

**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

NOTICE OF MOTION

Mr M S Ash
Deneys Reitz Inc.
021 405 1200

TAKE NOTICE THAT the Applicants intend to make application to the above Honourable Court on **TUESDAY 5 AUGUST 2008**, at **10h00** or as soon thereafter as the matter may be heard, for an order in the following terms:

1. That this application be heard as a matter of urgency, and that the usual forms and periods of notice and service be dispensed with.
2. That First Respondent and Second Respondent be directed to implement forthwith, at the places within the Cape Town Metropolitan Area and any other place at which persons displaced by the xenophobic attacks on foreign nationals are being accommodated as set forth in annexure "**A**" hereto or may in the future be accommodated ("the displacement centres"), the specific standards of accommodation, nutrition, health-care, hygiene, sanitation, security, and access to transport ("the minimum humanitarian assistance standards") as set forth in annexure "**B**" hereto.
3. That First Respondent and Second Respondent be directed to maintain the minimum humanitarian assistance standards at any such displacement centre for as long as any person displaced by the xenophobic attacks on foreign nationals is being accommodated at such displacement centre.
4. That First Applicant and representatives of Second Applicant be given sufficient access to the displacement centres, to investigate, observe, and monitor the implementation of and further compliance by First Respondent and Second Respondent with the terms of this Order.

TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**
Keerom Street
CAPE TOWN

AND TO: **FIRST RESPONDENT**
Care of
The State Attorney
Liberty Life Centre,
22 Long Street, Cape Town,
Western Cape Province
(service by Sheriff)

AND TO: **SECOND RESPONDENT**
Civic Centre,
12 Hertzog Boulevard,
Cape Town,
Western Cape Province
(service by Sheriff)

AND TO: **THIRD RESPONDENT**
Care of
The State Attorney
Liberty Life Centre,
22 Long Street, Cape Town,
Western Cape Province
(service by Sheriff)

Annexure “A”

DISPLACEMENT CENTRES

Every place in the Cape Town Metropole where foreign nationals displaced by the recent xenophobic violence are presently being sheltered, or may in the future be sheltered, until such persons have returned safely to the places from which they have been displaced or resettled, or repatriated, including:

7th Day Church
Africa Family Group Help Mission
Andile Msizi Hall - Khayelitsha
Beautiful Gates
Belhar Mosque
Bellville Refugee Centre
Bellville Methodist Church
Bergvliet Methodist Church
Blue Waters (Strandfontein)
Bo Kaap Yellow Mosque
Bonne Esperance Shelter for Refugee Women and Children
Bothasig Hall
Bridgetown Mosque
Christ Church Kenilworth
Christ our King Revival Church
Chrysalis Academy
Church Without Walls 2
Church of Christ Khayelitsha Site B
Church of God - Lotus River
Daroo Islam Mosque
Desmond Tutu Hall Khayelitsha
Edgemead Methodist Church
Evergreat Bible Church - Summergreens
Foreshore
Full Gospel Church Somerset West
God's Family Church
Goodwood Methodist Church
Goodwood Presbyterian Church
Grassy Park Methodist Church
Harmony (Strand)
His People Church
Holy Trinity Church Gardens
Home of Hope-West Coast Depot, Tableview Association of God
House in Matieland
House in Parrow
Hout Bay Church International
Ikamva Youth Centre

KTC Community Centre
Khayelitsha Site B Community Hall
Khayelitsha 7th Day Adventist Church
Knysna
Lentgeur Mosque
Lighthouse Church
Lighthouse Parrow
Longstreet Artists
Lotus River Methodist
Lower Crossroads Community Hall
Lynn's House
Masibambane
Masjid Al Jaama Mosque
Masjid Ur. Rahman
Mbekweni, Antoniesvlei
Meadowridge Baptist Church
Methodist Church, Belhar
Mowbray Mosque
Mr. M. Abrahams Mandalay House
Muizenberg All Saints Church
Muizenberg Community
Muizenberg Office
New Orleans Park
Norwood Methodist Church, Elsies River
Observatory Methodist Church
Paran Christian Ministeries
Parow Methodist Church
Pinelands Methodist Church
Portlands Mosque
Presbyterian Church
Resource Centre
Richwood
Rondebosch East Mosque
Rondebosch United Church
Rosebank Methodist
Saartjie Baartman Centre for Women & Children
Salvation Army
Scotsdene Youth Centre
Sarepta Sports Centre
Silverstroom (Atlantis)
Soetwater (Kommetjie)
Solomon Mahlangu
St Johns Church Wynberg
Summer Greens
Tableview Liebrant van Niekerk Hall

Tennyson Mosque
Thornton Methodist Church
Universal Evangelical Church
Uyesu Nathi Church, Khayelitsha
Valley Church
Way of Life Church
Woodlands Mosque
Woodstock Methodist church Inner city mission
Wynberg Methodist Church
Youngsfield
Zolani Centre

Annexure “B”

MINIMUM HUMANITARIAN ASSISTANCE STANDARDS

Food and Nutrition

Generally

- Daily food aid is to ensure compliance with the food energy requirement for refugees in emergencies of 2,100 kcals per person per day. 100 kcal should be added for every 5 degrees below 20 degrees C.
- Protein intake should provide at least 10-12% of the dietary energy of the ration. Level of fat intake should provide at least 17% of the dietary energy of the ration.
- Daily food aid is to ensure compliance with daily requirements of vitamins and minerals for a population needing emergency food aid of: 500 µg retinol equivalents (1,666 IU) vitamin A, 0.9mg thiamine (B1), 1.4mg riboflavin (B2), 12.0 mg niacin, 160 µg folic acid, 28.0 mg vitamin C, 3.8 µg vitamin D, 22mg iron, 150 µg iodine.
- Fortified blended foods must meet specific criteria in terms of composition and micronutrient fortification.
- Different foods should be fortified with the appropriately matched micronutrient(s), rather than these being provided through a single fortified food commodity.

Infants and Children

- Every effort should be made to identify ways to breast-feed infants whose mothers are absent or incapacitated. When this is not possible, an average daily ration of approximately 110 g (or 3.3 kg per month) of a bona fide infant formula is required to meet an infant's nutritional needs during the first six months of life.
- Breast-milk substitute must be strictly controlled and meet Codex Alimentarius standards. Adequate cooking fuel, pot, feeding cup and water for frequent preparation must be provided.
- Complementary foods for older infants (6-12 months) and young children must be furnished, and should provide adequate amounts of fats and oils: 30–40 percent of energy should come from fat. Energy derived from protein should be at least 12 percent.

- Energy needs from complementary foods for infants with “average” breast-milk intake in developing countries are approximately 200 kcal per day at 6–8 months of age, 300 kcal per day at 9–11 months of age, and 550 kcal per day at 12–23 months of age.
- For the average healthy breastfed infant, meals of complementary foods should be provided 2–3 times per day at 6–8 months of age and 3–4 times per day at 9–11 months and 12–24 months of age, with additional nutritious snacks offered 1–2 times per day.

Special Needs

- Pregnant women require an additional 285 kcals/day, and lactating women require an additional 500 kcals/day. These groups require the provision of fortified blended food commodities, designed to provide 10–12 percent (up to 15 percent) of energy from protein and 20–25 percent energy from fat. The blended food must be fortified to meet two-thirds of daily requirements for all micronutrients, particularly iron, folic acid and vitamin A.
- Micronutrient supplements for pregnant women: Daily supplements of iron (60 mg/day) and folic acid (400 mg/day). Lactating women: Vitamin A: 400 000 IU in 2 doses of 200 000 IU in an interval of at least 24 hours within six weeks after delivery.
- An adequate diet for older persons must ensure that micronutrient requirements are still met even with reduced energy intakes, and include blended food.
- Physical access to food should be ensured for disabled people.
- The foods distributed should be familiar to the recipients and consistent with their religious and cultural traditions.

Food Quality and Non-Food Commodities

- Commodities furnished must meet official government or Codex Alimentarius standards with respect to packaging, labelling, and shelf-life. All food received should have a minimum shelf-life of six months (except for fresh foods and maize meal) and be distributed well before date of expiry.
- Each household/family should have access to a large-sized cooking pot with handle and a pan to act as a lid; a medium-sized cooking pot with handle and lid; a basin for food preparation or serving; a kitchen knife; and two wooden serving spoons. Each person should have access to a dished plate, a metal spoon and a mug or drinking vessel.

Water

- International standards for emergency situations estimate average water allocation required from 15 to 20 litres per person per day, with additional allocations for communal needs, as well as health centres (40-60 litres per patient per day), feeding centres (20-30 litres per patient per day), schools (3 litres/pupil/day), mosques (2 to 5 litres/person/day), and for hand washing at communal latrines and offices (1 to 2 litres/user/day for hand washing, and 2 to 8 litres/cubicle/day for cleaning.)
- South African law determines 50 liters per person per day in densely-populated, poor areas.
- The maximum distance from any household/family to the nearest water point should be 200 metres.
- Queuing time at a water source should be no more than 15 minutes.
- It should take no more than three minutes to fill a 20-litre container.
- Each household must be provided with at least two clean water collecting containers of 10-20 litres, and sufficient clean water storage containers to ensure the household always has water.
- There must be at least one tap per 80 to 100 people.

Sanitation and Hygiene

Generally

- There must be at least one sanitarian for every 5,000 persons and one sanitation assistant for every 500 persons.
- Latrine should be allocated on a household/family unit basis for the best guarantee of proper maintenance of hygiene. As a second option, sufficient toilets must be provided so that there are no more than 20 people per toilet.
- Toilets must be maintained in such a way that they are used by all intended users.
- Appropriate anal cleaning materials must be available at or near all latrines.
- Toilets should be no more than 50 metres from dwellings.
- Toilets must be safe for children.
- Lighting must provided for safe use of toilets at night.

Solid Waste

- All households/family units must have access to a refuse container and/or should be no more than 100 metres from a communal refuse pit.
- At least one 100-litre refuse container must be available per 10 families, where domestic refuse is not buried on-site.

Bathing and Washing

- Sufficient bathing cubicles must be provided, with separate cubicles for males and females. Facilities must be located in central, accessible and well-lit areas.
- The numbers, location, design, safety, appropriateness and convenience of facilities must be decided in consultation with the users, particularly women, adolescent girls and any disabled people.
- At least one washing basin per 100 people must be provided, and private laundering areas must be available for women to wash and dry undergarments and sanitary cloths.

Personal Hygiene

- Each person must be furnished with or have access to 250g of bathing soap per month.
- Each person must be furnished with or have access to 200g of laundry soap per month.
- Women and girls must have access to sanitary materials for menstruation.
- Sufficient diapers (disposable or washable) must be provided for infants and children up to two years old

Shelter, Settlement and Non-Food Items

Camps and Other Sites

- Temporary planned or self-settled camps should be based on a minimum surface area of 45 square metres for each person.
- Individual family shelter should always be preferred to communal accommodation as it provides the necessary privacy, psychological comfort, and emotional safety.

- Safe play areas should be made available for children, and access to schools and other facilities provided where possible.
- The transportation infrastructure must provide access to the settlement for personal movement and the provision of services.
- Displaced people must not be forcibly restricted to “camps” and must be given freedom to move in and out of camps.

Shelter

- The initial covered floor area per person should be a minimum of 3.5 square metres, although a minimum standard of 4.5 to 5.5 square metres per person should apply in cold climates or urban situations, including the kitchen and bathing facilities.
- Refugee shelter must provide protection from the elements, space to live and store belongings, privacy and emotional security, as well as safe separation and privacy between the sexes, between different age groups and between separate families within a given household as required.
- In cold climates, heavy construction with high thermal capacity is required for shelters that are occupied throughout the day.
- Except for nomadic tribes, tents are not a satisfactory type of long-term shelter. In general, tents are difficult to heat as walls and roof do not provide sufficient insulation. Therefore, tents are not suitable as cold climate shelters, and must be replaced with permanent structures as soon as practicable.
- Climates where cold weather with rain and snow prevail over extended periods (3 to 5 months) demand that people live primarily inside a house. In particular, persons with special needs will require heated, enclosed spaces.
- A comfortable temperature for the inside of a shelter: 15 to 19° C.
- Sufficient space and privacy must be provided for, especially for female-headed households/family units, including the ability to secure the accommodation premises.

Clothing and Bedding

- Every person must have at least one full set of clothing in the correct size, appropriate to the culture, season and climate.
- Individuals should have access to sufficient changes of clothing to ensure thermal comfort, dignity and safety. This could entail the provision of more than one set of essential items, particularly underclothes, to enable laundering.
- Sufficient blankets, mattresses, and tarpaulins must be provided.

- Infants and children up to two years old should also have a blanket of a minimum 100cmx70cm.
- Infants and children are more prone to heat loss than adults due to their ratio of body surface area to mass; additional blankets, must be provided where required, to maintain appropriate levels of thermal comfort.

Health

Access and Practices

- All members of the community, including vulnerable groups, must have access to priority health interventions, including adequate supplies of safe water, sanitation, food and shelter, infectious disease control, basic clinical care and disease surveillance.
- The number, level and location of health facilities must be appropriate to meet the needs of the population.
- Suitable transportation must be organized for patients to reach the referral facility.
- Where user fees are charged, arrangements should be made to ensure that those unable to afford the fees still have access.
- People must have access to a consistent supply of essential drugs.
- All people must have access to health information that allows them to protect and promote their own health and well-being.
- Health personnel must attempt to safeguard and promote patients' rights to privacy, confidentiality and informed consent.

Staffing

- Adequate staffing levels should be achieved so that clinicians are not required to consistently consult more than 50 patients per day.
- The following guidelines establish general staffing levels (the term 'qualified health worker' refers to a formally trained clinical provider, such as a physician, nurse, clinical officer or medical assistant):
 - Community level: one community health worker per 500-1,000 population; one skilled/traditional birth attendant per 2,000 population; one supervisor per 10 home visitors; one senior supervisor.

- Peripheral health facility (for approximately 10,000 population): total of two to five staff; minimum of one qualified health worker, based on one clinician per 50 consultants per day; non-qualified staff for administering oral rehydration therapy (ORT), dressing, etc. and for registration, administration, etc.

Communicative Diseases

- Initiation of outbreak investigation should occur within 24 hours of notification.
- An established laboratory that can conduct the appropriate microbiological investigations for diagnosis confirmation must be identified.
- All children aged 6 months to 15 years must be immunized against measles. All infants vaccinated between 6-9 months of age must receive another dose of measles vaccine upon reaching 9 months, and routine ongoing vaccination of 9-month-old children must be established.
- A TB control programme, integrated with the existing Department of Health programme, must be implemented.

Reproductive Health

- Basic essential obstetric care services should be established at the health centre level as soon as possible. Comprehensive essential obstetric care should be available at the referral hospital.
- Condoms
 - Sufficient supplies of condoms must be provided.
 - People should be aware that condoms are available and where they can be obtained. Condoms should be made available in health facilities and other distribution points for privacy.
 - Condom needs should be calculated using the *Reproductive Health in Refugee Situations* formula, planning for about 12 condoms per sexually active male per month, plus wastage and loss.
- HIV/AIDS
 - The country's national treatment protocols for the provision of anti-retroviral treatment (ART) should be followed. The continuation of ART for people affected by emergencies who were previously on ART should be ensured.
 - Cotrimoxazole prophylaxis should be provided to people living with HIV/AIDS (PLWHA).
 - WHO Essential Drugs for HIV/AIDS management should be accessible.
- Treating Rape Survivors
 - Services for rape survivors must be available at the health care facility 24 hours a day, 7 days a week.

- Minimum care that should be provided to survivors even in the lowest-resource settings further includes a “same language” female health worker or companion in the room during examination; a private, quiet, accessible room with access to a toilet or latrine; examination table; light; sterilization facilities, “rape kit” for evidence collection, drugs for treatment of STIs as per local protocol and for pain relief, emergency contraceptive pills and/or IUD, local anaesthetic for suturing and antibiotics for wound care.

Social and Mental Health

- Access to an ongoing, reliable flow of credible information on the disaster and associated relief efforts must be given.
- Communication must be uncomplicated (understandable to local 12-year-olds) and empathic.
- Individuals experiencing acute mental distress after exposure to traumatic stressors must have access to psychological first aid at health service facilities and in the community.

Annexure “C”

DEPONENTS TO SUPPORTING-, CONFIRMATORY-, & EXPERT AFFIDAVITS

Displaced Persons

1. Adar Abdul
2. Abdi Guure Abdullahi
3. Asad Abdullahi
4. Seraphine Bekenge
5. Mercy Kataruza
6. John Utepa Kizomezi
7. Virginia Malebo
8. John-Dieudonne Mulumba
9. Prisca Munhenga
10. Angelina Nyazvigo
11. Idriss Nzobatinya
12. Deka Omar
13. Agnes Said
14. Zahran Said

Volunteers

1. Stephan Erwin Kratz
2. Oliver Human
3. Belinda Jean Morris
4. Anne Marie Robb
5. Tracy Kim Saunders
6. Nicola Tyson

Expert

1. Professor Astrid Berg

TAC / Aids Law Project

1. Fatima Hassan
2. Gilad Isaacs
3. David Biles
4. H.R.O Carrara
5. H. Mwanjira
6. Elan Abrell
7. Kaja Tretjak