
**AFFIDAVIT ON BEHALF OF THE SECOND APPLICANT:
TREATMENT ACTION CAMPAIGN**

I, the undersigned,

ABDURRAZACK (“ZACKIE”) ACHMAT

do hereby solemnly affirm that:

1. I am the deputy secretary-general of the Treatment Action Campaign (“the TAC”).
The TAC is a non-profit voluntary association incorporated as a section 21 company.
2. The facts contained herein are true and correct and within my knowledge unless the context indicates otherwise. Where I rely on information provided to me by others, I believe the same to be true. Where I make legal submissions, I do this on the advice of my legal representatives.
3. The TAC national office is located at 122 Longmarket Street, Westminster House, 3rd Floor, Cape Town. I am duly authorised by the TAC National Council, the highest decision making body of the TAC to make this application and depose to this affidavit on its behalf.
4. This is an application for urgent relief in the public interest and in the interest of refugees, asylum seekers, displaced persons and undocumented persons (“displaced people”).

5. I have read the final version of the affidavit of the First Applicant, Mr M Hirsi and confirm the contents in so far as they relate to the TAC
6. The TAC believes that the First and Second Respondents needed to act together weeks ago in order to improve norms and standards in all places of shelter. Regrettably, they have failed to do so.
7. I am advised and submit that the camps established by the Second Respondent are unlawful because they do not meet international humanitarian norms and standards, and they violate the Constitution of the Republic of South Africa in particular, the rights to dignity, family life, shelter, and freedom of movement, and the obligation to act in the best interests of children.

The Treatment Action Campaign (TAC)

8. The TAC campaigns for the rights and health of all people living with HIV in South Africa. Over the last 18 months, TAC has also worked on health and HIV- related prevention, treatment and care issues for asylum-seekers, refugees and immigrants including displaced people.
9. TAC joins in bringing this Application to further its own aims as set out in its Constitution. It also does so on behalf of the many displaced people who cannot do so in their own name because they are not aware of their rights, because they are indigent and do not have access to legal representation, or because they have been psychologically traumatised by the events of the past two months. It also acts in the public interest,

10. I respectfully submit that the TAC has standing to bring this application.
11. The TAC and AIDS Law Project (ALP) are part of the *Western Cape Civil Society Coalition* ("WC Coalition"), which is made up of trade unions, faith based organisations, and human, health and refugee rights organisations. The WC Coalition was formed to respond to and deal with the threats and violent attacks against foreign nationals, and to coordinate humanitarian assistance to people displaced by the crisis.
12. The Congress of South African Trade Unions (Cosatu) has been supportive of all the humanitarian, monitoring, advocacy and activist work done by the TAC and ALP.
13. The WC Coalition works closely with the South African Human Rights Commission (SAHRC). We have also tried to work and co-operate with the Respondents. On many occasions we have worked together to assure humanitarian assistance and to prevent security problems.
14. Regrettably, on the fundamental issues addressed in this application, we have failed to achieve any real progress.
15. There are more than 200 TAC branches across SA, including in the poorest communities in the Eastern Cape (such as Lusikisiki) and at institutions such as the University of Cape Town (UCT). Most of our volunteers and staff live in the communities in which they work. In Khayelitsha in the Western Cape, the TAC has more than 1,500 active members at community level in several branches. TAC has approximately 16,000 members.

16. A number of organisations and individuals in SA are associated with the TAC. They include the AIDS Law Project (ALP), the Congress of South African Trade Unions (COSATU), the Federation of Unions of South Africa (FEDUSA), the Southern African Catholic Bishops Conference (SACBC), the South African Council of Churches (SACC), Habonim Dror, Positive Muslims, the Children's Rights Centre, Médecins Sans Frontières (MSF), the AIDS Consortium, and a range of other organisations of people with HIV/AIDS and individuals with HIV/AIDS.
17. Internationally, the TAC is associated with the Pan African Treatment Access Movement (PATAM), itself a coalition of various HIV/AIDS treatment access organisations and individuals across Africa.
18. In 2001, the International TAC office was established to realise the special needs of people living with HIV/AIDS elsewhere in the world as well as that of refugees, asylum seekers, displaced persons and undocumented persons living or seeking refuge in SA.
19. The TAC has actively promoted the right to health of refugees, asylum seekers, displaced persons and undocumented persons. The TAC has worked actively with Zimbabwean and other refugee organisations to address access to health care for refugees and asylum seekers.
20. TAC's 4th National Congress affirmed our work with immigrants and refugees as part of our local and international solidarity action. The latest edition of our magazine, *Equal Treatment*, focuses specifically on the systematic abuse of immigrants and refugees in South Africa. It was published on the day that the violence started in communities across Gauteng, 11 May 2008.

21. TAC has engaged in a range of efforts to support refugees, immigrants and displaced people. These have included parliamentary submissions, pickets, marches, relief efforts and public education.

Response To Xenophobic Attacks In The Western Cape

22. When violent xenophobic attacks on a community-scale took place on or about 11 May 2008 in Gauteng and 22 May 2008 in the Western Cape, and then in KwaZulu-Natal, enormous numbers of people were displaced across our country.
23. As human rights organisations, TAC and the ALP in the Western Cape immediately responded on 23 May 2008 to the crisis in the Western Cape by providing humanitarian assistance in the form of shelter, food, relief services, legal and health advice. To date, we have spent about ZAR 3 million on advocacy work and humanitarian assistance (2.3 million has been spent on humanitarian assistance). TAC and ALP mobilised volunteers, a 24-hour relief centre, pro bono legal assistance and health care workers.
24. We conducted assessments of almost every site in the Peninsula in the Western Cape. This activity included commencing the first health assessments of each site and refugee camp. We participated in the documentation drives at the request of displaced people. The confirmatory affidavit of Ms Hassan of the ALP is attached marked "**TAC 1**".
25. We continue to conduct monitoring and assessments. However, as a result of financial constraints, we will not be able to continue providing humanitarian assistance beyond the first week in August 2008. This heightens the urgency of this

application.

Engagement With Government

26. In the last few weeks, the TAC and ALP together with other members of the WC Coalition have attended several meetings with various officials representing the First and Second Respondents, including the former Premier and the Mayor.
27. These meetings were called on the basis of good faith. They built trust and created expectations.
28. Regrettably, they ended in disappointment because of the failures of the Respondents to act with urgency and on a sustained basis on the critical questions of norms, standards and their constitutional obligations.
29. Civil society organisations and individuals have sent several letters, requests for information including pleas for humanitarian and other forms of assistance, a Joint Civil Society Memorandum, and letters of demand in an attempt to ensure that the obligations on the part of the Respondents during this crisis are met. Some of these attempts are described below.
30. In addition to sending letters and memoranda, we have held a peaceful protest in the vicinity of the Mayor's residence, a peaceful sit in (and sleep over) at the Cape Town Civic Centre, at least four peaceful demonstrations outside the Provincial Legislature, and several meetings with officials representing the First and Second Respondents.
31. These various efforts have not resulted in any meaningful change in the material

conditions of people in the camps and people in many community halls and private shelters.

32. Section 4 of the *Disaster Management Act* requires all spheres of government as well as non-governmental institutions, the private sector, communities and individuals involved in humanitarian relief to combine efforts and maintain uniform standards.
33. This was the purpose of our engagement and of this litigation.

The Establishment Of Camps And Shelters

34. On about 24 May 2008, the Second Respondent established temporary shelters, referred to as “refugee” or “safety” camps for displaced people. These camps are situated at Silverstream, Soetwater, Youngsfield, Harmony Park and Bluewaters.
35. While the camps may at that time have been an appropriate temporary solution to the immediate crisis of shelter, they are not an adequate response to the continuing problem.
36. According to the First Respondent, the camps are at present under the control of the Second Respondent.
37. Subsequently, in addition to the 5 camps, at least 11 community halls were opened to house displaced people closer to their communities. These halls are under the control of the First Respondent.
38. I submit that both the First and Second Respondents are responsible for all sites of

shelter.

39. The displaced people at the camps and community halls came from all parts of the Western Cape, and particularly from Khayelitsha, Milnerton, Mitchell's Plain, Worcester and Malmesbury. Some of those people have reintegrated with the communities from which they came. Some others have chosen to leave South Africa already. As at 18 July 2008, our records indicated that about 5000 people remain in the camps and halls.
40. Since early June 2008, the TAC and ALP have carried out assessments of the places of shelter from a health, humanitarian and other assessments of places of shelter. All of the assessments indicate that they fall short of minimum norms and standards set by various United Nations (UN) agencies and other international relief agencies. In particular, the camps fare badly when measured against minimum norms and standards. Despite our repeatedly asking the First and Second Respondents to remedy the gaps in meeting minimum norms and standards in the camps and halls they have failed to do so.

TAC/ALP Reports Of Deteriorating Conditions

41. A few days after the violence and displacement occurred in the Western Cape, the TAC, ALP and AIDS and Rights Alliance for Southern Africa (ARASA) arranged for medical volunteers to conduct health assessments at the camps and other places of shelter. Since then we have assisted the people at those sites with regard to their humanitarian needs, and have continued to monitor and assess all sites. We have done this with the assistance of site assessors and volunteers as well as other civil society organisations.

42. On Sunday 1 June 2008 we coordinated an assessment of 33 sites, covering 8,969 displaced people. The data collected included disaggregated population data, and information on the situation with regard to food, blankets, shelter, security, sanitation services, medical services available on site and medical needs.
43. On Thursday 5 June 2008 28 volunteers from the community and SHAWCO conducted further health assessments. The assessment form was updated to capture information on the implementation of the Province/City DOH Health plan to ensure service provision to all sites. Forty-one sites covering 13,041 people were assessed in this process. A copy of the summary of the assessment is attached marked "**TAC 2**".
44. Thereafter, from 23 June – 9 July 2008, with the assistance of Oxfam, 15 volunteers were trained by a senior analytical epidemiologist and a public health systems expert to collect data in a structured manner, using a specially designed data assessment form.
45. The next phase of data collection continued from 9 July – 14 July 2008 to build on the previous set of data collected and to measure conditions against minimum norms and standards (discussed in detail below).
46. The result of the two phases of data collection (23 June – 9 July and then 9 July - 14 July 2008) is a comprehensive report entitled *Joint TAC/ALP Western Cape Displaced People Report*, which is attached hereto marked "**TAC 3**". The report is dated 18 July 2008, and was updated on 21 July 2008. I refer to it below as the "*TAC/ALP Report*" hereinafter.

47. The TAC/ALP Report is based on the site assessments of several assessors including interviews with volunteers and displaced people at the camps. The process of data collection was coordinated, collated by Mr Gilad Isaacs, the Humanitarian Coordination Officer for TAC and Mr Dave Biles, a 4th year medical student and TAC Intern and mainly written by Henri Carrera, an analytical epidemiologist. The confirmatory affidavits of Mr Isaacs, Mr Biles and Mr Carrera are attached hereto marked “**TAC 4**” , “**TAC 5**” and “**TAC 6**” respectively.
48. The TAC/ALP Report shows that while the numbers at the camps and sites have decreased over time, conditions have not improved. I should point out that in addition to these reports, weekly assessments and data have also been collected by TAC/ALP since the beginning of the crisis and are available to any interested party.
49. I respectfully submit that our data collection system, the coordination thereof, and the collation of information collected enable us to provide the Court with reliable information about the conditions in the camps and halls. International agencies such as Oxfam, Medecins Sans Frontieres (Doctors Without Borders) and the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) have recognised our data, and rely on it for supplementary information purposes as well as for updates regarding the condition of people living in the places of shelter. This is because it is one of the few reliable and updated sources of information which is publicly available, which covers covering the majority of sites (camps and halls) and thus the majority of displaced people, and which reflects their real and immediate concerns.
50. Copies of the TAC/ALP Report were hand delivered to representatives of the First and Second Respondents including the office of the Mayor, Premier and a number of

other senior government officials on 22 and 23 July 2008, all the members of the JOC on 18 July 2008 as well as Dr Hildegard Fast, Chair of Joint Operations Centre and Head of the Provincial Disaster Management Centre on 24 July 2008.

51. It is, I submit, important to appreciate the situation in which displaced people find themselves. Very many of them lost all or most of their possessions when they fled from the xenophobic violence. Many of those who were self-employed, for example shop-keepers, have not been able to re-establish their shops since they were displaced. Many of those who were in employment have lost their jobs because they now live far from their places of employment, or because they were absent from work. The xenophobic violence has therefore made a large number of people, who were previously self-sufficient, unable to see to their own needs and dependent on support from others.

52. The TAC/ALP report shows that:

52.1 The tents in Silverstroom, Soetwater, and Youngsfield continue to provide inadequate shelter and protection from the winter weather.

52.2 There is an urgent need to address the food needs of children. Many sites still do not have milk supplements provided for children.

52.3 More than half of the people in places of shelter consider the current food insufficient.

52.4 There are 208 learners who are currently displaced. A plan is needed to ensure that they can access education. At about 7 sites there is no access

to education.

- 52.5 Many sanitation needs still are not being properly met across all sites. In over half the community sites there is a need for separate male and female toilets.
- 52.6 Lighting at sanitation areas is a particular concern in Youngsfield and Blue Waters, where women and children feel unsafe at night.
- 52.7 Across all sites there are insufficient nappies and sanitary towels.
- 52.8 Some sites currently do not have blankets for everyone and more are needed in the camps to protect people from the cold weather. Some people have reported respiratory and skin irritation as a result of the fibres, which are shedding from some of the blankets.
- 52.9 Transport for peoples return from health clinics need to be improved. Recent reports from Silverstroom, Blue Waters and Youngsfield also suggest attention needs to be given to ensuring the regularity of a health post on site.
- 52.10 There is an urgent need to provide detailed and regular information to people in sites on the actions and plans of Government, and on their options.
53. As is confirmed by Mr Biles, between 14 - 24 July 2008 further assessments were done at the 5 camps and 12 other sites to update the data collected in the TAC/ALP

report. This report showed conditions are largely unchanged, and that in some camps the conditions have deteriorated. The most significant improvement is that the lighting in communal and toilet areas in Blue Waters has been increased. There is now insufficient provision of milk supplements at Harmony, and Soetwater. At Youngsfield nine toilets were removed, so there are now 26 people per toilet. Basic non-food items continue to be overlooked. There is an insufficient supply of nappies at Youngsfield and Soetwater, and there was no supply at Youngsfield on 15 June until TAC sent an emergency delivery. There is an insufficient supply of sanitary towels at Harmony Park and Soetwater. A copy of this report can be made available.

54. We have made numerous requests to the Joint Operations Centre (JOC), which is under the control of the First Respondent, to address the problems which I have identified above. Before that, we made representations to the Disaster Management Centre (DMC), which was under the control of the Second Respondent.

55. In particular, we have made several repeated requests for relief needs during the period 1 -23 July 2008 to which we have had no substantial response. I summarise these below:

55.1 During this period the total number of requests made for food were 35, childcare 24, toiletries 31, bedding 17, health 6, general 19 and legal 2.

55.2 Each request was faxed through the JOC by TAC volunteers and a telephone call was made to confirm receipt of the fax. All correspondence and communications have been logged in the TAC's JOC file.

55.3 Hope Mwanjira, a TAC paid volunteer, followed up on each and every

request from 14 July 2008 and every day thereafter. Of all of the requests, not a single request was met by the JOC, including the urgent need for baby formula. The standard response of the JOC has been that they are 'verifying and processing' the requests. For this reason, we have had to raise money to procure and distribute urgent basic supplies. The confirmatory affidavit of Hope Mwanjira is attached hereto marked "**TAC 7**".

56. We also attend JOC meetings, at which we report to the JOC and its members on the situation on the ground. The JOC is therefore fully aware of all of our reports and other needs on the ground.

57. The TAC and ALP recommended in their joint report that Government:

57.1 improve the quality of shelter at tented sites (specifically, Silverstroom, Soetwater, and Youngsfield);

57.2 supply an adequate amount of food to children, which is suitable for their needs: (a) food that is suitable for the nutritional needs for younger children; and (b) milk supplements for infants;

57.3 complete a nutritional review of the food supplied to the site to ensure that caloric and nutritional intake matches *at least* minimum standards of care, especially given the colder winter temperatures; and ensure that dietary needs due to religion or culture are being respected;

57.4 provide people with raw food and cooking equipment so they can prepare their own food;

- 57.5 ensure that all school age children have access and safe transportation to school;
- 57.6 provide additional toilets and showers to ensure separate facilities for men and women at those sites indicated to have an insufficient number;
- 57.7 increase lighting at all sites to create well-lit paths to toilets at night;
- 57.8 supply nappies and sanitary towels to the sites reported to be lacking and monitor the need for these items to ensure these are not continued to be overlooked;
- 57.9 increase the number of blankets in sites currently lacking and in camps to protect people from the cold weather. Provide blankets that do not cause skin or respiratory irritation;
- 57.10 ensure there is transport available for displaced people both to and from health clinics;
- 57.11 improve regularity of health professionals on site at locations with health posts (specifically Silverstroom, Blue Waters, Youngsfield, and Harmony Park); and
- 57.12 issue weekly newsletters to inform displaced people of the events pertinent to their situation.

Assessments By Other Agencies

58. Other independent organisations have also conducted assessments of the camps and released reports detailing the conditions therein.
59. The SAHRC, which is established under Chapter 9 of the Constitution, has for example released several reports about the camps (not halls), and concluded without exception that the camps are inadequate and should be closed..
60. STAR Partnership and Médecins Sans Frontières (MSF) have also released several reports with recommendations.
61. Critically, an inter-agency assessment team comprising of various United Nations agencies (UNOCHA, UNICEF, WHO), the International Organization for Migration, the International Federation of the Red Cross and Red Crescent and the South African Red Cross Society conducted two assessments on the humanitarian situation at the sites. The first report was released on the 6 June 2008, and the second is likely to be released on 28 July 2008 which we will file once we are in receipt of it. The 6 June 2008 report is attached marked "**TAC 8**". The assessment was carried out to understand the humanitarian situation, to identify needs and gaps and to make recommendations (page 2). They recommended decongesting mega sites particularly Soetwater (page 13); training and strengthening of site management (page 13); "training in humanitarian principles and minimum standards in disaster response (Sphere) for organisations currently managing the sites" (page 14) (see below); strengthening coordination and information at district level (page 14) and other recommendations on the role of the IOM, UNHCR, Department of Home Affairs (age 14) and finally it recommended compliance and observance of the *Humanitarian*

Charter to 'reassert the right to life with dignity for disaster affected populations (Sphere)' (page 14).

Protests Against Poor Conditions In Camps

62. Since the camps were opened, the TAC/ALP and other civil society organisations met with the Mayor, the UN, the Premier and officials in the Premier's office. We asked that the camps be closed, that a plan be developed to close the camps and that alternative shelter be provided. The Mayor said that she would not open community halls and civic centres because of 'weddings, birthdays and other events' that have already been booked, as well as because of pension pay outs.
63. On 4 June 2006 we instructed our legal representatives to send an urgent letter of demand on behalf of several people staying at Soetwater as well as the TAC and COSATU to all three spheres of government asking them to make alternative shelter available as a matter of urgency, so that people in the camps could be removed to better and more accessible places of shelter. A copy of the letter is attached marked "**TAC 9**". The reason why the issue of alternative shelter has not been satisfactorily is largely, in our view, because the First and Second Respondents have not co-operated with each other to make alternative provision.
64. On Friday 6 June 2008, we received a letter from the Mayor (representing the Second Respondent) which is attached hereto marked "**TAC 10**". The letter in our view indicates a regrettable lack of understanding of the Second Respondents legal responsibilities.

International Humanitarian Standards For Emergency And Disaster Situations

65. South Africa has not previously experienced a humanitarian crisis of this magnitude. At least 55 people have been killed as a result of the xenophobic attacks, hundreds were injured, and at least 100 000 people were originally displaced.
66. Given the scale and nature of the crisis, it is important that the government obtain the assistance of international bodies with experience in dealing with the relief, technical advice, documentation and humanitarian aspects, in order to devise and implement a plan of action.
67. When considering the needs of displaced persons in collective settlements, a whole host of factors need to be taken into account. These can broadly be described under the following headings: water and sanitation, food and nutrition, health care, and shelter.
68. The minimum guidelines and standards relating to internally displaced persons are based on basic human rights. In particular, they seek to give a minimum content to a 'right to life with dignity'. To date, and despite repeated requests, government has not been able to tell us what it regards as the norms and standards for the present situation..
69. For this reason, during 7 - 11 July 2008, the TAC and ALP analysed and collated into a composite document the norms and standards which the international community considers to be the absolute bare minimum conditions that should apply in refugee camps and shelters which have been established because of disasters.

70. Those benchmarks are set out in the document entitled *TAC/ALP Document on Minimum Norms and Standards for Shelter, Nutrition, Sanitation, and Health for Displaced Persons as Stipulated by the United Nations High Commissioner for Refugees, World Health Organisation, The World Food Programme and The Sphere Project – Humanitarian Charter and Minimum Standards in Disaster Response*. I attach a copy of this document (“**TAC 11**”) to which I refer hereafter as “*TAC/ALP Document on Minimum Norms and Standards*”

TAC/ALP Document on Minimum Norms and Standards

71. The “*TAC/ALP Document on Minimum Norms and Standards*” was compiled within a week by two doctoral candidates at the City University of New York, Mr Elan Abrell and Ms Kaja Tretjak. They are volunteers. Their confirmatory affidavits are attached hereto marked “**TAC 12**” and “**TAC 13**” respectively.

72. The sources of information which they used in collating the *TAC/ALP Document on Minimum Norms and Standards* were the following:

72.1 South African standards on water and sanitation.

72.2 The Sphere Project: Humanitarian Charter and the Minimum Standards in Disaster Response – 2004.

72.3 The United Nations High Commissioner for Refugees (“UNHCR”) Handbook for Emergencies – 2007.

72.4 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.

72.5 WHO – Guiding Principles for Feeding Infants and Young Children in Emergencies – 2004.

72.6 WHO and UNHCR – Clinical Management of Rape Survivors – 2004.

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

73. The status of the international organizations such as the UNHCR, UNICEF, WFP, and WHO is, I believe, self explanatory. They are the international expert bodies in the areas in which they operate. South Africa is a member of the UNO, which is the body under the auspices of which the UNHCR, UNICEF, WHO and WFP have been established.

74. According to the Department of Foreign Affairs:

74.1 On 12 January 1996 South Africa acceded to the UN Protocol Relating to the Status of Refugees. Moreover, in February 1997, South Africa was elected to serve on the Executive Committee of the UNHCR’s Programme, which committee determines general policy under which the UNHCR plans, develops, and administers refugee projects and programmes, and advises the High Commissioner on the discharge of his duties.

74.2 From 1992, UNICEF (under the auspices of the UNHCR) provided support

to NGO's assisting with the return of thousands of South Africans from exile.

74.3 On 3 May 1996, South Africa concluded a Basic Cooperation Agreement, ratified on 8 March 1999, embodying the general terms and conditions under which UNICEF cooperates with the South African government.

74.4 The World Food Programme (WFP) was established in 1961 as the food aid organization of the UN. Although South Africa is not a member of the WFP, apparently for reasons that predate the present democratic dispensation, it has cooperated closely with the WFP in various instances and has contributed to various WFP projects.

74.5 The functions of the World Health Organisation (WHO) include promoting the improvement of nutrition, housing, sanitation and other aspects of environmental hygiene. South Africa was a founding member of the WHO in 1947. Deprived of voting rights in 1964, South Africa was unanimously readmitted as a full member of the WHO in 1994.

75. I submit that it is clear that the policy, principles and standards set by these international organizations are accepted by the global community, specifically including the government of SA.

76. The *Sphere Project* was launched in 1997 by a group of humanitarian NGO's including Oxfam, the International Red Cross and International Red Crescent. Current board members of Sphere include CARE International, the International Federation of Red Cross and Red Crescent Societies, Oxfam and the Salvation

Army.

77. The Sphere Project was launched specifically to address the shortcomings in the humanitarian response to the Great Lakes refugee crisis in 1994, particularly in Rwanda. The express purpose of the project was to develop a humanitarian charter and associated set of minimum standards in conjunction with relevant NGO's and UN agencies, to disseminate the charter and standards widely within the international humanitarian community, and to encourage formal adoption and practice of the charter and standards by relevant relief agencies.
78. By 2004, the Sphere Project produced a Humanitarian Charter and a Handbook of the minimum standards of humanitarian assistance to be applied in such circumstances.
79. I believe, and do so submit, that the Sphere Project Charter and Handbook are widely acknowledged as being the most comprehensive collation of international minimum policy and practice for humanitarian assistance to people affected by disasters. Indeed, I am informed that the First and/or Second Respondents invited the UNOCHA to provide it with specific information and training on Sphere.
80. I submit that it is clear that Sphere Project Charter and Handbook set out the absolute minimum standards that should be implemented in times of such crisis.
81. As is set out in the founding affidavit of the First Applicant, the aforesaid publications are not annexed to these papers because of their length. The Respondents should already have copies of these documents, but I tender to make copies available to them on request.

82. The TAC/ALP Document on Minimum Norms and Standards was delivered to the First and Second Respondents and to Dr Fast together with the recommendation that these benchmarks be the minimum standard of relief applied at all sites of shelter for displaced people in the Western Cape.
83. I attended a meeting on 24 July 2008 at the SAHRC offices with officials from the office of the Premier, and Dr Fast of the JOC. Dr Fast confirmed that she had received a copy of the TAC/ALP Document on Minimum Norms and Standards. She said that it had been disseminated amongst relevant government departments and that government accepted that there is a need to formulate minimum norms and standards. She stated that this has not yet been done, and that a workshop to address this issue will be held within two weeks, but that the process may only be completed within two months. I point out that by that time, many people are expected by government to have left the halls and camps through reintegration or repatriation.
84. At that meeting, I specifically requested that government develop a set of interim minimum norms and standards to deal with the real lived experiences of real people in the camps and halls, right now. I invite the Respondents to indicate what their response is to this.

Attempts To Avoid Litigation And Failure To Properly Engage

85. As I have mentioned earlier we have tried for the last eight weeks to avoid litigation, given the crisis we are facing. We have made many attempts to engage government to improve the conditions in the camps and halls. Regrettably, our efforts have met with failure. In fact, the overall situation is getting worse.

86. The most disheartening aspect of this matter is the lack of any meaningful response from the Respondents to the many issues raised by us in writing as far back as late May 2008.

87. Below I list and attach the letters, requests and memoranda sent by the TAC to the First and Second Respondents and/or to officials representing acting under their authority, regarding this matter. Where applicable, I also indicate whether a response has been provided and attach such reply. In addition to this correspondence, we have had many meetings with officials acting on behalf of the First and Second Respondents:

87.1 29 and 30 May 2008: Letters to First and Second Respondents on alternate shelter. Response from First Respondent dated 29 May 2008 indicating that alternative shelter was being sought and that no forced removals were taking place. Response from Second Respondent dated 2 June 2008 referring us to the First Respondent. **TAC 14-15 and responses are attached as TAC 16-17.**

87.2 4 June 2008: Letter to the President, Premier, Minister of Local Government and Mayor regarding inter alia the conditions at Soetwater camp, and a plan to close it (already attached as TAC 9). I have already referred to the Mayor's regrettable response of 6 June 2008 (TAC 10). The First Respondent replied on 9 June 2008 stating that the Second Respondent is responsible for the camps. The Minister of Local Government responded on 17 June 2008 indicating that he forwarded the letter to 'relevant stakeholders'. **TAC 18-19 respectively.**

- 87.3 4 June 2008: Letter to Provincial MEC for Transport regarding inter alia a plan for transport for people to access school, jobs and health facilities. No substantial response has been forthcoming. **TAC 20.**
- 87.4 5 June 2008: Letter to First and Second Respondents regarding shelter for the Caledon Square Group. The response by First Respondent dated 9 June 2008 stated that the Second Respondent is responsible for the camps (TAC 16 already attached). **TAC 21.**
- 87.5 5 June 2008: Letter to Minister of Education and Provincial MEC for Education regarding *inter alia* arrangements for displaced learners to attend schools and to defer their half yearly examinations. Response from the Head of Education Ministry dated 19 June 2008 and again on 14 July 2008 by S Mafanga-Kibi for the Head of Education. **TAC 22-24** Further response by TAC dated 11 July 2008 marked **TAC 24 B.**
- 87.6 9 June 2008: Supporting affidavit of the TAC in the matter between Province of the Western Cape and City of Cape Town, Cape High Court case number 9247/08. I do not attach a copy of this because of its length, but will make a copy available on request.
- 87.7 10 June 2008: Correspondence between First and Second Respondents, provided to the TAC by the First Respondent, regarding obstacles encountered in accessing community halls that are under the control of the Second Respondent. **TAC 25**
- 87.8 11 June 2008: Letter to First Respondent regarding crisis at Soetwater. No

substantive response was received. **TAC 26**

87.9 12 June 2008: Joint Civil Society Memorandum (signed by 10 organisations) on “Dealing with the Consequences of Displacement”, with 3 annexures (the annexures are not attached hereto). The memorandum was hand delivered to the Respondents on 12 June 2008. No response has been forthcoming. **TAC 27**

87.10 12 June 2008: Memorandum of Demands by the Caledon Square Group and TAC to the First and Second Respondents. A formal response dated 17 June 2008 was received via e-mail communication from Pieter Cronje, stated to be on behalf of the Joint Province and City Task Team, advising that only camps are available to protect and shelter people. **TAC 28-30**

87.11 13 June 2008: Letter to First Respondent regarding Annexure X of the subsequently withdrawn court application by the First Respondent against the Second Respondent. No response was received.

87.12 13 June 2008: Letter to City and Provincial Health authorities. Response was received from Provincial health department dated 18 June 2008 and City health authorities (undated but faxed to TAC on 17 June 2008), confirming that no one can be refused health care simply because they are a foreigner/refugee. **TAC 31-33.**

87.13 20 June 2008: Letter to the Premier regarding the poor response from Joint Provincial and City Task Team. A response was received from the Premier dated 23 June 2008. **TAC 34 -35.**

- 87.14 25 June 2008: Joint Civil Society Memorandum to the Western Cape Provincial Government (PGWC), delivered to Mr Jeremy Michaels. No written response. **TAC 36**
- 87.15 30 June 2008: Letter to Office of the Premier regarding the closure of Ulani Community Hall, forced movement of displaced people, and denial of access to legal support. No response was received. **TAC 37**
- 87.16 4 July 2008: Letter to Office of the Premier regarding humanitarian assistance and basic needs for displaced persons. No response was received. **TAC 38**
- 87.17 11 July 2008: Letter to Premier and Director-General of Province regarding minimum norms and standards for displaced people, delivered on 14 July 2008. **TAC 39**
- 87.18 11 July 2008: Letter to Mayor regarding the advertised closure of community halls housing foreign nationals. No response was received. **TAC 40**
- 87.19 17 July 2008, Letter to Department of Home Affairs (National Immigration Branch and Provincial Manager) and National Minister of Home Affairs regarding the “registration process” for displaced persons in Cape Town. No response was received. **TAC 41**
- 87.20 18 July 2008: Letter to Dr Hildegard Fast, Chair of Joint Operations Centre and Head of the Provincial Disaster Management Centre, regarding

minimum norms and standards for displaced persons crisis. **TAC 42**

88. As a result of our failure to persuade the First and Second Respondents to comply with their legal obligations towards displaced persons we now, as a last resort, approach this Honourable Court for relief.
89. We do this with genuine regret. We have attempted to maintain a co-operative relationship with government over the past two months. We believe that any fair-minded person will conclude that we and our partner organisations in civil society have provided considerable assistance to government to enable South Africa to meet its obligations to displaced persons. We offer our continued co-operation in this regard, and urge government to maintain an open door approach that allows all of us to fulfil our constitutional obligations as government and citizens.

Concluding Submissions On Legal Standards

90. I submit that the conduct of the Respondents has caused continued suffering and trauma for displaced person. I submit that the failure to implement minimum norms and standards in all places of shelter violates the Constitution including the rights to:
- a. life,
 - b. dignity,
 - c. freedom and security of the person particularly to be free from all forms of violence,
 - d. equality,
 - e. health, and
 - f. freedom of movement and residence,

and the children's rights which are associated with these rights

International Duties and Obligations

91. I respectfully submit that in deciding this application, the Court should also have regard to the international obligations of South Africa:

91.1 Guiding Principles on Internal Displacement 1998 specifically including:

91.1.1 Principles 1 and 2 that guarantees internally displaced persons the same rights in international and domestic laws without any adverse distinction;

91.1.2 Principle 3 places the primary duty and responsibility for humanitarian assistance on national authorities with a duty to ensure fairness.

91.1.3 Principle 18 guarantees the rights to food, water, basic shelter and housing, appropriate clothing, essential medical services and sanitation. Special efforts are required from national authorities to ensure the full participation of women in the distribution of these services.

91.1.4 Principle 11 requires respect for dignity and the physical, mental and moral integrity of internally displaced persons. Protection against violence including gender-based violence is guaranteed.

- 91.1.5 Principle 19 includes the right, when necessary, access to psychological counselling and social services. Special attention to the needs of women including to reproductive health care.
- 91.1.6 Principles 6, 8, 10, 14 and 25 affirm the duty of national international authorities to ensure humanitarian assistance and the guarantee of fundamental human rights including life, dignity, movement, family life and living standards in accordance with the principles of humanity.
- 91.1.7 The Guiding Principles on Internal Displacement 1998 is the primary international instrument on the legal framework to protect internally displaced persons.
- 91.2 **the Universal Declaration of Human Rights 1948** specifically Articles 1, 2, 3, 6, 12, 13, 14, 22, & 26. The articles enshrine the rights to life, dignity, housing, equality, personhood, freedom from violence, movement, asylum and social security.
- 91.3 **the International Covenant on Civil and Political Rights 1966**, specifically, articles 2, 3, 6, 9, 12, 16, 18, 24 and 26. The articles enshrine the rights to life, privacy, dignity, equality, personhood, freedom from violence, freedom of movement and the special protection of children.
- 91.4 **the international Convention on the Elimination of All Forms of Racial Discrimination 1969**, specifically Articles 1 and 5. The displaced people in South Africa are without exception black African. The articles guarantee

equality and equal access to housing, health, medical care and social services.

91.5 **Convention relating to the Status of Refugees 1951 and the Protocol relating to the Status of Refugees 1967** specifically articles 3, 12, 13, 17, 18, 21, 22, 23, 24, 25 and 26. These rights include among others equality, personhood, public relief, earn a living, education, administrative assistance and freedom of movement.

91.6 **The Convention Governing the Specific Aspects of Refugee Problems in Africa (1969)**. The Convention in its Preamble the Universal Declaration of Human Rights, and the Un Conventions and protocols on Refugees. Articles 6 and 8 guarantee non-discrimination and the duty to co-operate with the UNHCR.

91.7 **Convention on the Rights of the Child 1989**, specifically, Articles 2, 3, 5, 6, 16, 22, 24, 26, 27, 28, 31, 36 and 39. These obligations include refugee children's rights to non-discrimination, best interests of children, life, freedom from violence, health, social security, physical and psychological counselling, as well as, protection from exploitation.

91.8 The instruments can be made available to the above Honourable Court at its request.

Urgency

92. I submit that this application is by its nature urgent. It involves the daily and

continuing breach of the most fundamental rights of a most vulnerable group of people, resulting in severe suffering and deprivation. I have been advised that if this matter were to proceed in accordance with the ordinary provisions of the Rules of Court, it would not be heard for many months. That would defeat the very purpose of the application.

93. I therefore request that this Honourable Court deal with this application as a matter of urgency, and dispense with the forms, time limits and service provided in the Rules of Court.

94. In the premises I therefore pray that this Honourable Court grant the relief set out in the Notice of Motion.

DEPONENT

I certify that the deponent signed and affirmed this affidavit before me at CAPE TOWN on this 29 day of JULY 2008. He stated that the contents are true and correct; that he has conscientious objections to taking the oath; and that he regards the affirmation as binding on his conscience.

COMMISSIONER OF OATHS