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For the Government of Eritrea

THE SUPREME COURT OF ERITREA
ASMARA, ERITREA

In the Matter of:

Case No.: SC130726THO00001

Thomas Samuel Aron,
plaintiff

(The passport and exit visa case)

Vs

Government of Eritrea,
defendant

GOVERNMENT'S MOTION TO DISMISS COMPLAINT

PROOF OF SERVICE: executed via CAAM on all parties.

GOVERNMENT’S MOTION TO DISMISS COMPLAINT OR, IN THE ALTERNATIVE, FOR PARTIAL DISMISSAL AND REMAND

1. PRELIMINARY STATEMENT

1. The Government of Eritrea respectfully moves under Rules 24, 31, 32, 41, and 43 of the Rules of Procedure of the Supreme Court of Eritrea for an order dismissing the Complaint. In the alternative, the Government requests dismissal of Count Four and the claims for immediate issuance, nationwide structural relief, monetary compensation, costs, and litigation expenses, followed by remand of any surviving passport question to the Department of Immigration and Nationality.
2. The Complaint begins from a correct but incomplete premise. Constitution of Eritrea 1997, article 19(9), protects a citizen's right to leave and return to Eritrea and to be provided with a passport or other travel document. That right is important, but it is not absolute. Individual liberty exists within a constitutional community whose Government must protect national security, public safety, public order, the country's economic well-being, and the rights of others. Citizens, in turn, must defend the country, complete lawful national service obligations, and comply with law. Constitution of Eritrea 1997, articles 25(2)-(3), 25(7), 26(1).
3. The Complaint repeatedly alleges that the Government identified no statutory authority for its decision. Complaint paragraphs 2, 17, 37, 47, 52. That proposition cannot survive examination of the governing legislation. Proclamation 24/1992 expressly regulates regular travel documents, makes a valid travel document and exit visa prerequisites to departure, authorizes the Secretary to establish conditions for exit visas, and permits refusal on specified grounds. Proclamation 24/1992, Travel Documents and Immigration, articles 5(3), 11-13. Regulation 4/1992 separately prescribes passport and exit-visa application requirements, including supporting authorization for an Eritrean leaving for education. Regulation 4/1992, Travel Documents and Immigration, articles 4, 17(1)-(4), 17(11)(a).
4. More fundamentally, the Statement of Agreed Facts does not identify the legal or factual ground on which the Department acted. It establishes only that officials did not communicate an explanation to the Applicant. Statement of Agreed Facts paragraphs 12-13. Absence of a communicated explanation is not an agreed fact that no lawful ground existed. The Complaint converts that silence into additional factual conclusions--that the Government had no legal basis, no administrative standard, no constitutional justification, and no factual reason--that the Government never stipulated. Complaint paragraphs 2, 17, 32, 37, 42, 47, 52.

5. Rules 31 and 32 make that omission dispositive at this stage. Facts outside the Statement of Agreed Facts ordinarily may not be considered, and this Court does not receive evidence or resolve factual questions. Without an agreed administrative ground, decision record, current application, or agreed fact that the Applicant ever applied for an exit visa, the Court cannot perform the necessity and proportionality analysis demanded by article 26. Rules of Procedure of the Supreme Court of Eritrea, rules 31-32.
6. Count Four fails independently. Eritrea's accession to the International Covenant on Civil and Political Rights binds Eritrea on the international plane. But Eritrea follows a dualist approach under which a ratified treaty does not automatically become a domestically enforceable cause of action. The Complaint identifies no National Assembly law incorporating the Covenant and no enactment creating a private claim for damages or injunctive relief under it. Constitution of Eritrea 1997, article 32(4); Report of the Detailed Findings of the Commission of Inquiry on Human Rights in Eritrea, U.N. Doc. A/HRC/29/CRP.1, paragraph 287 (2015).
7. The constitutional structure confirms that movement rights are limitable. Article 26(3) expressly identifies rights that may not be limited and includes freedom of thought, conscience, and belief under article 19(1), but it does not include the travel and passport right in article 19(9). Constitution of Eritrea 1997, article 26(3). The deliberate distinction within the same constitutional article forecloses the Complaint's treatment of article 19(9) as an effectively unconditional command.
8. The Court should therefore dismiss the Complaint. If it concludes that the Article 19(9) question should be retained, the constitutionally restrained disposition is to dismiss the legally defective counts and remedies and return the matter to the Department for consideration of a current, complete application under the governing law. The Court should not issue a passport itself, award unproved damages, or assume legislative supervision of the national passport system.

2. RELIEF REQUESTED

9. The Government requests an order: (a) dismissing the Complaint for failure to establish, on the stipulated record, an unconstitutional governmental action; (b) alternatively, dismissing Count Four and all theories asserted under articles 2, 14, 15, 16, 21, 26, 28, and 49 as independent causes of action; (c) striking the demands for immediate issuance of a passport and exit visa, nationwide administrative rules, monetary compensation, costs, and litigation expenses; and (d) if any Article 19(9) claim remains, remanding that limited matter to the Department of Immigration and Nationality without prejudging the merits of a current application.

3. GOVERNING STANDARD

10. Rule 43 authorizes a motion that identifies the procedural order sought and the precise reasons supporting it. Rules 24 and 41 require a party to identify the applicable legal issues and grounds. Rules of Procedure of the Supreme Court of Eritrea, rules 24, 41, 43.
11. A complaint should be dismissed when the agreed facts, even taken as true, do not establish a violation of the governing law or when the relief requested exceeds the Court's constitutional authority. The Applicant bears at least the initial burden under article 28(2) of identifying a fundamental right that was denied and an action that legally constitutes its violation. Constitution of Eritrea 1997, article 28(2).
12. This Court's procedure makes the Statement of Agreed Facts controlling. Facts not contained in that statement ordinarily may not be considered. If material facts have not been agreed, the Court may require a revised statement, decline jurisdiction, or make another appropriate order; it may not ordinarily conduct discovery, hear testimony, or decide evidentiary disputes. Rules of Procedure of the Supreme Court of Eritrea, rules 4, 31-32.
13. Constitutional adjudication also requires restraint. The Court must decide only questions necessary to dispose of the proceeding and should avoid unnecessary constitutional rulings. Comparative and international decisions may assist interpretation, but they are not binding. Rules of Procedure of the Supreme Court of Eritrea, rules 73-74.
14. The Government assumes that the Constitution of Eritrea 1997 supplies the governing constitutional law and that this Court may review the legal sufficiency of the Complaint. The Government does not, through this motion, contest the Court's institutional premise or the Applicant's Eritrean citizenship.

4. AGREED FACTS MATERIAL TO THIS MOTION

15. The Applicant began work at a local administration in 1997. His assignment was later formalized as national service, and he reported to Sawa in 2004 when directed to do so. A Medical Board subsequently found him medically unfit for national service. Statement of Agreed Facts paragraphs 2-7.
16. In 2019, the Applicant received a scholarship to study computer programming in Germany. He then sought his first Eritrean passport. Statement of Agreed Facts paragraphs 8-9.
17. Officials told the Applicant to provide no-objection letters from the local administration and his government employer, proof of national-service exemption, and identity documents. He produced those items and submitted a passport application. Statement of Agreed Facts paragraphs 10-11.

18. The Department denied that application without communicating an explanation, and it likewise denied later applications without stating reasons. The Applicant informally sought assistance from influential persons, but no passport issued. Statement of Agreed Facts paragraphs 12-13.
19. The agreed statement does not identify the date or contents of each application, the official who decided it, the complete administrative record, the operative legal ground, whether the no-objection letters constituted the support required by Regulation 4/1992, article 17(11)(a), whether the Applicant sought formal administrative redress, or whether he ever filed an exit-visa application.
20. The Applicant later attempted to leave without authorization in December 2019 and January 2021. His arrests, detention, treatment in custody, and challenges to those actions are expressly excluded from this case. Statement of Agreed Facts paragraphs 14-17.
21. After the first incident, the German university allowed the Applicant to defer admission. The agreed statement says the repeated obstacles ultimately deprived him of the educational opportunity, but it does not identify the scholarship's monetary value, the date on which it ended, any tuition or wages lost, or what portion of the asserted loss resulted from the passport decision rather than later events excluded from this proceeding. Statement of Agreed Facts paragraphs 16-18.

5. ARGUMENT

5.1. ARTICLE 19(9) DOES NOT CREATE AN AUTOMATIC AND UNCONDITIONAL ENTITLEMENT TO A PASSPORT AND EXIT VISA

22. Article 19(9) must be read as part of the Constitution as a whole. It protects movement and access to travel documentation, while article 25 requires citizens to comply with law and article 26 permits properly confined limitations serving national security, public safety, the country's economic well-being, health or morals, prevention of disorder or crime, or protection of the rights and freedoms of others. Constitution of Eritrea 1997, articles 19(9), 25(7), 26(1).
23. The Constitution thus rejects the premise that the individual right is absolute. It also rejects an unlimited appeal to the "greater good." A restriction must rest on a purpose enumerated in article 26(1); the limiting law must be consistent with the principles of democracy and justice, apply generally rather than single out a person arbitrarily, preserve the essential content of the right, and identify the constitutional authority for the limitation. Constitution of Eritrea 1997, article 26(1)-(2). The Government's position is therefore not that public interest ends the inquiry, but that the public interests expressly recognized by the Constitution permit proportionate administration of passports and departure.

24. Article 26(3) makes the point especially clear. It identifies rights that may not be limited and expressly includes freedom of thought, conscience, and belief under article 19(1), but omits the travel and passport right under article 19(9). Constitution of Eritrea 1997, article 26(3). The Constitution's deliberate distinction between two rights in the same article prevents the Court from treating article 19(9) as an unconditional command.
25. Passport administration serves collective interests without extinguishing the right. Identity verification, confirmation of lawful civic obligations, fraud prevention, orderly departure, and individualized assessment of risks to national security, public order, and the rights of others are legitimate regulatory functions. Requirements for a complete application, supporting authorization, and case-specific review are materially different from a categorical prohibition on all foreign travel; they preserve a lawful route by which eligible citizens may obtain travel documents.
26. The text does not say that every application must be granted immediately or that possession of the documents initially requested by an official conclusively establishes eligibility. It does not eliminate identity verification, national-service review, fraud prevention, exit-control procedures, or consideration of national security and the interests of the country. Reading article 19(9) as an automatic entitlement would render the Constitution's limitations clause and the Legislature's regulatory scheme largely meaningless.
27. International law follows the same structure. Article 12(2) of the Covenant recognizes freedom to leave, while article 12(3) permits restrictions provided by law and necessary to protect national security, public order, public health or morals, or the rights and freedoms of others. International Covenant on Civil and Political Rights, articles 12(2)-(3), December 16, 1966, 999 U.N.T.S. 171. The Covenant therefore does not convert every passport application into a ministerial demand that must be granted without administrative examination.
28. Comparative authority likewise recognizes that international travel may be regulated and that serious national-security and foreign-affairs interests can justify passport restrictions. *Zemel v. Rusk*, 381 U.S. 1, 14-15 (1965); *Haig v. Agee*, 453 U.S. 280, 306-10 (1981); *Regan v. Wald*, 468 U.S. 222, 241-42 (1984). Those decisions are not binding, but they demonstrate that recognition of a right to international travel does not eliminate lawful passport administration.

5.2. ERITREAN LAW EXPRESSLY GOVERNS PASSPORTS AND EXIT VISAS

29. The Complaint's assertion that the Department acted without statutory authority is incorrect as a matter of law. Proclamation 24/1992 defines a travel document to include a passport and assigns regular travel documents for work, tourism, education, and other valid purposes to the Secretary of Internal Affairs. Proclamation 24/1992, Travel Documents and Immigration, articles 3(5), 5(3).

30. The same Proclamation provides that no person may leave Eritrea without a valid travel document and exit visa. It authorizes the Department of Internal Affairs to issue exit visas and the Secretary to determine the conditions and validity period. Proclamation 24/1992, Travel Documents and Immigration, articles 11-12.
31. Article 13 further permits the Secretary to forbid an exit visa when a competent court has restricted departure, when the person has been summoned to appear in specified proceedings, or when the Secretary believes on valid grounds that departure might affect the security or interests of the country. Proclamation 24/1992, Travel Documents and Immigration, article 13.
32. Regulation 4/1992 implements that Proclamation. A new applicant must establish nationality and submit the prescribed form and photographs. The Regulation states that a person "authorized" to receive a travel document receives it upon payment of the fee, confirming that submission of preliminary materials does not itself complete the authorization decision. Regulation 4/1992, Travel Documents and Immigration, article 4(1)-(4).
33. For departure, the Regulation requires an exit visa and assigns its issuance to the Immigration Authorities. An Eritrean leaving for education must submit "support from concerned organs." Regulation 4/1992, Travel Documents and Immigration, article 17(1)-(4), 17(11)(a).
34. The parties stipulated that the Applicant supplied the documents officials communicated to him. They did not stipulate that those documents satisfied every legal requirement, that the two no-objection letters constituted the support contemplated by article 17(11)(a), or that the competent authority granted the authorization contemplated by Regulation 4/1992, article 4(3). Statement of Agreed Facts paragraphs 10-12.
35. Proclamation 24/1992 predates the Constitution. That chronology does not make the statute disappear. The coherent reading is to construe its security and national-interest provisions within the legitimate purposes and safeguards of article 26. A contrary rule would create a legal vacuum in the very field Article 19(9) necessarily expects the State to administer.
36. Article 26(2)(c), which requires a law limiting a right to identify the constitutional article authorizing the limitation, cannot reasonably require a 1992 enactment to cite a Constitution adopted five years later. The provision should operate prospectively as a drafting command and presently as a rule of narrow construction. The Court can construe "security or interests of the Country" in Proclamation 24/1992, article 13(3), to encompass only the legitimate interests enumerated in Constitution of Eritrea 1997, article 26(1). That interpretation respects constitutional supremacy without erasing the Legislature's passport framework.
37. The Proclamation does not abolish the essential content of Article 19(9). It creates the mechanism by which passports and exit visas are issued and identifies conditions under which departure may be regulated. Proclamation 24/1992, Travel Documents and Immigration, articles 5, 11-13. The facial existence of that framework defeats the Complaint's repeated premise that the Department possessed no legal authority.

5.3. THE AGREED RECORD CANNOT SUPPORT AN AS-APPLIED CONSTITUTIONAL JUDGMENT

38. The Applicant asks the Court to decide that the particular denials were arbitrary, unnecessary, and disproportionate. That conclusion requires the Court to compare the Government's actual ground against the legitimate purposes in article 26 and determine whether the restriction was suitably tailored. The parties did not place the actual ground in the Statement of Agreed Facts.
39. "Denied without explanation" means that no reason was communicated to the Applicant. Statement of Agreed Facts paragraph 12. It does not establish that no reason existed, that the decision rested on no administrative standard, or that the Secretary lacked valid grounds. The Complaint's contrary statements are argumentative conclusions rather than agreed facts.
40. Rule 31 supplies the procedural answer. This Court ordinarily may not consider facts outside the agreed statement. When material facts are missing, it may direct a revised statement, decline jurisdiction, or make another just order. Rules of Procedure of the Supreme Court of Eritrea, rule 31.
41. Rule 32 prevents the Court from repairing the omission by receiving the underlying files, examining officials, or resolving factual disputes. Rules of Procedure of the Supreme Court of Eritrea, rule 32. The constitutional question cannot be decided by assuming the very factual proposition--absence of valid grounds--that the Government did not agree to and that the Applicant must establish.
42. The deficiency is especially clear concerning the exit visa. The agreed facts describe passport applications, but no paragraph states that the Applicant filed an exit-visa application that the Department adjudicated. Statement of Agreed Facts paragraphs 9-13. The concluding characterization in paragraph 19 cannot substitute for the missing operative fact of an application and decision.
43. The record also contains no current application. The known applications arose around a 2019 scholarship, followed by later events through 2021. Statement of Agreed Facts paragraphs 8-17. A 2026 mandatory order cannot properly issue without a current application, current destination and purpose, current supporting documents, and a current administrative determination.
44. Because this Court is designed to decide law rather than disputed facts, dismissal without prejudice is the appropriate result. Alternatively, the Court should direct a revised Statement of Agreed Facts identifying the operative administrative ground or remand for a current decision. It should not enter constitutional judgment on an incomplete stipulated record.

5.4. COUNT ONE FAILS TO PLEAD A COMPLETED VIOLATION OF ARTICLE 19(9)

- 45.Count One assumes that producing the initially requested documents transformed the constitutional right into an unconditional command to issue a passport. Complaint paragraphs 35-39. Neither article 19(9) nor the governing legislation supports that proposition.
- 46.Article 19(9) secures meaningful access to travel documents; it does not prevent the Government from determining whether the application is complete, whether the asserted purpose is valid, whether the applicant has obtained support required by law, or whether a constitutionally permissible ground affects departure. Constitution of Eritrea 1997, articles 19(9), 26; Proclamation 24/1992, Travel Documents and Immigration, articles 5, 11-13; Regulation 4/1992, Travel Documents and Immigration, articles 4, 17.
- 47.The Court need not decide that every past denial was lawful. It need decide only that the agreed facts fail to establish unlawfulness. Because the decisive administrative ground is absent and the Court cannot find facts, Count One should be dismissed without prejudice or returned for a current administrative determination.

5.5. COUNT TWO IMPROPERLY EXPANDS ARTICLES 15 AND 24

- 48.Article 15(2) provides that no person shall be deprived of liberty without due process of law. It does not create an unbounded procedural code for every administrative decision. The Constitution addresses movement and passports specifically in article 19(9) and addresses administrative questions specifically in article 24. Those provisions, rather than an abstract enlargement of article 15, govern this dispute.
- 49.Article 24(1) guarantees respectful treatment and "quick and equitable answers." It does not expressly require a written opinion, disclosure of sensitive information, or an agency-created appellate tribunal for every passport decision. Constitution of Eritrea 1997, article 24(1). The agreed facts establish that the Department decided the applications; they do not establish disrespectful treatment or unreasonable processing delay.
- 50.Article 24(2) protects the right "to seek due administrative redress." It does not provide that officials must initiate redress for the applicant. Constitution of Eritrea 1997, article 24(2). The agreed facts identify informal requests to influential individuals, not a formal request for reconsideration, a written demand for reasons, or invocation of an established administrative-redress procedure. Statement of Agreed Facts paragraph 13.
- 51.The Complaint alleges that no appeal procedure was offered, but that assertion does not appear in the Statement of Agreed Facts. Complaint paragraph 42; Statement of Agreed Facts paragraphs 1-19. Rule 31 bars treating that disputed assertion as established.

52. A rule that every passport denial must contain public written reasons could also conflict with legitimate protection of security information and official sources. If the Constitution requires reasons in a particular case, the form and permissible confidentiality of those reasons should first be addressed by the responsible agency and Legislature. Count Two's demand for a judicially created nationwide procedure exceeds the text of article 24 and should be dismissed.

5.6. COUNT THREE IS DERIVATIVE AND CANNOT STAND WITHOUT AN ESTABLISHED RESTRICTION AND GOVERNMENTAL GROUND

53. Article 26 supplies the standard for evaluating a limitation; it is not an independent factual substitute for showing what the Government did and why. Count Three simply repeats Count One and asserts that the unknown ground was unlawful, unnecessary, and disproportionate. Complaint paragraphs 45-49.

54. Proportionality is relational. A court cannot decide whether a measure was necessary or narrowly applied without knowing the governmental objective and the operative measure. The agreed statement contains neither. Count Three therefore fails on the controlling record.

55. The Complaint also incorrectly assigns the Government the entire burden before the Applicant establishes a prima facie infringement unsupported by law. Complaint paragraph 46. Article 26 contains no burden-shifting rule. At minimum, an Applicant seeking relief under article 28 must establish an actual restriction, its legal character, and facts permitting constitutional comparison. Constitution of Eritrea 1997, articles 26, 28(2).

5.7. COUNT FOUR DOES NOT STATE A DOMESTIC CAUSE OF ACTION UNDER THE ICCPR

56. The Government acknowledges that Eritrea acceded to the ICCPR on January 22, 2002, and that the Covenant entered into force for Eritrea on April 22, 2002. United Nations Treaty Collection, International Covenant on Civil and Political Rights, status for Eritrea.

57. International binding force and domestic direct effect are different questions. The Constitution assigns ratification of international agreements to the National Assembly "by law." Constitution of Eritrea 1997, article 32(4). The Complaint identifies no law that incorporated the ICCPR as directly enforceable domestic law and no legislation authorizing a private damages action under articles 2 or 12 of the Covenant.

58. The United Nations Commission of Inquiry described Eritrea as a dualist State in which ratified international treaties are not automatically included in the domestic legal framework and require integration through domestic measures. Report of the Detailed Findings of the

Commission of Inquiry on Human Rights in Eritrea, U.N. Doc. A/HRC/29/CRP.1, paragraph 287 (2015).

59. Article 49(2)(a) gives this Court sole jurisdiction to interpret the Constitution and determine the constitutionality of laws and governmental action. It does not itself create jurisdiction to issue a free-standing declaration of international responsibility under an unincorporated treaty. Constitution of Eritrea 1997, article 49(2)(a).
60. The Covenant may serve as persuasive interpretive material under Rule 74, particularly because its article 12 resembles articles 19(9) and 26 of the Constitution. But interpretive assistance is not an independent cause of action. Rules of Procedure of the Supreme Court of Eritrea, rule 74.
61. Even as persuasive authority, article 12 does not resolve the case without the missing governmental ground. Article 12(3) allows restrictions that are provided by law, necessary for enumerated interests, and consistent with other Covenant rights. International Covenant on Civil and Political Rights, article 12(3). Count Four should be dismissed with prejudice as a domestic cause of action, without denying Eritrea's international obligations.

5.8. THE REMAINING CONSTITUTIONAL REFERENCES DO NOT CREATE ADDITIONAL CLAIMS

62. Article 2 establishes constitutional supremacy. Article 28 supplies enforcement and remedies after a violation is ascertained. Article 49 allocates jurisdiction. None independently establishes that a passport denial was unconstitutional.
63. The Complaint discusses equality under article 14 but identifies no similarly situated comparator, differential rule, or discrimination based on a prohibited or otherwise improper factor. Complaint paragraph 22; Constitution of Eritrea 1997, article 14. An unexplained individual denial does not, without more, plead unequal treatment.
64. The Complaint invokes human dignity under article 16 but alleges no treatment that independently invades physical or inherent dignity. Complaint paragraph 24. Administrative disagreement or silence does not automatically constitute a separate dignity violation.
65. Article 21 concerns equal access to publicly funded social services and directs the State, within its resources, to endeavor to make health, education, cultural, and other services available. Constitution of Eritrea 1997, article 21(1). It does not guarantee attendance at a foreign university, convert a foreign scholarship into an Eritrean public service, or require a passport whenever foreign admission is obtained.
66. These references may provide constitutional context, but they cannot expand the pleaded counts beyond the legal elements and agreed facts. Any independent claims under articles 2, 14, 15, 16, 21, 26, 28, and 49 should be dismissed.

5.9. THE REQUESTED REMEDIES EXCEED THE RECORD AND THE COURT'S PROPER ROLE

67. The demand that the Court order issuance of a passport and every necessary exit authorization within thirty days asks the Court to perform the statutory work assigned to the Department. Complaint paragraph 61. The record contains no current application and no agreed exit-visa application. A mandatory issuance order would bypass current identity, eligibility, security, and supporting-document review.
68. Even if the Court finds that the Department should have communicated more information, the appropriate remedy would be reconsideration by the Department, not judicial issuance. Administrative law ordinarily returns an inadequately explained matter to the competent agency so that the agency may exercise the discretion entrusted to it. See *SEC v. Chenery Corp.*, 318 U.S. 80, 94-95 (1943) (explaining, as a persuasive comparative principle, that an administrative determination committed to an agency must be made by that agency).
69. The request to compel the Government to create and publish nationwide eligibility criteria, processing periods, written-decision requirements, and administrative-review procedures is legislative in character. Complaint paragraph 63. The Constitution vests lawmaking in the National Assembly and prohibits other bodies from making decisions with the force of law unless constitutionally or legislatively authorized. Constitution of Eritrea 1997, article 32(1).
70. Article 49 authorizes constitutional adjudication, not continuing judicial management of an executive department. Rule 73 directs the Court to decide only questions necessary to resolve the parties' dispute. Constitution of Eritrea 1997, article 49(2); Rules of Procedure of the Supreme Court of Eritrea, rule 73. The proposed structural injunction should therefore be dismissed.
71. Monetary compensation is available under article 28(2) only after the Court ascertains a violation and determines that the Applicant suffered compensable damage. Constitution of Eritrea 1997, article 28(2). The agreed facts contain no scholarship valuation, tuition payment, lost-wage calculation, medical evidence of distress, or allocation of loss among the passport denials, the Applicant's later unauthorized exit attempts, and detention events expressly excluded from this case.
72. The university initially deferred admission, demonstrating that the first denial did not immediately extinguish the opportunity. Statement of Agreed Facts paragraph 16. Later causation cannot be adjudicated without considering events the parties excluded. Statement of Agreed Facts paragraphs 14-17. The damages demand is therefore unsupported and should be dismissed without prejudice to a properly established claim in an appropriate proceeding.

73.The Complaint also requests costs and litigation expenses but identifies no constitutional provision, statute, or Court rule authorizing fee shifting against the Government. Complaint paragraph 66. That request should be dismissed.

5.10. ALTERNATIVE DISPOSITION

74.If the Court declines to dismiss the entire Complaint, it should narrow the proceeding to one question: whether the Department must reconsider a current passport application under articles 19(9), 24, and 26 and the existing statutory framework.

75.The Court should dismiss Count Four, the duplicative constitutional theories, and the overbroad remedies. It should then remand without ordering issuance and permit the Department to receive a current application, determine whether all statutory support has been supplied, identify the applicable legal ground, and provide an answer consistent with article 24 while protecting any information lawfully requiring confidentiality.

76.That disposition would preserve the Applicant's ability to challenge a concrete, current decision; respect the Department's statutory responsibility; avoid findings unsupported by the agreed record; and adhere to Rule 73's requirement of judicial restraint.

6. PRAYER FOR RELIEF

77.WHEREFORE, the Government of Eritrea respectfully requests that this Honourable Court:

78.Dismiss the Complaint because the Statement of Agreed Facts does not establish an unconstitutional governmental action and omits the material ground necessary for review under article 26.

79.Alternatively, dismiss Count Four with prejudice as a domestic cause of action and dismiss Counts Two and Three, together with all independent theories under articles 2, 14, 15, 16, 21, 26, 28, and 49.

80.Strike or dismiss the requests for immediate issuance of a passport or exit visa, promulgation of nationwide administrative procedures, monetary compensation, costs, and litigation expenses.

81.If any Article 19(9) question survives, remand it to the Department of Immigration and Nationality for consideration of a current application under Proclamation 24/1992 and Regulation 4/1992, without directing the substantive outcome.

82.Grant such other relief as the Court considers lawful and appropriate.

Respectfully submitted,
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Date: July 24, 2026

VERIFICATION

83.Counsel for the Government certifies that this Motion is founded upon the Complaint, the jointly filed Statement of Agreed Facts, the Rules of Procedure, and the legal authorities cited herein. The Government accepts the agreed facts for purposes of this proceeding but does not accept factual characterizations appearing only in the Complaint or matters expressly excluded from the Statement of Agreed Facts.