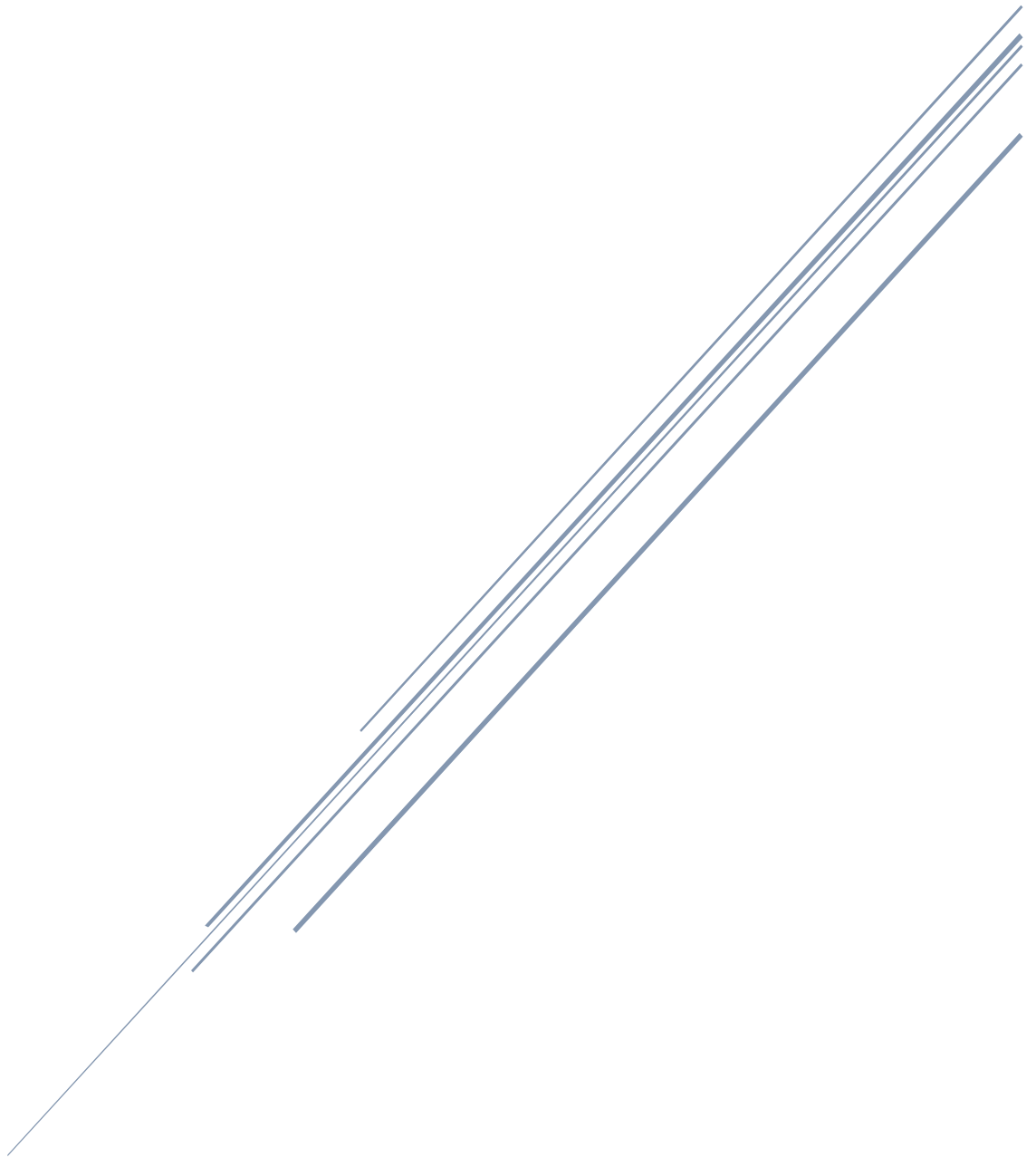


COUNTDOWN TO CLOSURE

A multi-stakeholder response to the Temporary Sites housing refugees and asylum-seekers



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Countdown to Closure

Background

In late-September 2019, a group of refugees and asylum seekers attempted to occupy the UNHCR offices in the CBD of Cape Town. That attempt was thwarted and the group sought sanctuary in the Central Methodist Church at the beginning of October. That sanctuary became an occupation of the Church as the group persisted in their demand for group resettlement to a third country or countries. All engagement with authorities – including DHA, UNHCR, the CoCT, DSD – came to naught because of the group leadership insisting on the fulfilment of their central demand – resettlement.

At the end of December 2019/early January 2020, a leadership tussle between JP Balous and Papi Sukami, split the group with the Balous faction strengthening its grip on the Church, the Sukami faction took up occupation around the Church.

Between November 2019 and March 2020, the Central Methodist Church asked the group to leave the precinct several times, to no avail. Nevertheless, the Church did not apply to evict the group despite the complete cessation of its activities. The history of the Church serving as a place of sanctuary in pre-democracy times was a strong compelling factor in not taking this legal step.

Throughout this time, from October 2019 there was ongoing attempts by a range of governmental departments (including Dept of Home Affairs, the City of Cape Town, Dept of Social Development, the South African Human Rights Commission, SAPS, the UNHCR (and its implementing agencies)) as well as a number of civil society organisations and structures to

deal with the needs and the demands of the 2 groups.

On 15 March 2020 the National State of Disaster was declared, and a National Lockdown ensued with effect from 26 March 2020, a week later. The Regulations under the DMA (Disaster Management Act) provided an opportunity to end the occupation.

When the City of Cape Town conducted an operation to enforce compliance with the City's bylaws, this resulted in the group occupying the precinct around the Church being moved from that space. They eventually took up a position in Albertus Street, near the Central Police Station on 03 March 2020. They were there for nearly 4 weeks. On 02 April, SAPS evacuated the Church under the DMA regulations; that group was taken to a site called Paint City in Bellville. The group around Albertus Street was moved to the Wingfield site near Goodwood.

Integration of 11 families

However, the 11 families who were part of this operation had indicated their willingness to be considered for reintegration, they had been assessed and as lockdown was imposed on 26 March 2020, they were moved as *en groupe* to a guesthouse in Bellville.

Their accommodation costs (R15,000 +R35,000) and some subsistence costs (+/- R10,000 for food and airtime) amounted to over R60,000 for the group of 20 adults and 48 children.

The month was intended to provide a bridge for the families and to assist them in securing more permanent lodging and more steady employment. Unfortunately, the lockdown regulations under Level 5 prohibited moving into rental accommodation or any work options.

On 26 April, their rental period came to an end and the guesthouse owner asked them to vacate the premises. After some negotiations that period was extended to 04 May.

Between 04 May and 21 May the group lived on the streets between Bellville and (eventually a park in) Parow Valley. They were eventually supported with rental assistance so that each of the families were able to make a new start in rental opportunities around the metro at a cost of R50,000.

Durable Solutions

There are 3 broad categories of durable solutions for refugees and asylum seekers: (1) **Voluntary repatriation** (return to their home country when the reasons for their fleeing has dissipated), (2) **Local integration** into the local community of the asylum country (best option); or (3) **Resettlement** to a third country particularly those with limited prospects for local integration or voluntary repatriation, or for those with specific needs who cannot find adequate protection in the country of origin or the country of asylum.

Under international human rights law, the **principle of non-refoulement** guarantees that no one should be re- turned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm.

The principle of non-refoulement applies regardless of whether a person flees from a country that enjoys peace or a country involved in an armed conflict: if there are substantial grounds for believing that the individual in question would be in danger of being subjected to violations of certain fundamental rights, the person cannot be returned. This would be the case, for instance, for a leader of an opposition group who would in all likelihood be tortured or summarily executed upon return.

While the principle of non-refoulement is traditionally understood as protecting against an individualized threat, it may also protect against more situational threats. As many

conflicts are fought on religious, ethnic or political grounds, UNHCR [has argued](#) that civilians fleeing from armed conflicts often face persecution on one of these grounds and qualify as refugees.

Regional instruments, [legally-binding for most African States](#) , also recognize refugee status and protection for persons fleeing armed conflicts or other situations seriously disturbing public order. This means that **involuntary deportation** of refugees or asylum seekers is not permitted where the conditions in the home country do not allow for that.

NB: Resettlement (to a third country) during the global COVID19 lockdown is next to impossible (1) because the South African borders are currently closed, (2) most international borders are closed to cross-border travel, (3) infection rates in traditional reception countries are very high and (4) no invitations from reception countries have been received. This last is a crucial component in the resettlement process.

South Africa has taken a policy position not to establish refugee camps; rather it has chosen to promote local integration as the preferred option for refugees and asylum seekers. This involves providing rights like documentation, administrative assistance and freedom of movement, as well as the rights to work, education, health care and family unity from the outset.

Enabling refugees to become self-reliant pending the realization of an appropriate long-term solution is an important first step towards achieving any of the three durable solutions. Working towards solutions can also reduce the need for irregular onward movements by refugees.

South Africa has not been successful in implementing this policy position over the past 25 years and suffers large backlogs and systemic failures in providing services and

support to the 250,000 refugees and asylum seekers in the country.

Two Options: Local Integration or Repatriation

The Portfolio Committee on Home Affairs called for presentations by various role-players on the status of the two temporary sites.

After consideration of all the options, the Dept of Home Affairs was given the task of reporting back on the possible **repatriation** of the site population; the City of Cape Town was given the responsibility of reporting back on a process of **(re)integration** of members of the site population into local communities.

These are the only durable solutions currently under consideration.

Neither of these options are simple or easy. Both of these options rely on the collaboration of several government institutions across the 3 spheres of government.

Delivery of both options will also require the engagement with civil society structures supporting refugees & asylum seekers and/or humanitarian assistance and/or process facilitation. Successful voluntary repatriation or local integration will depend on all agencies fulfilling their mandate within the spirit and principles of the intergovernmental framework.

Key to the success of either process will also be the contribution of civil society structures to facilitate the welcome and settlement in either a local community in South Africa or back in their home country.

Lastly, and most crucially, both options rely on the cooperation of the members of the 2 site populations; this has been a major stumbling block in negotiations thus far.



The Context: COVID19 A Health Crisis

The primary reason both sites were established was because the occupation at the Central Methodist Church constituted a breach of the COVID19 Regulations under the DMA and the overcrowded conditions inside and around the Church constituted a ready risk factor and vector for infection with the virus.

Dealing with the health risk posed by this group must therefore remain a priority – both in the **palliative** and **preventative** sense.

Key activities in this regard include: screening of the population, testing for the presence of COVID19, identification of high-risk population (including those with co-morbidities), limiting contact (either for spreading or contracting the disease) and encouraging changes in behaviour regarding hygiene and infection control.



Temporary Sites

The two groups were moved to two separated sites. The split had been violent, resulting in assaults – including sexual assaults – damage to property, threats and intimidation.

For this reason, housing the groups in one venue, or even in close proximity to each other, was not deemed practical.



Wingfield

The CoCT moved the group that had taken up occupation in Albertus Street in the CBD to the temporary site erected on land owned by the Dept of Public Works on the grass verge bordering Voortrekker Road near Wingfield. This group consists largely of supporters of Papi Sukami, although some members claim to have turned their backs on JP Balous's leadership – although not his demand for resettlement. This has added to the tensions within the Wingfield site during April and May.

Originally, around 400 people (including children) were moved. The site population has increased to at least 700 people. This has put a strain on the resources allocated to the site. The CoCT has provided the tent, water and showers and electricity to the site; they have also put a semi-permanent Law Enforcement capacity outside of the site. A private security detail is on-site, securing a very porous fence. Access control and overall management of the site and the occupants rest with the site population.

The population was screened and have been provided with some PPE although the wearing of masks is not uniformly observed and other hygiene measures are also not consistently practiced. Because of the lax access control, the population was able to move in and out between the site and the surrounding community, even under Level 5.



Paint City, Bellville

The SAPS moved the occupiers of the Central Methodist Church to the Paint City site. There is a lack of clarity over whose responsibility the site is. The tented site is situated adjacent to a temporary site for homeless people erected by the CoCT. However, the CoCT has had very little engagement with refugee site.



Around 900 people were moved; it is evident that the site population has significantly increased over the 2 months. The site is managed by the organisation WCC, established by JP Balous and his partner, Arline. Notwithstanding his imprisonment on

intimidation charges, Balous continues to exert a strong influence over the site population. In effect, the control exerted by them in the Church has continued unabated. This has made any direct engagement with the site population very difficult. The Dept of Health was even refused to do a health assessment of the site population.

Unlike the group in Wingfield, the group in Paint City has not been assessed – not for documentation, not for health conditions, not for risk factors and not for integration.

They do screen visitors to the site. The rather cramped conditions – worsened by the increase in numbers – makes social distancing very difficult.

This group has been the most consistent in their demand for resettlement to a third country, pursuing this option persistently and aggressively.

It is important to remember that all of the families and individuals in these 2 site populations chose to self-displace from their homes/accommodation/schooling etc in September/October.

The Exit Plan – Coordinated and Joined Up

For 2 months there has been a lack of coordination among the intergovernmental authorities who have set up these temporary sites. Under the DMA regulations, provinces and municipalities are able to establish temporary shelters or sites for homeless people or those who are unable to self-isolate / quarantine themselves respectively. Given that none of the occupation members had tested positive for COVID19 at the time of the moving, it is safe to assume that the

applicable regulations relate to the temporary sheltering of homeless populations.

It is also clear that in the setting up of the two sites, the intergovernmental responsibilities for managing the sites and the provision of services were not clearly delineated. A lack of clarity around overlapping mandates or worse still too narrowly defining those mandates, resulted in very little site management and ad hoc provision of services.

This is the priority – clarifying the respective role and responsibilities across the various government agencies across the sphere of government. An attempt at populating the table of responsibilities is attached at the end of this document.

The Exit Plan: Phase One – Stabilising the Site Population

The DMA Regulations proclaim:

Regulation 10. Shelters and sites identified by the State during [national state of disaster](#)¹

(1) The State shall identify—(a)temporary shelters for homeless people that comply with the necessary [health protocols](#) and adequate spacing standards as provided for in guidelines published by the Director General of Health; and(b)temporary sites for [quarantine](#) and [self-isolation](#) that comply with the necessary [health protocols](#) and adequate spacing standards, as provided for in guidelines published by the Director General of Health, for persons who cannot isolate or [quarantine](#) in their homes.

(2) The provision of the State's resources contemplated in sub regulation (1) shall be for the duration of the [national state of disaster](#), and the use thereof will be subject to conditions determined by the Cabinet member responsible for such resources.

1

https://openbylaws.org.za/za/act/gn/2020/r480/eng/#sec_10

It is unclear whether the DMA regulations specify detailed guidelines for the establishment and running of provincial and municipal temporary sites and shelters. In the absence of COVID19-specific guidelines and norms and standards. However, this does not mean that there are none.

There are national norms and standards that focus on dealing with national disasters². This provides for intergovernmental cooperation where various agencies come together to deliver on their respective mandates in a joined-up fashion. This applies both to the assessment of the risk posed by the disaster and the implementation of a rapid response.

Notwithstanding this, the nature and scale of this epidemiological disaster seems to have overwhelmed state resources and especially in respect of the setting up of temporary shelters and sites.

For this reason, in the management of sites it is useful to refer to the following international guidelines and norms and standards:

- a) In respect of COVID19 response the [NICD COVID19 guidelines](#);
- b) In respect of quarantine sites, the [NICD guidelines](#) and [WHO guidelines](#)

Access Control

Both sites need to exercise better access control. Given that these are both COVID19 regulated sites, that access control ideally should be done by **a combination of security authorities (SAPS/Law Enforcement/SANDF) and representatives of the site population**. Standard Operating Procedures for screening and limiting entry and exit must be put in place; at the very least a system of record-keeping of all visitors and the duration of their stay must be kept. This currently does not exist at either site. However, this must be an

absolute minimum for these 2 COVID19 Temporary Sites.

Population Census:

Both sites have clearly increased their populations. At this stage the verified populations are outdated. The group occupying Albertus Street and moved to the Wingfield site were put through an assessment process and counted, but those numbers and identification need to be updated now.

The occupiers within the Church provided their own lists of occupiers throughout the occupation, with the result that no official site population exists. This group has also resisted any assistance or assessment (by DSD, DoH or DHA) insisting on only working with the UNHCR.

Fixing the population and getting the current breakdown is essential for any subsequent process(es).

This should be the function of the Site Management authority.

Site Management

“Out of camps” or “alternatives to camps” solutions are universally acknowledged as preferable to camps. Camps are costly and can develop a dependency on aid that can be an obstacle to proper integration in society. Camps, where necessary, should be temporary. They must also still conform to certain standards in relation to site selection, planning, coordination and management in a way that takes the specific needs of the camp population into account. All camps must ensure the fulfilment and protection of the rights of occupants including in particular their rights to dignity, housing, water and sanitation services, and access to healthcare. These are in line with international best practice in the establishment and maintenance of temporary

2

<https://www.westerncape.gov.za/text/2013/July/sa-national-disaster-man-framework-2005.pdf>

sites in the face of a humanitarian disaster or emergency. The guiding questions below reflect this international best practice³ and are the minimum standards that should apply. As South Africans we should strive to provide better protections for those who have been moved into shelters to minimise the infection of COVID19 and to flatten the curve.

These minimum standards relate to the following areas as a guide to the various authorities or agencies to fulfil obligations in respect of temporarily sheltering people during the pandemic:

- a) Site Coordination
- b) Water supply, Sanitation and Hygiene promotion (WASH)
- c) Food security and Nutrition
- d) Shelter and settlement to protect against infection
- e) Health concerns

Best practice would recommend that authorities manage the sites with a consultative relationship with the site population. In both current sites, the sites are managed entirely by the site populations and this has made it difficult for a range of other deliverables to be met – most notably in terms of assessing the infection risk and incidence.

The setup of a cooperative multi-stakeholder site management team is crucial at both sites.

The Exit Plan: Phase Two – Closure of the Sites

Once the sites are stabilised, we can start working to closure of the sites. The National State of Disaster was extended by a month to end (at this stage) on **15 July 2020**. The end of the National Disaster will also signal the end

of the operation of the Regulations – and with them, the authority to establish these temporary sites. Before that happens, there is until 15 or 30 July 2020 to determine where the 2 site population members will go once the sites are taken down.

This determination will involve multiple agencies across the different levels of government; it will require collaboration with a number of civil society structures and organisations; it will need the cooperation and participation of the individual families of the 2 site populations and their leadership committees.

Assessment

Both site populations have to be assessed and/or verified both in terms of the COVID19 pandemic as well as being part of a vulnerable group – refugees and asylum seekers. The factors that have to be assessed include the following:

- a) **Health** – COVID19 status, underlying conditions & comorbidities (including HIV, TB, substance abuse)
- b) **Verification** of status & documentation
- c) **At risk assessment** (security) – women and children have been at risk of violence (including sexual violence) throughout the occupation in the CBD
- d) **Economic assessment** – current employment status, skills assessment, previous accommodation address, reason for leaving etc.
- e) **Other Protection Needs**

Reintegration

One of the “durable solutions” promoted by UNHCR in protracted situations is local integration, where refugees are offered

³ These standards are drawn from the international humanitarian best practice contained in the SPHERE 2018 handbook <https://www.google.com/url?q=https://spheresta>

standards.org/wp-content/uploads/Sphere-Handbook-2018-EN.pdf&sa=D&ust=1587033689723000&usg=AFQjCNEYD5t5Udc8sWAVzoWw0eMHboDaIA

permanent asylum and integration into the host society by the host government. As set out in international refugee conventions,¹ local integration refers to the granting of full and permanent asylum, membership and residency status, by the host government. It takes place through a process of legal, economic, social and cultural incorporation of refugees, culminating in the offer of citizenship. Refugees with this status enjoy a range of human and civil rights, often referred to as 'refugee rights', which are set out in the 1951 Convention and other international instruments,² and include the right to marry, to practice one's own religion, to own property, to work and seek employment, and to have access to education and to housing. Under these circumstances, refugees have once again acquired the protection of a state, and are no longer refugees.

With its policy position of eschewing the establishment of refugee camps, this is the preferred option in South Africa; government ought therefore to do as much as is possible to make this happen. We recognise that the extension the wide range of rights is a gradual process and might take time (especially the extension of citizenship in South Africa). However, refugees and asylum seekers do enjoy a range of rights that allow them to integrate into the local community.

In this context (dealing with the 2 site populations) Local Integration comprises extending assistance to the various families to enable them to settle into a local community. The following areas are the most urgent ones that must be attended to:

Shelter: The government will not set up a (temporary) refugee camp; the CoCT has indicated that it would not accommodate the members from the sites in any of the

TRAs; the members of both sites have indicated that they are not willing to be housed or to reside in any informal settlement and feel unsafe in many township areas. The 11 families who were integrated were able to do so because they received some assistance to secure rental accommodation.

Employment: having been in the occupation and now under lockdown for many months, a large chunk of the 2 populations – although not exclusively have no employment and this poses a challenge to their integration in the longer term.

Documentation or lack thereof poses a significant barrier to integration and the accessing a fuller set of rights in country.

Where there is evidence of **trauma** and/or sexual violence, the relevant support services would need to be identified and provided.

Subsistence is linked to the ability to generate income and there may be a need to connect to civil society structures (e.g. the CANs) to assist with food provision.

Safety and Security are major concerns within both populations – and have been fed both by lived experiences and retold narratives. A process of entry into a receiving community – slotting into community structures for instance will need to be facilitated.

Local community and refugee structures – including those supported by the CoCT and DOCS would play an important role in this aspect.

Education and access to schooling opportunities for learners (grade 7 and 12 initially and then in line with the roll out plan of the **WCED**) will need to be identified and facilitated.

Repatriation

Voluntary repatriation, whenever feasible, is of course the most desirable solution to refugee problems. If refugees in complete freedom express the wish to return to their country of origin, it is essential that everything possible should be done to assist them in this regard. The facilitation of voluntary repatriation is one of the basic functions of UNHCR (and of international agencies like the International Organisation on Migration IOM).

The essential need for repatriation to be voluntary is, indeed, the counterpart of the fundamental and generally accepted principle non-refoulement, according to which no person may be returned against his will to a territory where he has reason to fear persecution. Efforts to ensure that repatriation is voluntary, both in the case of individual repatriation and in regard to large-scale repatriation operations, constitute an important aspect of the UNHCR's work in the field.

Closer to home, on the African continent, the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (Article V) in addition to affirming the voluntary character of repatriation, calls upon countries of asylum, in collaboration with countries of origin, to make adequate arrangements for the safe return of refugees who request repatriation. The Convention, moreover, calls upon countries of origin, on receiving back refugees, to facilitate their resettlement and to grant them the full rights and privileges of nationals of the country and subject them to the same obligations. It is further provided that refugees who voluntarily return to their country shall in no way be penalized for having left it for any of the reasons giving rise to refugee situations.

These instruments necessitate certain steps to be followed in the case of pursuing a

repatriation option for the populations in the 2 sites:

- a) Ensuring that the refugees are adequately informed about the situation in their country of origin;
- b) Ensuring the safety of repatriating refugees upon their return and related amnesties;
- c) Establishing the degree of voluntariness of the wish to repatriate;
- d) Ensuring the readiness of governments to re-accept refugees wishing to repatriate

As far as individual refugees are concerned, it may be necessary to obtain travel documents, transit visas, entry permits, etc. The travel costs may have to be covered or even the actual travel to be arranged. In certain cases, it may also be necessary to approach the authorities of the home country with a view to obtaining their agreement to the refugee's return

On the receiving side, the screening of the returnees by the authorities of the home country and the actual movement of returnees to their homes may have to be organized, especially in countries where transportation presents considerable difficulties. In special situations where the returnees may have to walk long distances, special stop-over points will have to be created and interim care and maintenance will have to be ensured. Special projects for the rehabilitation and reintegration of refugees may have to be envisaged involving the provision of homes, health assistance, agricultural equipment and seeds. Such projects may be necessary in order to avoid situations in which repatriating refugees find themselves in a precarious situation.

The agencies most involved in this process would be **DHA, DIRCO, Embassies and**

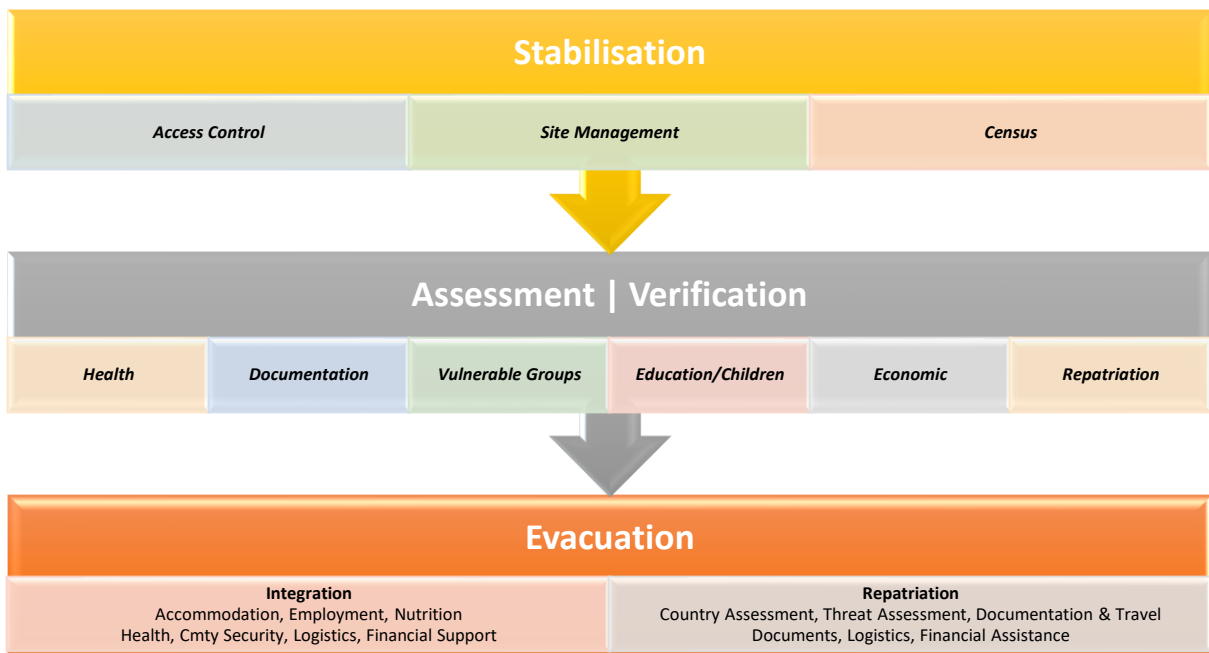
Missions of the countries whence the refugees come, **UNHCR, IOM**

Coordination

It should be clear from the above that a proper multi-stakeholder, joined up and coordinated approach should be followed. Given the complexities of the various national, provincial and municipal agencies as well as the need for engagement with the civil society sector organisations working with the refugee and asylum-seeking communities, it is recommended that the convenor of the multi-stakeholder meeting be the South African Human Rights Commission.

The purpose of this forum would be to populate the plan collectively in line with the respective mandates of the different agencies and structures. It would also meet weekly to ensure proper progress updates. It would also be the structure to engage with site leadership groups about the roll-out of these plans.

Once phase 2 is underway, we recommend that functional responsibility be assigned to the appropriate authority to lead and coordinate also civil society engagement. It is important to note that our intergovernmental framework places the three spheres of government as co-equal with differential mandates.



Roles and Responsibilities

Category	Activity	Wingfield	Paint City
Stabilisation	Access Control	SAPS/CoCT LE / SANDF + Site Cmte	SAPS/CoCT LE(?) / SANDF + Site Cmte
	Site Management	CoCT/DoH + Site Cmte	DoH + Site Cmte
	Site Census	CoCT/DoH/DHA	DoH/DHA
Assessment / Verification	Health / COVID19 assessment	DoH	DoH
	Documentation Verification	DHA/DSD	DHA/DSD
	Vulnerable Groups	DSD/DoH/SAPS	DSD/DoH/SAPS
	Economic Assessment	CoCT/DoL/ WCMRF	CoCT/DoL/ WCMRF
Reintegration	Rental Assistance	CoCT/Civil Society CoCT/	
	Food & Subsistence Support	COVID19 Grants/local CANs / DSD	
	Employment	DoL / WCMRF / Country Community groupings	
	Community Integration	DOCS / CPFs / CoCT /Office of the Premier (social cohesion) / WCRMF	
	Education	WCED	
Voluntary Repatriation	Home Country Assessment	DHA/DIRCO in collaboration with country missions/UNHCR	
	Personal Threat Assessment	SAPS/SSA/DIRCO/UNHCR	
	Travel Documentation	DHA/DIRCO/UNHCR	
	Travel Logistics	DIRCO/UNHCR/IOM	
	Local Community Integration Support	UNHCR/IOM/Local structures	

Project Timeline

To be populated

			WK1	WK2	WK3	WK4	WK5	WK6	Wk7