For attention: Mr Sihle Mthiyane

Email: whitepaper@dha.gov.za

15 February 2026

Dear Mr Mthiyane and Ms Diketso Ratau

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We as Kopanang Africa Against Xenophobia (KAAX) and Helen Suzman Foundation (HSF) hereby attach our written submission in response to the invitation for comments on the Draft Revised White Paper on Citizenship, Immigration and Refugee Protection.

Should you have any queries, it would be appreciated if you could contact me at the following email address: media@kaax.org.za

Yours Sincerely

Mike Ndlovu

Media Co-Ordinator

1. Introduction

1.1. The Department of Home Affairs ("DHA") has returned with a revised version of the 2024 White Paper on Citizenship, Immigration and Refugee Protection: Towards a Complete Overhaul of the Migration System in South Africa ("White Paper").

1.2. This revised version represents a significant retreat from the previously ill-advised recommendations that sought to withdraw South Africa from its international law obligations in favour of a xenophobic and populist approach.

1.3. While many of the proposals would be unobjectionable in a different context, several recommendations appear to be transplanted from jurisdictions that do not face South Africa's protracted administrative challenges, nor operate within the same regional context where climate change, political instability, and economic precarity drive migration flows.

1.4. The White Paper further overlooks that many of its proposals are premised on conditions that have not yet been met domestically. This is particularly evident in its reliance on digitisation within a country where only 78.9% of the population has access to the internet.[1] According to Stats SA: poorer households rely on cheaper smartphones and prepaid mobile data; they are far less likely to have fixed home broadband, a second device (laptop/tablet), or stable power/data budgets needed for heavy uses (work, online learning). Stats SA shows mobile access is the dominant form nationally, but fixed access is concentrated in wealthier metros (e.g., Cape Town, Johannesburg).

1.5. This concern recurs throughout the document.

1.6. The White Paper proposes four broad policy reforms: Refugee Protection Policy Reforms; Citizenship and Naturalisation Reforms; Intelligent

[1] https://datareportal.com/reports/digital-2025-south-africa

Population Register and Civil Registration Policy Reforms; and Immigration Policy Reforms.

1.7. The White Paper also seeks to align South Africa's immigration framework with the National Development Plan ("NDP"). The NDP affirms that the Constitution requires South Africa to build "a united and democratic South Africa, able to take its rightful place as a sovereign state in the family of nations", and articulates broad objectives aimed at eliminating poverty and reducing inequality.

1.8. KAAX commends the Department for incorporating certain public comments, including the removal of proposals such as withdrawal from the 1951 Convention Relating to the Status of Refugees.

1.9. We further submit that human rights must remain the primary guiding principle for all migration and immigration policies. Economic growth and national security, while legitimate policy objectives, cannot be pursued at the expense of fundamental human rights. Migration must be framed in a way that prioritises dignity, inclusion, and equality, recognising historical and structural inequalities.

1.10. However, in its current iteration, several remaining proposals risk entrenching inequality and fail to honour South Africa's international law obligations.

2. Cross Cutting Constitutional and Institutional Reform

1.1. KAAX submits that advancing constitutional democracy and strengthening the rule of law requires addressing deficiencies in the immigration framework that undermine the obligation to respect, protect, promote and fulfil the rights contained in the Bill of Rights, which apply to all persons in South Africa, save for expressly reserved citizenship rights.

1.2. The White Paper often frames migration in terms of national security or economic benefit. KAAX submits that such framing risks entrenching xenophobic narratives and exclusionary practices. Policies must recognise that migration is an inherent and permanent aspect of humanity and that social cohesion is best achieved through inclusion programmes rather than restrictive measures.

1.3. In addition, policies that limit access to South Africa based on points systems, merit criteria, or first-country principles risk disproportionately affecting poor and racialised groups. Measures must therefore be

designed with equity, historical context, and anti-poverty considerations in mind.

2. Civil Registration, Identity, and Legal Status

1.1. Birth Registration

1.1.1. Section 3.3.2 of the White Paper addresses universal digital registration of births and recognises that legal recognition is a fundamental right of every child, while acknowledging the various barriers that may prevent registration at birth.

1.1.2. KAAX welcomes the proposal that all children be registered at birth regardless of the status of their parents, thereby ensuring that children do not face barriers arising from their parents' immigration or other status.

1.1.3. A persistent and critical omission, however, is the failure to address existing backlogs in late birth registrations. This omission is particularly concerning given the centrality of birth registration to the enjoyment of a range of constitutional rights.

1.1.4. KAAX submits that the White Paper should be revised to address:

1.1.5. the scope and scale of the problem of late birth registration, including relevant statistics; and

1.1.6. a clear, systemic proposal for addressing both existing backlogs and future late registrations.

1.2. Stateless Children

1.1.1. The White Paper attempts to address gaps in the law relating to stateless children. However, KAAX submits that it fails to create a realistic, clear, and certain process for addressing statelessness.

1.1.2. The White Paper presents three possible pathways for determining a child's statelessness but does not specify when or how each pathway should be applied. This lack of clarity risks leaving children suspended in prolonged statelessness.

1.1.3. Where a child is deemed not to meet the requirements for South African citizenship, the White Paper does not address the child's legal status thereafter, raising the prospect of an international law limbo.

1.1.4. Children's citizenship should not be conditional on a "risk of statelessness" alone. All children born and raised in South Africa should be recognised as

part of the community, in line with *Minister of Home Affairs v Miriam Ali and Others [2018] ZASCA 169.*[2]

1.1.5. It is assumed that such a child may apply for asylum or refugee status. However, this would impose additional burdens, particularly if Refugee Reception Offices are relocated to ports of entry. The financial, safety, and logistical implications for children—especially unaccompanied minors—are severe.

1.1.6. KAAX submits that the policy should be revised to provide a clear, accessible pathway for statelessness determination and the issuance of documentation to affected children.

2. Intelligent Population Register

1.1. KAAX does not oppose the modernisation of the population register. However, the White Paper proposes the use of artificial intelligence within an intelligent population register in the absence of a legislative framework regulating such technology.

1.2. While South Africa has legislation governing access to information and data protection, there is no comprehensive framework regulating the use of artificial intelligence in a manner consistent with the Bill of Rights.

1.3. Biometrics and other sensitive data must be carefully managed, with clear limitations on scope, purpose, and affected populations. Digital processes must be accessible to all, including migrants who may have limited technological access or skills.

1.4. KAAX submits that the White Paper should include an explicit proviso that artificial intelligence will only be utilised once an appropriate legislative framework has been adopted, particularly given the sensitivity of the information to be collected.

2. Death Registration

1.1. The White Paper acknowledges that prior death registration may not be possible in cases such as religious burials. However, it then suggests that burial without death registration may constitute concealment of death, a common-law crime typically associated with obstructing the course of justice.

[2] https://www.saflii.org/za/cases/ZASCA/2018/169.html

1.2. This approach risks criminalising communities in rural or remote areas who lack reasonable access to DHA offices and may be forced to delay burial rites.

1.3. Should the White Paper seek to criminalise concealment of death, it must do so with narrowly tailored qualifications that protect communities acting in good faith and in accordance with customary or religious practices.

2. **Institutional Architecture, Oversight and Administrative Capacity**

1.1. The White Paper proposes the creation of several advisory and review bodies, including a Citizenship Advisory Panel and a single Home Affairs Review/Appeals/Waivers/Exemptions Authority.

1.2. The White Paper proposes the establishment of a Citizenship Advisory Panel ("CAP") under section 3.1.5 as an independent oversight body. However, it provides no detail regarding its composition, the number of members, or the process by which members will be appointed or elected. This jeopardises the transparency and accountability of the panel which must be reinforced to prevent xenophobic capture.

1.3. The White Paper also proposes the formal creation of an Immigration Advisory Board ("IAB"), following its reconstitution by the Minister under section 3.3.6.1. While the IAB is originally constituted under the Immigration Act, it is unclear whether the proposed board will replicate its predecessor or constitute an entirely new body. The lack of accountability and transparency is witnessed in the current Immigration Advisory Board which has enforced that every member sign a non disclosure agreement, and to date since its inception there has been no public report on its deliberations.

1.4. The White Paper refers only to representatives of organised labour and four appointed experts, without specifying the total number of members or the criteria for appointment to the IAB.

1.5. The White Paper refers inconsistently to a Home Affairs Administrative Review and Appeals Authority and a Home Affairs Review, Appeals, Waivers and Exemptions Authority under section 3.4.6 and 3.3.7.2 respectively.

1.6. This body is intended to conduct independent reviews and appeals of administrative decisions made by DHA and its entities. It is implied that it would subsume existing bodies such as the Standing Committee for Refugee Affairs and the Refugee Appeals Authority.

1.7. The proposal is poorly articulated and confusing. The absence of clarity regarding the structure, mandate, and even name of this authority prevents meaningful engagement by commentators and invites speculation as to the purpose of this merger, including weaponizing bureaucratic processes to the detriment of asylum seekers and refugees.

1.8. As with the previous White Paper, this version also fails to address how DHA intends to confront and clear the protracted backlog of applications. In a parliamentary reply dated 19 November 2025,[3] the Minister reported the following unprocessed applications:

> "There are *429* cases at first instance adjudication (RSDO level), *8 353* cases before the Standing Committee for Refugee Affairs (SCRA), *76 552* cases before the Refugee Appeals Authority (RAASA) and *3 173* cases pending on judicial review."

1.9. In the absence of a detailed plan on how to address current backlogs, this will simply handover the current administrative crisis to the next iteration and further entrench backlogs.

1.10. While the White Paper reviews selected refugee-related case law, it fails to engage with jurisprudence arising from other areas of immigration law. KAAX reiterates its previous concern that this omission deprives commentators of insight into the jurisprudential consequences of repealing or amending the Immigration Act.

1.11. We therefore submit that:

1.11.1. The institutional bodies mentioned above must be revised and have their mandate, scope, composition, and appointment processes clearly defined in order to have meaningful public input.

1.11.2. Increase reference to already established case law in order to ensure that any statutory changes are in line with current jurisprudence.

1.11.3. Provide clear steps on how the current backlog in the Department will be cleared without creating additional bureaucratic burden on DHA staff and hurdles for migrants awaiting permits. As a Priority it is recommended that the Department set out measures to address the quality of decision making from the RSDO through the appeals process including what is currently in place being the Refugee Appeals Authority of SA-RAASA and the Standing Committee on Refugee Affairs- SCRA

[3] https://pmg.org.za/committee-question/34151/.

2. Asylum System Restructuring and Access to Protection

1.1. Mixed Migration Flows and Opportunistic Asylum Applications

1.1.1. Section 2.1 (iv) of the White Paper refers to "mixed migration flows" and "opportunistic asylum applications" and suggests that processing delays are attributable primarily to the volume of applications received.

1.1.2. This framing is disingenuous. While high application volumes may affect workflow, the White Paper fails to acknowledge well-documented systemic challenges within the Department, including staff shortages, corruption, and institutional instability, poor quality of decision making, all of which have been widely reported.[4]

1.1.3. In its submissions on the previous White Paper, KAAX noted that DHA attributed poor decision-making to underqualified staff. The revised White Paper appears to retreat from this position, instead placing responsibility on the volume of applications.

1.1.4. Additionally, it cannot credibly be asserted that asylum applications are processed without discrimination, particularly in light of numerous cases where courts have been required to intervene and undertake "good cause" assessments themselves.

1.1.5. South Africa must accept that change and migration across borders is a permanent and inherent aspect of humanity, and consequently a framework for inclusion with an action plan that considers social cohesion is something we must work towards.

1.1.6. KAAX submits that policy reform cannot be premised on a singular explanation for widespread institutional failure. Meaningful reform requires a candid acknowledgment of multiple systemic shortcomings in order to propose viable solutions.

1.2. First Safe Country Principle

1.2.1. The White Paper (like the previous version) proposes the introduction and enforcement of the First Safe Country Principle. In essence, this involves the prevention of the secondary movement of asylum seekers by requiring them to lodge applications for refugee status in the first safe country reached. The White Paper frames its motivation for the adoption of this policy by arguing that "it is designed to combat the phenomenon of

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4 https://lawyersforhumanrights.b-cdn.net/wp-content/uploads/2020/09/Corruption-Report-V4-Digital.pdf

applicants "picking and choosing" South Africa as their preferred destination, while passing through other safe countries on their way to South Africa".[5]

1.2.2. The White Paper indicates that the implementation of this reform proposal is dependent on:[6]

1.2.2.1. The Minister designating safe countries that have ratified the 1951 Convention and to withdraw such designation as the need arises; and

1.2.2.2. It will mandate the Government to enter into bilateral agreements with safe third countries in order for the burden of migration in sub-Saharan Africa to be shared on a more equitable basis.

1.2.3. Although the White Paper acknowledges that the implementation of the First Safe Country Principle should be done in such a manner as to not violate the principle of non-refoulement, it falls short in unpacking the other criteria that has been attached to the implementation of this proposed reform. Courts in other jurisdictions with arguably similar international law obligations as South Africa and constitutional guarantees have ruled that the following criteria must be taken into account by a country wishing to deport an asylum seeker to the first safe country he or she encountered or to a third safe country:

1.2.4. It has been found that the non-refoulement principle requires that when a State proposes to remove an asylum seeker to a third country it must undertake a proper and thorough assessment as to whether removal to that country is actually safe.[7] It prohibits removal to a country where a danger of subsequent deportation to an unsafe country exists. In other words, the asylum seeker should not be at risk in a third country of subsequent refoulement to a place at risk in violation of the 1951 Convention.

1.2.5. In addition, where a country is a party to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,[8] Article 3 requires it to –

[5] Page 11 of the White Paper, paragraph 1.1.1.
[6] As above.
[7] See the deliberations of the European Court of Human Rights in 2000 in T.I. v United Kingdom. (Available at https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-5105%22]}).
[8] South Africa is a party and has domesticated the Treaty through the implementation of the Prevention and Combatting of Torture of Persons Act of 2013.

Not expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture;

And for the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

1.2.6. The European Court of Human Rights has held that the latter means that protection afforded by Article 3 is absolute and imposes an obligation not to expel any person who would "run the risk of being subjected to such treatment".[9]

1.2.7. The proposed designation of safe countries and the entry into bilateral agreements with safe third countries will have to adhere to these criteria. The White Paper should be amended to incorporate such, so as to guide the development of criteria to determine designated safe countries or the entry into bilateral agreements should these reforms be pursued. In the absence of bilateral agreements that meet these criteria, as a minimum, it is not clear how Home Affairs intends to implement the First Safe Country Principle.

1.2.8. The White Paper does not refer to burden sharing but seems to imply it. Article II(4) of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa encourages other Member States, in the spirit of African solidarity and international cooperation to take appropriate measures to lighten the burden of Member States that find difficulty in continuing to grant asylum to refugees. Burden-sharing is part of the 1951 Convention as well and has been used on an ad hoc basis across the world. The UN High Commissioner for Refugees has noted the following in this regard: "Burden-sharing is a key to the protection of refugees and the resolution of the refugee problem. However, international solidarity and burden-sharing is not a pre-requisite for respecting the principles of non-refoulement and asylum".[10] However, the Department seems to outsource burden sharing to the Department of International Relations

[9] Saadi v Italy 2008 (Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-85276%22]}).
[10] Burden-sharing = Discussion Paper submitted by UNHCR Fifth Annual Plenary Meeting of the APC (at page 6). Available at https://www.iom.int/sites/g/files/tmzbdl486/files/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/rcp/APC/2000-Discussion-Paper-UNHCR-submission-5th-plenary.pdf

and Cooperation and agreements on aspects such as deportation have not been reached.[11]

1.2.9. We submit that each refugee must be assessed individually, taking into account their individual factors. For example, a homosexual refugee from Uganda must pass through other African countries to reach South Africa – these countries may not explicitly or directly criminalise homosexuality as such, however they face discrimination through social stigma and arrest under associated laws such as vagrancy laws. Under the First Safe Country principle, it may be argued that the lack of direct criminalisation constitutes a country as 'safe' when in reality, it is not.

1.3. Replacement of ZEP permits

1.1.1. In Helen Suzman Foundation and Another v Minister of Home Affairs and Another,[12] the Court made it clear that in deciding on the future utilisation or termination of the Zimbabwe Exemption Permit the Minister of Home Affairs must follow a fair process that complies with the requirements of sections 3 and 4 of the Promotion of Administrative Justice Act 3 of 2000.[13]

1.1.2. The White Paper makes no reference to this ruling or the process to be followed by the Minister in making decisions about the continued utilisation or not of said permits. Yet, in paragraph 3.3.5.1, the White Paper proposes the establishment of bilateral agreements with neighbouring countries to enforce the First Safe Country Principle and note that a key element of this policy proposal include, amongst others (own emphasis):

1.1.3. "Facilitating regional labour mobility in line with the new labour migration policy by enabling skilled, semi-skilled, and low-skilled workers from our immediate neighbouring countries to legally work in South Africa under structured and cooperative migration agreements. This will replace the colonial labour bilateral agreements that were used to exploit economic migrants from the region. It will also replace the dispensation permits that have been issued to our neighbouring countries such as Zimbabwe, Lesotho and Angola".

1.1.4. Whilst KAAX is not against such a new dispensation per se, we are recommending the inclusion in the White Paper of a brief discussion of the above mentioned High Court ruling so as to ensure that in the negotiating of a new dispensation with neighbouring countries, the

[11] https://pmg.org.za/committee-question/33274/
[12] [2023] ZACPPHC 490.
[13] At par 147.

Minister does not stray from the Court's ruling to follow a fair process with those currently holding these permits.

2. **Relocation of Refugee Reception Offices**

1.1.1. The White Paper supports an approach where the First Safe Country Principle and the Relocation of Refugee Reception Offices to ports of entry run hand in hand. We deduce from this approach that it wants to stop asylum seekers at our borders. It seems to us that since the Department realised that it would not succeed in limiting access to socio-economic rights for asylum seekers by withdrawing from the 1951 Convention, it is attempting to stop asylum seekers from entering the country (without stating it in an overt manner) and thereby deny them any constitutional claims to the rights contained in the Bill of Rights.

1.1.2. The White Paper proposes the relocation of RROs to ports of entry to "facilitate immediate assessment of asylum claims and limit the ability of asylum seekers still awaiting the outcome of their applications to compete with impoverished communities for resources".[14] In a further attempt to limit entry into the country it proposes virtual appeals and adjudication processes.[15] In unpacking this policy proposal, the White Paper states that "all initial asylum applications must now be processed at designated ports of entry, including virtually, preventing undocumented asylum seekers from entering South Africa and applying inland".[16]

1.1.3. In our submission on the previous White Paper, we highlighted a number of prominent cases shaping refugee case law in South Africa. (See paragraph 3 of our previous submission). The principle of non-refoulement, which our courts have found to allow asylum seekers entry into South Africa and to remain here until their applications for refugee status are finally determined means that any proposal to stop asylum seekers at our ports of entry will likely not pass constitutional muster.

1.1.4. Submissions in the past to proposed policy changes have asked that the Department provide a costing for the establishment of what is in reality a camp. There is no indication how the Department will make provisions with respect to capacity to ensure that asylum seekers' claims for refugee protection are processed within the time period stipulated. The current

[14] Paragraph 1.1.1 on page 11.
[15] As above.
[16] Page 51 at paragraph 3.4.5.

waiting period for an asylum seeker to have their claim for refugee protection processed has been anything between 10 to 15 years

2. Conclusion

1.1. KAAX recognises the Department of Home Affairs' efforts to revise the White Paper and to incorporate certain public comments, including the removal of proposals that would have placed South Africa in direct conflict with its international law obligations. These changes reflect an acknowledgment of the constitutional and legal constraints within which migration policy must operate.

1.2. However, significant concerns remain. Several proposals in the White Paper are premised on institutional capacities, technological infrastructure, and regional agreements that do not yet exist or remain inadequately defined. In the absence of clear implementation frameworks, safeguards, and accountability mechanisms, these proposals risk exacerbating existing administrative failures and entrenching inequality rather than resolving them.

1.3. Of particular concern is the continued failure to confront systemic backlogs, governance weaknesses, and the jurisprudential consequences of proposed reforms. Policy reform cannot succeed where it obscures institutional shortcomings, shifts responsibility onto migrants and asylum seekers, or relies on speculative future developments such as digitisation, artificial intelligence, or bilateral agreements without concrete legal and operational foundations.

1.4. KAAX further submits that several proposals—particularly those relating to the First Safe Country Principle, the relocation of Refugee Reception Offices, stateless children, and the replacement of dispensation permits—raise serious constitutional and international law concerns. Without clearer safeguards, these measures risk undermining the principles of non-refoulement, procedural fairness, and the best interests of the child.

1.5. KAAX therefore urges the Department to further revise the White Paper to ensure that its proposals are grounded in South Africa's constitutional framework, informed by existing jurisprudence, and responsive to the lived realities of those affected by the migration system. Meaningful reform must strengthen, rather than erode, the rule of law and South Africa's longstanding commitment to human dignity, equality, and accountability.