR did not intervene to stop this unconstitutional process. Problems with the way the process has been conducted have also been raised by Amnesty International.

81. Small samples of displaced people staying in the camps have provided testimonies regarding their own personal experiences, or the lack thereof, with the UNHCR during their four-month stay in the camps. These testimonies range from pleas for help, to detailed complaints and are attached to this complaint. Since it is these people who have been suffering due to the lack of UNHCR commitment, these testimonies provide a condemnation of the UNHCR which is echoed by civil society.

82. The individuals with whom civil society, government and the displaced have had contact during the crisis are as follows: Olivier Beer; Arvind Gupta; Yusuf Hassan; Bill Lipsit; Abel Mbilinyi

83. The above is not an exhaustive list of the failures of UNHCR in Pretoria; rather, it consolidates nearly four months of incompetence in to five areas in which the organization has blatantly failed to fulfill its mandate.

84. At the outset of this crisis, civil society and refugee groups in South Africa were excited to have the opportunity to work with the UNHCR; however, at this point, it seems as if the organization has neglected its mandate and opted rather to ignore the concerns of those very people it was meant to protect.

85. We are still open to working with the UNHCR to come to a collective, comprehensive and lasting solution to the crisis that has emerged in South Africa; but we find such an effort impossible if the UNHCR will not conduct itself in a manner of accountability consistent with its mandate.

For all of these reasons, the undersigned again formally request that the UNHCR in Geneva open a commission of inquiry in to the failures of the UNHCR in Pretoria to meet its mandate to protect refugees and displaced people following the xenophobic attacks in South Africa.

We note that several organizations sympathize with this complaint but were unable to sign on for a number of reasons.

This inquiry should be conducted in a public forum, so that all reported activities and actions of the local UNHCR office may be confirmed or disputed. People affected by the violence and civil society deserves a public apology from the UNHCR, as well as a public acknowledgement of the failure of its local office and its' staff to meet its' mandate here.

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