

SUBMISSION ON THE DRAFT REVISED WHITE PAPER ON CITIZENSHIP, IMMIGRATION, AND REFUGEE PROTECTION

TO: The Director-General, Department of Home Affairs

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FROM: The Office of the President of Al Jama-ah, Hon. Ganief Hendricks, MP

DATE: February 11, 2026

SUBJECT: Formal Objection and Proposed Policy Reform regarding the "First Safe Country Principle"

I. Introduction and Preliminary Remarks

The President of Al Jama-ah, Honourable Ganief Hendricks, has formally engaged the Director-General (DG) of the Department of Home Affairs (DHA) to request a necessary extension for public comments on the Draft Revised *White Paper on Citizenship, Immigration, and Refugee Protection*. Al Jama-ah views this policy framework as a critical juncture for our constitutional democracy, and it intends to raise comprehensive questions when invited to present its ideas and thoughts regarding this revised draft *White Paper* before the Portfolio Committee.

It is our firm conviction that any reform of South Africa's citizenship, immigration and refugee laws must be rooted in the revolutionary philosophy of our liberation struggle; alongside that, we – as democratically-oriented South Africans - owe our profound historical debts to the international community; the latter, by and large, acted as sincere enablers in helping us to achieve our democratic freedom.

Factoring in the philosophy and the historical contingencies, our country's legal landscape of 'refugee protection' is defined by a sophisticated integration of regional Pan-African norms and domestic legislation. At the heart of this framework, it should be stressed, is the 1969 OAU Convention; a legal instrument that provides an expanded definition of a refugee. It includes, for example, the notion of 'flight' from their homeland due to (a) external aggression, (b) brutal occupation, (c) foreign domination, or (d) events that seriously disturbed public order.

South Africa, it needs to be emphasized, has fundamentally internalized these obligations through the Refugees Act 130 of 1998, particularly through Section 1A, which expressly mandates that the Act be interpreted consistently with other legal instruments; these include the OAU Convention, the 1951 UN Refugee Convention, and the Universal Declaration of Human Rights. Section 2 of the Act that codifies the

principle of non-refoulement; it ensures that no person should be refused entry or be returned to a territory where he/she would face persecution, prosecution, or threats to his/her life, liberty, and physical safety.

This statutory protection is, however, reinforced by the South African Constitution under Section 231; a legal document that binds the state to several ratified international agreements; and, moreover, Section 233 obliges the state's courts to prefer interpretations of domestic law that are consistent with international law.

Since the dawn of our South African democracy, the judiciary has played a pivotal role in reinforcing these norms; this is most notably so in the landmark case of *Ruta v Minister of Home Affairs* {(CCT02/18) [2018] ZACC 52; 2019 (3) BCLR 383 (CC); 2019 (2) SA 329 (CC) (20 December 2018)}. In this matter, the Constitutional Court confirmed that the principle of non-refoulement was deeply embedded in South African law through the Refugees Act, asserting that the right to seek and enjoy asylum arises directly from this framework.

By invoking Section 39 of the Constitution, which requires courts to consider international law when interpreting the 'Bill of Rights,' the court ensured that asylum-seekers must be permitted access to the legal system; and, via it, they may have their claims properly assessed before any removal or extradition. This judicial alignment ensures that domestic due process remains anchored in both regional and global protections, effectively ensuring that administrative procedures cannot undermine substantive refugee rights.

II. Objection to the 'First Safe Country Principle' (Clause 3.4.4)

Al Jama-ah categorically objects to the inclusion of Clause 3.4.4, the "First Safe Country Principle," a clause that features in the draft Bill and subsequent Act of Parliament. This clause stipulates that asylum seekers, who have transited through countries considered 'safe and compliant' with international conventions, may be ineligible for asylum in a country such as South Africa; a nation-state that is geographically located at the southern part of the African continent.

It seems that the DHA's drafters extracted this idea from the neo-liberal Brexit campaigner, namely Ms, Susan Evans (a former UK Independence Party); the latter contended that 'refugees should seek refuge in the first safe country they (reach/) come to.' This, for the record, is a deliberate misinterpretation of the UN Refugee Convention (also termed the Geneva Convention).

Nonetheless, while the current DA-managed DHA wishes to argue that its reformulation and rephrasing of the policy aligns with international practices, it essentially – if not erroneously - reduces the strain on domestic systems. In this regard, Al Jama-ah resolutely asserts that this principle is fundamentally faulty and

incompatible with the notion of Pan-Africanism and out of sync with the African Union's Convention as well as with internationalist bonds. These are ones that define South Africa's moral cum ethical identity; one that is inextricably tied to its African and Global South identity.

As a consequence of the presented interpretation, **Al Jama-ah does not support this draft Bill's First Safe Country Principle** as it currently stands. It strongly argues that this reviewed draft document dismally fails to recognize the historic hospitality and the safe sanctuary that were provided to all our dedicated liberation fighters and courageous exiles by our continental neighbours (ranging from Zimbabwe to Tanzania and Algeria) as well as by our liberation movements' global allies (such as the Scandinavian nation-states) and support structures that included the UK-based Anti-Apartheid Movement.

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It is important to make the point that Al Jama-ah further argues that the "First Safe Country Principle" is in the interest of providing a safe place for **European and Israeli war mongers along with genocide perpetrators from Africa!** These groups and organizations are the ones that should not be given safe haven in South Africa and they are the ones who must be either be arrested and deported or jailed for their heinous crimes.

Now, anyone that purposely adopts any form of restrictive measure - as is the case in this draft, effectively bar persons/individuals from nations that were the foundational supporting pillars of our valiant struggle for freedom. Bearing this point in mind and undertaking a close reading of this draft reveals that it not only produced a hastily-designed policy to appease certain partners within the Government of National Unity (GNU), but was a weakly formulated one that is embedded in a Euro-centric, neo-liberal philosophy that essentially undermines and challenges our democratic principles. Worded differently, the drafters literally disrespected our Founding Fathers' legacies when they crafted it; and, for us, this is not only unacceptable but it is basically deplorable and essentially offensive.

Al Jama-ah's firm position is that at no stage should the spirit of the 'architects of apartheid' return and be permitted to frame seemingly liberal policies; ones that are inherently harmful. These not only damage the image of our democratic environment but they tarnish our beings as practicing democrats; on top of this, the party vehemently opposes any group that uses our GNU structures to conveniently revise and deceitfully devise policies that definitively weaken the universal values and collective principles of solidarity that our nation espouse; all of these contributed obliquely and directly towards our collective liberation as oppressed communities and transforming us – the suppressed communities (and even the oppressors) - into a resilient, self-governing nation.

III. The Historical Debt: Solidarity and the "Mecca of Revolutionaries"

The proposed policy, the party underscores, ignores the reality that our citizens encounter. Let it be stated that South Africa is not a destination of secondary convenience, but a first port of call for several reasons; one of it being that the nation is based upon a multi-generational relationship of mutual defence and ideological alignment.

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For example, during the height of the anti-apartheid struggle, Algeria served as the "Mecca of Revolutionaries;" it was, then, a primary sanctuary for our leaders. In 1962, (the late) Nelson Mandela undertook his first clandestine military training under the guidance and support of the Algerian National Liberation Army (referred to as ALN); this was in the town of Oujda.

It was from Algerian revolutionaries and from the notable strategies of Frantz Fanon that Madiba gained his insights and understanding; from them, Madiba learnt 'the art war' and all the tactical necessities of an armed struggle with the sole objective of dismantling 'white supremacy' - propped up by the USA, UK, and Western Europe - in Southern Africa.

Algeria, as matter of interest, did not instruct Nelson Mandela to seek refuge in the "first safe country" that he encountered on his long journey; nay, Algeria provided Madiba with the desired combatting skills, usable passport, and military intelligence as well as the relevant psychological hardening that was required upon Madiba's return to lead the African National Congress' (ANC) armed wing, Umkhonto we Sizwe. And speaking about having been issued a 'passport', Sudan also issued Madiba with a diplomatic passport that is kept in the Johannesburg-based Apartheid-museum.

Perhaps it is of relevance to recall the masses roaring applauses at President Nelson Mandela's inauguration as South Africa's first democratically elected president on 10 May 1994 as the leaders of African states such as Robert Mugabe, Muammar Gaddafi, Fidel Castro, Yasser Arafat and others made their appearance at the event. They amongst others, who supported the liberation struggle, were classified as "A Must Invite Guests" according to historical records and the Nelson Mandela Fund.

Apart from Madiba, Oliver Reginald Tambo also spent significant time in exile in Algeria's capital, namely Algiers; this was where he plotted with others the pathway for an armed struggle. And this was alongside Algerian veterans who had valiantly fought against the French colonial forces. Let it be added that Algeria did not only assist the ANC, but also the PAC (Pan Africanist Congress of (Azania; the PAC's first 'white' member, Patrick Duncan, was appointed as its Chief Representative in Algeria (*PAC Documents* 1959-1992; Kondlo 2009:101).

Factoring in these and to now implement a policy that would deny asylum to an Algerian citizen fleeing instability would be a gross betrayal of our historical narrative. Because of this, **Al Jama-ah wants to unequivocally reiterate the point that it does not support the First Safe Country Principle** in this amended draft. If our beloved country, for some strange reason, do so as a result of not having critically reviewed its defective amended policies, then all of us will witness how these would effectively shut the doors to the very nation-states' peoples who opened theirs for our compatriots. So, the rhetorical question is: would it be fine to adopt these types of policies that would over time destroy our image?

V. Frontline Sacrifices and Global Comradeship

Our closest allies were, *inter alia*, Cuba, Palestine, Egypt, Ethiopia, Ghana, Tanzania, Zambia, Angola, Mozambique, and Libya; each of these nation-states provided the military, financial, and logistical framework that sustained the ANC, PAC, BCMA (Black Consciousness Movement of Azania) and other liberatory movements whilst they were in exile. The Frontline States took the brunt of the apartheid regime's aggression; their societies suffered massive damages to their infrastructure and they lost countless law-abiding citizens because they refused to expel the South African resistance fighters who they expediently labelled as 'terrorists.'

Lest all of us forget, the apartheid regime's despicable policies were, ironically, accepted and approved by the USA, UK and Western European countries; nations that did not object to Madiba being referred to as a 'terrorist' even after he was democratically elected and appointed as South Africa's first democratically appointed political leader.

It will historically be recalled that when Mandela visited Fidel Castro, he affirmed with pride that Cuba's victory at Cuito Cuanavale; it broke the myth that the apartheid army was invincible (and, of course, sustained – as mentioned earlier - by the Western nation-states). If Cuban citizens, for argument sake, were to seek safety here in our country today amidst increasing geopolitical volatility and the Western nation-states' institutional pressures, then they would not find South Africa to be a gracious nation; nay, they would experience it as an unfriendly state that adopted a set of restrictive transit policies; ones that were crafted and set in line with the Democratic Alliance's (DA) secular values; ones that are consistently promoted by its leadership that are tied to American cum European standards. These, in many ways, are very distant from African values that are embedded in the philosophy of *Ubuntu*.

Currently, the USA's anti-Cuban policies have harmed them deeply; these destructive policies have been transferred to all others – including South Africa - who have relations with them; so, our South African government has been critiqued by the American administration for its pro-Cuban stance. In a similar manner, the American regime gave all its support to the rogue Israeli state – that is also shielded by the DA

without our democratic environment – despite its dreadful and despicable policies towards the Palestinians with whom democratic South African government has a healthy relationship; their mutual ties were developed over the decades because the Palestinian leadership under Yasser Arafat and its subsequent leaders identified with the ANC's anti-apartheid struggle.

Considering the geopolitical realities of the Palestinian struggle, Yasser Arafat, it should be stressed, was one of Madiba's closest allies; he addressed a joint sitting of Parliament regarding the Palestinian Liberation Organization's (PLO) contributions to South Africa's liberation. The PLO's input resulted in Libya's Colonel Muammar Gaddafi providing invaluable resources for the ANC's- and even the PAC - armed struggle.

As a South African political party, it acknowledges the testimony of the President of Western Sahara's President who highlighted that while Morocco supplied tanks to aid the then contemptable apartheid regime, the Polisario Front captured 60 of those tanks and sent them via other supportive African states to the ANC; this was to help defend the territories of the frontline nations. In light of these deep-rooted military and political alliances, **Al Jama-ah wishes to reinforce the view that it does not support the First Safe Country Principle** in this pro-European, neoliberal draft legal document.

If adopted as it appears at present, then it would indeed cruelly - if not inhumanely – openly deny peoples from occupied Palestine and occupied Western Sahara to seek refuge in South Africa. It should not be overlooked that thousands of Palestinians have been massacred and thousands of Western Saharans have remained oppressed; they are still being maimed and killed; their communities are all deliberately destabilized by, among others, their occupiers; all of these developments, sadly, are with the tacit approval of the mentioned Western nation-states.

V. Proposed Policy Alternative: The "Exemption for Liberation Allies"

Al Jama-ah's position is fairly obvious as regards this amended draft Bill. Considering the arguments expressed above and factoring in all the related/relevant arguments, it decided to propose an alternative policy or rather a differently formulated one.

In place of the restrictive Clause 3.4.4, Al Jama-ah proposes the following alternative provision and this is to be considered when revisiting and revising the amended draft Bill and Act:

"Recognizing South Africa's unique historical debt to the international community, asylum seekers from nations that provided strategic, military, or material support to the South African liberation movement between 1948 and 1994 shall be granted a 'Liberation Solidarity Exemption.' These applicants shall not be subject to the First Safe Country Principle and shall be eligible to apply for asylum in the Republic of South

Africa as their primary destination of choice, regardless of their transit route, in recognition of the long-standing bilateral bonds and shared revolutionary history."

Keeping this proposal on the radar, H.E. Wamkele Mene, a South African national, serves as the Secretary General of the African Continental Free Trade Area (AfCFTA) Secretariat. In this capacity, he leads efforts to promote intra-African trade and economic integration. Now, if our GNU government decides to adopt the amended draft as it is, then Al Jama-ah wishes to make mention of the fact that the implementation of the First Safe Country principle, via the bill, could potentially disrupt AfCFTA's objectives.

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It would not only be limiting the asylum seekers' movement between and among African countries, but it would inevitably affect the regional economic integration and cooperation project in SADC; and it would possibly develop into strained relations within and beyond Africa's diverse regions – be it in the neighbourhood or at a distance. And, in the process, they would be adopting dissimilar instead of similar principles. The rhetorical question is: should our GNU government allow the amended draft text to be implemented and undo all the work towards a Pan Africanist continent?

Interesting to observe is the statement that was made by the DHA's (DA) Minister whose hands are quite visible in the amendments and reformulations of selected clauses. He remarked that South Africa cannot be regarded as a "haven for all." While that statement seems to reflect the notion that he is doing it in South Africa's interest, it also hides that which he, in fact, does not wish to make known. In other words, while it is acknowledged that there is a need to tighten the country's porous borders for the sake of internal and external security, it cannot be ignored that he subtly stressed the idea of the exclusion of African and Asian groupings.

At this juncture permit this submission to take a slight pause by turning its attention to a related matter; and that is that there is a need to point out the following: over the past two to three decades, many South Asians (Pakistanis and Indians), Southern Africans (such as Zimbabweans and Malawians), and Far East Asians (including China) who have legally entered and settled in South Africa – and not ignoring those who are illegal and who should be repatriated - contributed rather handsomely towards the country's economy.

Some of them have, for example, set up commercial ventures and charitable causes that contributed towards the lessening of the country's current challenges on different fronts; they have, according to reports, assisted towards poverty reduction in certain areas where they are active; they have made inputs to address the inequalities that exist in selected places, and they have helped to tackle the unemployment issues where they encountered the phenomenon. These are indeed positive developments that the DHA and related government bodies cannot afford to push aside; they, in fact, should factor in before they craft their clauses or make amendments that are not only unhealthy but that are injurious to the country's economy.

For some reason, their collective contributions and positive impact seem to be absent from the country's statistics; and, on some fronts, this helped to reinforce certain sectors to adopt negative attitudes towards those who, for example, come from South Asia and West Africa. So, instead of marginalizing and shunning them, they should be embracing and welcoming them. As a consequence of consciously marginalizing them, this resulted in the rise of xenophobia in South Africa's urban areas.

Amidst the xenophobic attacks, South Africans overlooked the country's trade with the rest of Africa. Continentally, it may be argued that Africa is indeed South Africa's major trading block compared to both North Africa and Western Europe. According to the statistics, about 25–30% of South Africa's exports go to African countries and that says much about South Africa's trade relations with the continent.

Worded in a different way: Emphasis should be laid on the fact that South Africa sells more across the African continent than what it buys; this is reflected in South Africa's overall trade contributions where major continental companies (such as MTN and Shoprite) have demonstrated their abilities to open and penetrate new African markets. Despite this, very few pundits in economics make mention of this; and the question is: why is it that not much said about this potential growth area?

Many are silent about it because certain circles still favour continuing trade relations with the North (that is, with the Europeans and Americans) rather than with the South (that is, Africa and Asia); this is in spite of the potential trading opportunities that exist in Africa and Asia respectively. Comparatively speaking, the USA's trade with South Africa is much smaller than its trade with China; since this is the case, should this not be seen as a positive outcome? Nay, this subtly shows that both the Americans and Europeans are favoured during the current circumstances that they – as allies - politically dominate.

That said and returning to conclude, Al Jama-ah drives home the position that South Africa must remain a haven for all who supported the anti-apartheid struggle. None of us in South Africa should forget that nations like Nigeria and Egypt placed the ANC on their annual national budget to support the anti-apartheid cause. That having been the case, none of us can deny the backing that they gave the ANC, PAC, and others who fought for liberation. If their contributions are overlooked, then as a democratic state – as a sovereign nation – our dignity is indirectly dented if not destroyed.

As Al Jama-ah concludes its submission, it wishes to restate the view that **Al Jama-ah does not support the First Safe Country Principle** in the way it has been formulated in the amended draft; in addition to this, it cannot identify with the way it treats African countries' refugees in which it publicly disregards the sameness of fate that is shared between our people and those of others on – and even outside - the African continent.

Our peoples, it should be reinforced, are inextricably tied by the philosophy of *Ubuntu*. Connected to that is the fact that our party powerfully advocates the ideals of Pan Africanism; an ideological construct that desires to break down all the constructed borders. These are ones that were deliberately erected as part of the colonial forces' 'divide and rule' policies; a set of policies that not only harmed most Africans to this day, but that has psychologically, socially, culturally, politically, and economically injured each and every African nation-state very deeply!

At this point, Al Jama-ah repeats by holding the view that the Minister's statement: "South Africa cannot be a haven for all," is devoid of an anti-racist focus on Citizenship, Immigration, and Refugee Protection. The Minister's (manufactured) announcement comes across as "anti-black" targeting African migrants while ignoring migrants that hail from Europe and the USA. Perhaps as a reminder, another rhetorical question tied to these should be posed and that is: should all of us forget that the apartheid state brought into our country many East Europeans - during the 1980s - to literally bolster its numbers to reinforce its racist position? Allow one to raise another question: Should all of us conveniently overlook the fact that Janusz Walus, who comes from that region, was instrumental with the white extremists in murdering Chirs Hani, an anti-apartheid icon?

VI. Conclusion

Before Al Jama-ah offers its final words and bringing this submission to a close, it wishes to briefly point out that though much of the submission gave its attention to the 'First Safe Country Principle', it did not say anything about the 'merit-based selection criteria,' a provision that is quite controversial and highly debatable. Along with the 'First Safe Country Principle', this particular provision not only undermines our country's Constitution but it also injures our image as a hospitable, friendly, and open nation-state.

If our GNU opts to consider pushing this amended draft *White Paper* as part of the country's freshly-adopted legislation, then the party shudders to think about its outcomes in the years ahead; it will in the end, counter the ideals of African unity by shattering them and it will effectively destroy Pan Africanism as a process towards that unity.

Leaving that aside and without intentionally sidestepping it, allow the party to pose the following question: How can we – as South Africans - deny asylum or refuge to those from Palestine, Western Sahara, Zimbabwe, Mozambique, and others when they played a decisive role in giving effect to our liberation? Nearly every African country and a handful of Asian nations contributed to the freedom that we all enjoy today.

Clause 3.4.4 of the Draft *White Paper* cannot be applied in a vacuum; it should be seriously reflected upon since its contents have massive implications for our region

and our continent's history. Late President Mandela and successive administrations benchmarked our policies against the standards of the African Union (AU) and the UN Human Rights Commission; all of these important documents emphasize social protection and, of course, the *Ubuntu* philosophy.

South Africa's refugee policy, Al Jama-ah underscores, functions within a complex ecosystem where domestic statutes, constitutional mandates, and Pan-African treaties converge. While the Refugees Act and its 2020 amendments have introduced stricter administrative hurdles, the judiciary serves as an essential corrective mechanism to maintain alignment with international standards.

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This was recently exemplified by the May 2025 Western Cape High Court ruling, which found parts of these amendments unconstitutional for narrowing access to the asylum system and failing to comply with non-refoulement obligations. Ultimately, through the continuous application of precedents like the Ruta case (mentioned in the beginning of this submission) and a strict adherence to constitutional principles, South Africa maintains its role as a regional – if not a continental - leader in refugee protection while navigating the ongoing tensions between migration management and its normative commitments under Pan-African law.

Al Jama-ah recommends maintaining the following:

- **African Solidarity:** including with those allies who held our hands during the liberation struggle, while calling for strict, legal, and orderly immigration processes.
- **Support Lawful Immigration:** fellow Africans and those from countries who were our allies during the anti-apartheid struggle, with legitimate needs should comply with South African laws;
- **Anti-Illegal Immigration:** the DHA should - in an unbiased way - tackle illegal immigration of those “seeking refuge” in South Africa from their criminal and genocidal activities elsewhere. Our country's borders must be secured to prevent not only undocumented individuals, but mercenaries who carried out acts of war and genocide in other countries.
- **Support for Refugee Management:** refugee camps should be managed effectively and orderly whilst processing documents of foreign nationals.
- **Vigilantism against foreigners:** Al Jama-ah strongly condemns the violent attacks orchestrated by a ‘third force’ and carried out by organisations such as Dudula; their vigilante cum xenophobic attacks only target African and Asian immigrants.
- **Economic Justice:** Introspection on the current inequality and poor service delivery should be done to avoid economic struggles and should be directed at fellow Africans, refugees and immigrants who qualify for a chance for a better and safe living environment.

Al Jama-ah remains committed to ensuring that the positive legal reforms emerging from this draft *White Paper* should reflect the values of unwavering loyalty; one that defined our journey from Egypt's Cairo to South Africa's Cape Town and Senegal's Dakar to Tanzania's Dodoma, and 'Morocco's Rabat to Madagascar's Tananarive; and more recently, the noteworthy solidarity song: '*From Cape Town to Gaza...Joburg to Ramallah...*'. So, as a party, its legal expertise will look at further considerations for substantially reform and provide detailed questions – and responses - to the Portfolio Committee.

And this is to ensure that our democratic laws are not cunningly constructed to appease and pacify the current 'architects of apartheid' (along with those from the North that desire to marginalize those from the South) via reshaping and re-engineering the existing legal instruments to meet their specific needs and not those of all South Africans. Nay, the reviewed and revised laws should be amended to rather honour the "Mecca of Revolutionaries;" that is, those who made our democracy possible and those who are in the vanguard to make sure that we all - as Africans - take our rightful place in an ever-changing, face-paced global village.