

Samuel Berhe, Esq.
1 Hadnet Ave # 203, Asmara, Eritrea
Tele: 112233 / Fax: 112234
samuel.b@samlaw.com

Attorney for the plaintiff

THE SUPREME COURT OF ERITREA
ASMARA, ERITREA

In the Matter of:

Case No.: SC130726THO00001

Thomas Samuel Aron,
 plaintiff
 Vs
Government of Eritrea,
 defendant

(The passport and exit visa case)

PLAINTIFF'S BRIEF IN SUPPORT OF COMPLAINT

PROOF OF SERVICE: executed via CAAM on all parties.

PLAINTIFF'S BRIEF IN SUPPORT OF COMPLAINT

1. PRELIMINARY STATEMENT

1. This is the first constitutional merits case before the Supreme Court of Eritrea. It concerns a right stated with unusual clarity: “Every citizen shall have the right to leave and return to Eritrea and to be provided with passport or any other travel documents.” Constitution of Eritrea 1997, article 19(9). The parties have agreed that Thomas Samuel Aron is an Eritrean citizen, that he supplied every document the Department of Immigration and Nationality required, and that the Department repeatedly denied him a passport without giving any reason. Statement of Agreed Facts paragraphs 1, 9-13.
2. The Court need not declare freedom of movement absolute to decide for the Plaintiff. Article 26 permits limitations, but only for enumerated purposes and only through a law that is democratic and just, generally applicable, protective of the right's essential content, and precise about the limitation's ascertainable extent and constitutional source. Constitution of Eritrea 1997, article 26(1)-(2). The Government has supplied neither an actual purpose nor a law that authorized the unexplained passport denials on this record.
3. The distinction between a right and an absolute right is fundamental. A limitable right remains the constitutional rule; a limitation is an exception for which the State must provide a lawful and demonstrably sufficient justification. Human Rights Committee, General Comment No. 27: Freedom of Movement, U.N. Doc. CCPR/C/21/Rev.1/Add.9, paragraphs 11-16 (1999). Omission of Article 19(9) from the non-limitable list in Article 26(3) permits a proper limitation; it does not itself enact one, prove one necessary, or confer standardless executive discretion.
4. This case also requires the Court to distinguish three questions too often collapsed into the labels “monism” and “dualism”: whether a treaty binds Eritrea internationally; whether the act of ratification has domestic legislative authority; and whether a particular treaty provision is judicially enforceable without further implementation. Constitution of Eritrea 1997, articles 2(3), 31(1), 32(4), 33. Those questions must be answered from the Constitution's text and structure, not from a label.
5. On the international plane, Eritrea's ratified treaties bind the State, and internal law cannot excuse nonperformance. Vienna Convention on the Law of Treaties article 27, May 23, 1969, 1155 U.N.T.S. 331; Human Rights Committee, General Comment No. 31, U.N. Doc. CCPR/C/21/Rev.1/Add.13, paragraphs 3-4 (2004). On the domestic plane, Article 32(4) states that “[t]he National Assembly shall ratify international agreements by law,” which means a constitutionally completed ratification is itself a legislative act rather than a mere executive promise. Constitution of Eritrea 1997, article 32(4).
6. A treaty ratified by law cannot override the Constitution, which remains supreme. Constitution of Eritrea 1997, article 2(3). But, absent a constitutional or legislative direction to the contrary, the ratification law has at least the status of an ordinary law of the National Assembly; and

even where a treaty provision is not directly enforceable, Eritrean law should be interpreted consistently with Eritrea's binding commitments and the common human-rights standard they embody. Rules of Procedure of the Supreme Court of Eritrea, rule 74.

7. The Court can therefore decide this case on a narrow and stable hierarchy: the Constitution controls; constitutionally ratified treaty law and other Acts of the National Assembly occupy the statutory plane; subordinate ministerial regulations, agency rules and public body bylaws acts must conform to both; and all domestic law should, so far as text reasonably permits, be construed to avoid placing Eritrea in breach of international law. Constitution of Eritrea 1997, articles 2(3), 32(1), 32(4), 33.
8. The agreed record establishes violations independent of the treaty question. Repeated unexplained denials deprived the Plaintiff of the passport expressly promised by Article 19(9), denied him a quick and equitable answer and due administrative redress under Article 24, and failed every reviewable component of Article 26. Constitution of Eritrea 1997, articles 19(9), 24, 26.
9. Article 28 supplies unusually broad remedial authority. Once the Court ascertains a violation, it may make “all such orders” necessary to secure enjoyment of the right and may award monetary compensation for damage. Constitution of Eritrea 1997, article 28(2). Effective relief here should include declarations, nullification of the denials, issuance or a tightly supervised reconsideration of the passport, prospective minimum procedures, a reserved process for compensation, and retention of jurisdiction until compliance.
10. A restrained judgment need not manage every passport decision or rewrite the statute. It should establish constitutional minima, leave the Executive a lawful choice of implementing means, and ensure that Thomas receives the right he has already spent years attempting to exercise. Rules of Procedure of the Supreme Court of Eritrea, rules 73-74.

2. QUESTIONS PRESENTED

11. Whether repeated denial of a passport to an Eritrean citizen who fulfilled every communicated requirement, without any stated legal or factual reason, violates Constitution of Eritrea 1997, article 19(9).
12. Whether Article 26 permits a limitation merely because Article 19(9) is not listed among non-limitable rights, or instead requires the Government to establish a precise legal basis, an actual enumerated objective, necessity, minimal impairment, proportionality, and preservation of the right's essential content.
13. Whether an unexplained passport denial violates the rights to a quick and equitable administrative answer and due administrative redress under Constitution of Eritrea 1997, article 24.
14. What domestic status and interpretive effect should be given to the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, each of which protects the right to leave one's own country.

15. What declarations, mandatory orders, procedural safeguards, supervisory measures, and compensation are necessary and proper under Constitution of Eritrea 1997, article 28.

3. JURISDICTION AND GOVERNING PROCEDURE

16. The Supreme Court has exclusive jurisdiction to interpret the Constitution and determine the constitutionality of a law enacted or governmental action taken. Constitution of Eritrea 1997, article 49(2)(a). The Department's repeated passport denials are governmental actions directly affecting fundamental rights and are therefore reviewable.

17. Every aggrieved person claiming denial or violation of a constitutional right may petition a competent court for redress. Constitution of Eritrea 1997, article 28(2). Article 28 does not condition review on legislative permission, exhaustion of an undefined process, or executive consent.

18. The Statement of Agreed Facts controls the merits. Rules of Procedure of the Supreme Court of Eritrea, rule 31. The Court ordinarily does not receive testimony or decide disputed evidence. Rules of Procedure of the Supreme Court of Eritrea, rule 32.

19. Those rules help the Plaintiff rather than the Government. The State agreed that the applications were repeatedly denied "without explanation" and that Thomas had fulfilled the requirements communicated by its officials. Statement of Agreed Facts paragraphs 10-13. Rule 31 prevents the State from replacing that record with a litigation-created reason that it never communicated and never placed in the agreed statement.

20. The absence of a reason is not a factual gap that prevents review. It is the agreed administrative act being reviewed and an independently sufficient procedural wrong. An agency decision must be judged on the ground the agency actually invoked; a court cannot invent a ground that the agency itself did not give. *SEC v. Chenery Corp.*, 318 U.S. 80, 87, 94-95 (1943).

21. If the Government believed a secret but constitutionally sufficient ground was material, Rule 31 allowed it to negotiate a formulation, request a revised statement, or seek an order protecting sensitive information. Rules of Procedure of the Supreme Court of Eritrea, rule 31. It may not convert its own silence and control of the administrative record into a presumption against the citizen.

22. Rule 74 authorizes consideration of constitutional text, purpose, structure, underlying principles, foreign courts, and international tribunals. Rules of Procedure of the Supreme Court of Eritrea, rule 74. Comparative authorities are used here to illuminate Eritrean text, never to displace it.

4. AGREED FACTS RELEVANT TO JUDGMENT

23. Thomas began serving the local administration while still in school, and his placement later became his national-service assignment. Statement of Agreed Facts paragraphs 2-4. When directed to report to Sawa in 2004, he complied. Statement of Agreed Facts paragraph 5.
24. The competent Medical Board found Thomas medically unfit for national service after his chronic anemia and diabetes worsened. Statement of Agreed Facts paragraph 6. He then returned to civilian employment in the local administration and remained there until approximately 2019. Statement of Agreed Facts paragraph 7.
25. In 2019 Thomas earned a full scholarship to study computer programming in Germany. Statement of Agreed Facts paragraph 8. The opportunity resulted from years of improving his English and seeking admission. Statement of Agreed Facts paragraph 8.
26. Thomas had never held a passport. Statement of Agreed Facts paragraph 9. Officials required two no-objection letters, proof of national-service exemption, and identity documents. Statement of Agreed Facts paragraph 10.
27. Thomas obtained both no-objection letters, supplied the Medical Board's exemption certificate, submitted the required identity documents, and formally applied. Statement of Agreed Facts paragraph 11. The Government agreed to these facts without identifying any documentary deficiency.
28. The application was denied without explanation, and additional applications were likewise denied without a stated reason. Statement of Agreed Facts paragraph 12. Informal efforts through senior officials produced no passport. Statement of Agreed Facts paragraph 13.
29. Thomas later attempted unauthorized departure and was detained. Statement of Agreed Facts paragraphs 14, 17. The legality and consequences of those arrests and detentions are expressly excluded from this case, and the Plaintiff does not seek relief here for them. Statement of Agreed Facts paragraph 15.
30. The university initially deferred admission, but repeated obstacles ultimately deprived Thomas of the educational opportunity and caused substantial disappointment and frustration. Statement of Agreed Facts paragraphs 16, 18. The parties agree that this action challenges the refusal to issue a passport and exit visa, thereby denying Thomas the right to leave Eritrea. Statement of Agreed Facts paragraph 19.

5. APPLICABLE CONSTITUTIONAL AND LEGAL FRAMEWORK

31. The Constitution is the supreme law and source of legality for every branch. Constitution of Eritrea 1997, article 2(3). Any act contrary to its letter or spirit is null and void. Constitution of Eritrea 1997, article 2(3).
32. Eritrea's constitutional order requires accountable and transparent government, an efficient and equitable civil service free from delay, and courts capable of quick and equitable judgment. Constitution of Eritrea 1997, articles 7(5), 10, 11. These are operative principles for

interpreting Articles 19, 24, 26, and 28. Rules of Procedure of the Supreme Court of Eritrea, rule 74.

33. Article 19(9) guarantees each citizen the right to leave and return and the right to be provided a passport or other travel document. Constitution of Eritrea 1997, article 19(9). Its grammar imposes both a negative duty not to obstruct lawful departure and a positive duty to supply the document without which lawful departure is impossible.
34. Article 24(1) guarantees respectful hearing and “quick and equitable answers” to administrative questions. Constitution of Eritrea 1997, article 24(1). Article 24(2) guarantees due administrative redress when an administrative matter interferes with or threatens rights or interests. Constitution of Eritrea 1997, article 24(2).
35. Article 26(1) permits limitations only insofar as they serve national security, public safety, the country's economic well-being, health or morals, prevention of disorder or crime, or the rights and freedoms of others. Constitution of Eritrea 1997, article 26(1). Its closed list excludes free-floating appeals to convenience, policy preference, or an undefined “greater good.”
36. Article 26(2) separately regulates the limiting law. It must accord with democracy and justice; be general; preserve the right's essential content; specify the ascertainable extent of the limitation; and identify the constitutional article supplying authority. Constitution of Eritrea 1997, article 26(2).
37. Article 28 prohibits the Legislature and Executive from abolishing or abridging a fundamental right except as the Constitution authorizes and declares a violative law or action null and void. Constitution of Eritrea 1997, article 28(1). Article 28(2) then guarantees judicial redress, all necessary orders, and compensation for damage. Constitution of Eritrea 1997, article 28(2).
38. Proclamation 24/1992 defines “travel document” to include a passport and authorizes issuance of regular travel documents for education and other valid purposes. Proclamation 24/1992, Travel Documents and Immigration, articles 3(5), 5(3). It requires a valid travel document and exit visa for lawful departure. Proclamation 24/1992, Travel Documents and Immigration, article 11.
39. Article 13 permits the Secretary to forbid an exit visa when departure is restricted by a competent court, when the person is 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. Article 13 concerns exit visas; it does not create a general standard for denying passports.
40. Regulation 4/1992 requires the prescribed application, photographs, and proof of Eritrean nationality, and provides that an authorized person receives a travel document upon payment. Regulation 4/1992, Travel Documents and Immigration, article 4. An Eritrean leaving for education must submit support from the concerned organs. Regulation 4/1992, Travel Documents and Immigration, article 17(11)(a).
41. Article 12(2) of the ICCPR guarantees freedom to leave any country, including one's own; Article 12(3) permits only restrictions provided by law, necessary for specified purposes, and

consistent with other Covenant rights. International Covenant on Civil and Political Rights articles 12(2)-(3), Dec. 16, 1966, 999 U.N.T.S. 171.

42. The passport is not peripheral to that freedom. The Human Rights Committee has explained that the right to leave “must include the right to obtain the necessary travel documents” and that the State of nationality is responsible for issuing the passport. Human Rights Committee, General Comment No. 27, *supra*, paragraph 9.

43. The African Charter likewise guarantees the right to leave one's own country and permits only restrictions provided by law for national security, law and order, public health, or morality. African Charter on Human and Peoples' Rights article 12(2), June 27, 1981, 1520 U.N.T.S. 217. Articles 1, 7, and 26 require domestic measures, effective adjudication, and independent courts. African Charter on Human and Peoples' Rights articles 1, 7, 26.

6. ARGUMENT

6.1. ARTICLE 19(9) ESTABLISHES A FUNDAMENTAL RIGHT AND A POSITIVE STATE DUTY

44. Article 19(9) does more than protect an abstract liberty to approach the border. It expressly couples departure with the Government's duty to provide the passport or other travel document that makes lawful departure possible. Constitution of Eritrea 1997, article 19(9).

45. The mandatory phrase “shall have the right” identifies the citizen as the rights-holder and the Government as duty-bearer. Constitution of Eritrea 1997, article 19(9). Administrative authorization therefore implements a constitutional entitlement; it does not transform the entitlement into a favor.

46. The right protects departure for education no less than departure for another lawful purpose. General Comment No. 27 explains that the right does not depend on the purpose or duration of travel or on the destination selected. Human Rights Committee, General Comment No. 27, *supra*, paragraph 8.

47. Comparative constitutional law confirms that passport control implicates the liberty to travel and cannot rest on an unguided executive choice. *Kent v. Dulles*, 357 U.S. 116, 125-29 (1958). Even where travel is limitable, a scheme that sweeps broadly without individual justification is constitutionally suspect. *Aptheker v. Secretary of State*, 378 U.S. 500, 505-14 (1964).

48. The Government's concern for national security and public welfare is legitimate. The Constitution itself recognizes those interests. Constitution of Eritrea 1997, article 26(1). But constitutional recognition of a governmental objective is the beginning of justification, not its conclusion.

49. Thomas established direct interference. He sought the document, fulfilled the communicated requirements, received repeated denials, and consequently could not leave lawfully. Statement of Agreed Facts paragraphs 9-13, 19. That is a completed deprivation of both components of Article 19(9).

6.2. ARTICLE 26 REQUIRES A STRUCTURED, CUMULATIVE LIMITATIONS ANALYSIS

50. This Court should adopt a transparent Article 26 framework for all future cases. A claimant must first establish the scope of a right and governmental interference. Once shown, the Government must establish each element authorizing the limitation because the limiting purpose, evidence, and means lie within its control. Constitution of Eritrea 1997, articles 26, 28.
51. The Government's burden follows from “may be limited only” and from Article 28's prohibition on abridgment unless constitutionally authorized. Constitution of Eritrea 1997, articles 26(1), 28(1). A citizen cannot be required to disprove reasons the Government refuses to disclose.
52. The first question is legality: does an accessible, sufficiently precise law authorize this particular interference? Constitution of Eritrea 1997, article 26(2)(c). A law must tell citizens the extent of the restriction and constrain officials against arbitrary decision. Human Rights Committee, General Comment No. 27, *supra*, paragraphs 11-13.
53. The second question is purpose: did the decision actually pursue one of Article 26(1)'s enumerated objectives? Constitution of Eritrea 1997, article 26(1). To borrow wisdom from elsewhere, a hypothetical purpose offered by government counsel cannot substitute for the objective on which the government acted. *SEC v. Chenery Corp.*, 318 U.S. at 87.
54. The third question is rational connection: is the measure capable of advancing the identified objective on the facts of the particular case? *R. v. Oakes*, [1986] 1 S.C.R. 103, 138-39 (Can.). Conclusory references to security cannot establish a connection to a citizen whom the Government's own Medical Board exempted and whose employer and local administration supplied no-objection letters.
55. The fourth question is necessity or minimal impairment: was a less restrictive, reasonably available measure capable of serving the objective? *Oakes*, [1986] 1 S.C.R. at 139. ICCPR Article 12 similarly requires the least intrusive instrument among those capable of achieving the protective function. Human Rights Committee, General Comment No. 27, *supra*, paragraph 14.
56. The fifth question is proportionality in the strict sense: do the concrete public benefits justify the severity and duration of the harm to the right-holder? *Oakes*, [1986] 1 S.C.R. at 139-40. An indefinite, repeated restraint that destroys the entire opportunity to travel demands an exceptionally specific justification.
57. The sixth question is preservation of essential content. Constitution of Eritrea 1997, article 26(2)(b). A system that recognizes a passport right in theory but permits repeated unexplained denials without time limit, criteria, or review negates the right in practice.
58. The seventh question is procedural proportionality. A person must receive an individualized decision, an intelligible reason or at least a meaningful gist, a prompt answer, and access to review. Constitution of Eritrea 1997, article 24; Human Rights Committee, General Comment No. 27, *supra*, paragraphs 15-16.

59. These requirements are cumulative. Failure at any stage invalidates the limitation. This structure respects both constitutional rights and the Government's legitimate authority because it demands justification without predetermining that no restriction can ever be valid.
60. Article 26(3) does not change this analysis. It shields selected rights from Article 26(1) limitation. Constitution of Eritrea 1997, article 26(3). Its omission of Article 19(9) means a restriction is possible only if Articles 26(1) and 26(2) are actually satisfied.
61. Treating omission from Article 26(3) as sufficient justification would erase Article 26(1) and (2). The Court must instead give effect to every clause and require the State to prove a lawful purpose, a valid limiting law, and a proportionate application.

6.3. THE DENIALS FAIL EVERY MATERIAL COMPONENT OF ARTICLE 26

62. No agreed fact identifies the actual objective of any denial. Statement of Agreed Facts paragraphs 9-13. A court cannot test an undisclosed objective for legitimacy, rationality, necessity, or proportionality.
63. The Government's motion invoked national security, public order, civic obligations, identity verification, and fraud prevention in the abstract. None appears as the Department's stated reason or an agreed fact. Rule 31 excludes those post hoc possibilities from the merits record. Rules of Procedure of the Supreme Court of Eritrea, rule 31.
64. Proclamation 24/1992, article 13, does not save the denials. It governs an exit visa and requires "valid grounds" for a security or national-interest restriction. Proclamation 24/1992, Travel Documents and Immigration, article 13(3). The State identified no valid ground, and the provision does not authorize unexplained passport refusal.
65. The phrase "interests of the country" must be read narrowly to include only the interests enumerated in Article 26(1). Constitution of Eritrea 1997, articles 2(3), 26(1). An unrestricted meaning would fail Article 26(2)'s requirements of ascertainable extent, democratic justice, and preservation of essential content.
66. The Proclamation predates the Constitution and could not have identified Article 19(9) as required by Article 26(2)(c). That chronology supports a saving construction, not a constitutional exemption. The Court may preserve the legislation by holding that it authorizes only individualized restrictions corresponding to Article 26(1), supported by valid grounds, written reasons, and review.
67. Even under that saving construction, the denials fail. Thomas supplied proof of nationality, identity, two no-objection letters, and the Medical Board exemption from national service. Statement of Agreed Facts paragraphs 10-11. The State stipulated to no missing document, outstanding summons, court order, unfulfilled service obligation, or security fact.
68. The repeated and indefinite character of the denials negated the essential content of the right. Constitution of Eritrea 1997, article 26(2)(b). Thomas did not merely experience a processing delay; the restraint persisted until his full scholarship was lost. Statement of Agreed Facts paragraphs 12-13, 16, 18.

69. Bureaucratic barriers, employer-support requirements, unreasonable delay, and failure to provide information about requirements are precisely the kinds of practices that can violate the right to leave. Human Rights Committee, General Comment No. 27, *supra*, paragraph 17. Thomas overcame every disclosed barrier and was still given no answer capable of review.
70. The Government therefore cannot establish legality, actual purpose, rational connection, necessity, proportionality, procedural fairness, or preservation of essential content. Constitution of Eritrea 1997, article 26. The Article 19(9) violation follows without treating the right as absolute.

6.4. THE FAILURE TO GIVE REASONS AND A REVIEWABLE PROCESS VIOLATED ARTICLE 24

71. A “quick and equitable answer” must be more than an unexplained negative. Constitution of Eritrea 1997, article 24(1). “Equitable” requires a decision based on law and facts, and “answer” requires enough information for the citizen to understand whether requirements were met and whether redress is warranted.
72. Article 24(2)'s guarantee of due administrative redress would be ineffective if the State could conceal the basis of action. Constitution of Eritrea 1997, article 24(2). A person cannot correct a deficiency, challenge an error, or demonstrate disproportionality without knowing the case to meet.
73. Discretion affecting fundamental rights must be guided by clear legal standards. *Dawood v. Minister of Home Affairs*, 2000 (3) SA 936 (CC) paragraphs 47, 53-56 (S. Afr.). Where a law entrusts officials with decisions that can impair constitutional rights, the law and its administration must protect against arbitrary outcomes. *Id.*
74. The African Commission has likewise held that withholding the reasons for immigration action undermines adjudication and the rule of law. *Kenneth Good v. Republic of Botswana*, Communication 313/05, African Commission on Human and Peoples' Rights, paragraphs 193-95, 207 (2010). National-security language does not justify denying the affected person any opportunity to understand and challenge the decision. *Id.* paragraphs 193-95, 207.
75. Genuine security sensitivity can affect the form of reasons, not eliminate accountability. The Government may provide a non-sensitive gist to the citizen and submit genuinely protected details to an independent reviewer or the Court under confidential procedures. A complete refusal to state any ground is neither necessary nor proportionate.
76. Reasons also discipline administration. They require the official to connect evidence to law, permit supervisors and courts to detect error, and demonstrate equal treatment. Constitution of Eritrea 1997, articles 7(5), 11, 14, 24.
77. The Government argues that Article 24 does not expressly use the word “written.” That is not decisive. In a decision repeatedly denying a constitutional passport right, a durable and reviewable answer ordinarily must be recorded; otherwise, the constitutional guarantees of

equitable answer, redress, and judicial enforcement become illusory. Constitution of Eritrea 1997, articles 24, 28.

78. Thomas received no reason and no identified review route despite repeated applications and efforts through officials. Statement of Agreed Facts paragraphs 12-13. That conduct independently violated Article 24.

6.5. THE AGREED-FACT PROCEDURE DOES NOT REWARD OFFICIAL SILENCE

79. Rule 31 makes the agreed statement the evidentiary boundary, not a presumption that undisclosed facts favor the Government. Rules of Procedure of the Supreme Court of Eritrea, rule 31. The agreed statement proves the interference, documentary compliance, repeated denial, and absence of explanation.

80. Once those facts are established, Article 26 places the constitutional justification in issue. The State is the only party capable of identifying its purpose and grounds. A rule allocating the risk of nondisclosure to the citizen would allow the Executive to defeat review simply by refusing to explain itself.

81. International human-rights analysis reaches the same conclusion. Where restrictions are imposed, the State must demonstrate in the particular case that they are necessary and proportionate. Human Rights Committee, General Comment No. 27, *supra*, paragraph 16; Human Rights Committee, General Comment No. 31, *supra*, paragraph 6.

82. The African Commission rejected a bare national-security defense where the State failed to demonstrate how the individual's conduct posed a threat or how the means were proportionate. Kenneth Good, Communication 313/05, paragraphs 224-25. That reasoning is particularly persuasive under Rule 74 because African Charter Article 12(2) closely parallels Eritrean Articles 19(9) and 26.

83. If the Court concludes that some omitted fact is indispensable, Rule 31 permits a revised statement or another just order. Rules of Procedure of the Supreme Court of Eritrea, rule 31. Dismissal is not warranted; the minimum just order would require the Government to identify the contemporaneous basis and allow the Plaintiff to respond, with appropriate protection for genuinely confidential material.

6.6. INTERNATIONAL LAW HAS BINDING, LEGISLATIVE, AND INTERPRETIVE DIMENSIONS THAT MUST BE KEPT DISTINCT

84. The Court should decline to decide treaty status through the slogan that Eritrea is “strictly dualist.” The Commission of Inquiry's description is an important account of state practice, but it is not a domestic judgment and cannot replace the Constitution's text. 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).

85. The Constitution divides treaty authority between political branches. The President negotiates and signs international agreements. Constitution of Eritrea 1997, article 42(6). The National Assembly ratifies them “by law.” Constitution of Eritrea 1997, article 32(4).
86. Signature is therefore comparable to executive presentation of a legislative proposal: it does not by itself make domestic law. Ratification by the National Assembly supplies democratic legislative authority, and Article 33 requires the approved law to be signed and published. Constitution of Eritrea 1997, articles 32(4), 33, 42(4), 42(6).
87. Where those constitutional steps occurred, a second incorporation statute should not be presumed necessary unless the ratification law or treaty requires implementing detail. Article 32(4)'s phrase “by law” makes ratification itself a legislative act. Constitution of Eritrea 1997, article 32(4).
88. The domestic rank of such a treaty law is below the Constitution, which is supreme, and ordinarily equal to other National Assembly laws. Constitution of Eritrea 1997, articles 2(3), 31(1), 32(1), 32(4). Conflict should first be avoided through harmonious interpretation; only an unavoidable conflict requires rules governing statutes of equal rank.
89. Direct judicial enforceability is a separate, provision-specific question. A treaty rule may require legislation where it calls for institutions, offenses, budgets, or detailed administration; a sufficiently clear rights provision may be judicially applied where the ratification law made it domestic law and the Constitution supplies a remedy. Human Rights Committee, General Comment No. 31, *supra*, paragraphs 13, 15.
90. If no National Assembly ratification law can be established, the treaty may lack status as a freestanding domestic cause of action. That does not erase the Constitution or Eritrea's international responsibility. The Court may resolve Thomas's claims under Articles 19, 24, 26, and 28 while treating the treaties as persuasive and harmonizing standards under Rule 74.
91. Internationally, Eritrea's accession to the ICCPR binds the State. International Covenant on Civil and Political Rights article 2; Vienna Convention on the Law of Treaties article 27. A State may not invoke the absence of internal implementation as justification for nonperformance. Vienna Convention on the Law of Treaties article 27; Human Rights Committee, General Comment No. 31, *supra*, paragraphs 3-4.
92. The African Charter is equally a binding treaty, not a declaration of aspiration. Kenneth Good, Communication 313/05, paragraphs 226-32. Ratification constitutes consent to respect, protect, and fulfill its provisions. *Id.* paragraphs 228-29. The old monism-dualism debate does not exhaust the interpretive use of internationally accepted rights norms. *Id.* at 33-54.
93. The UDHR, while not itself a treaty, is relevant to the content and history of the freedom to leave and return. Universal Declaration of Human Rights article 13(2), G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948). ICCPR Article 12 and African Charter Article 12 convert the same principle into treaty obligations accepted by Eritrea.
94. The Court should adopt a tiered holding: first, the Constitution is supreme; second, treaties ratified by National Assembly law possess domestic legislative authority subject to their terms; third, treaty provisions not directly enforceable still guide interpretation where Eritrean

text permits; and fourth, the international obligations remain binding on Eritrea regardless of domestic direct effect.

95. Under every tier, the result here is the same. Article 19(9) is more explicit than the international guarantees, Article 26 mirrors their legality-and-necessity structure, and Article 24 supplies domestic procedural protection. The treaties confirm rather than create the decisive constitutional rule.

6.7. THE COURT SHOULD HOLD THE GOVERNMENT LIABLE ON EACH PLEADED COUNT

96. Count One is established because repeated passport denials directly impaired the positive and negative rights in Article 19(9) and no Article 26 justification appears in the controlling record. Constitution of Eritrea 1997, articles 19(9), 26; Statement of Agreed Facts paragraphs 9-13, 19.

97. Count Two is established because the unexplained denials were not quick and equitable answers capable of administrative redress. Constitution of Eritrea 1997, article 24. They also offended constitutional supremacy, rule-of-law administration, and the prohibition on unauthorized abridgment. Constitution of Eritrea 1997, articles 2(3), 28(1).

98. Count Three is established because no actual restriction was shown to rest on a constitutionally sufficient law or enumerated purpose, and no necessity, tailoring, or proportionality could be demonstrated. Constitution of Eritrea 1997, article 26.

99. Count Four should be sustained to the extent the record establishes the ICCPR's domestic ratification by law or, alternatively, the Court should declare that the same conduct is inconsistent with ICCPR Articles 2 and 12 as a binding international obligation and interpretive standard. International Covenant on Civil and Political Rights articles 2, 12; Constitution of Eritrea 1997, article 32(4).

100. The Court need not decide an abstract conflict between a treaty and the Constitution. There is none. The constitutional and treaty texts converge; the conflict is between those texts and unexplained government action.

6.8. ARTICLE 28 REQUIRES PRACTICAL AND EFFECTIVE REMEDIES

101. A declaration alone would identify the past wrong but would not secure the passport right after years of unsuccessful applications. Article 28 requires “all such orders” necessary to secure enjoyment. Constitution of Eritrea 1997, article 28(2).

102. As observed elsewhere, constitutional relief must be effective, not merely symbolic. *Fose v. Minister of Safety & Security*, 1997 (3) SA 786 (CC) paragraphs 69, 94 (S. Afr.). The remedy must fit the right, the violation, and the institutional setting. *Id.*

- 103.First, the Court should declare that the repeated unexplained denials violated Articles 19(9), 24, 26, and 28 and were inconsistent with ICCPR Article 12 and African Charter Article 12(2). Constitution of Eritrea 1997, article 28(1)-(2).
- 104.Second, the Court should declare the denials null and void and set them aside. Article 28(1) supplies the constitutional command; the Court is not exercising executive discretion when it removes an unconstitutional act. Constitution of Eritrea 1997, article 28(1).
- 105.Third, the Court should order the Department to issue Thomas a passport within thirty days. The record contains repeated applications, compliance with every communicated requirement, and no valid ground for refusal. Statement of Agreed Facts paragraphs 9-13. After years of futile process, an unstructured remand would repeat rather than remedy the violation.
- 106.If the Court concludes that the Department must complete the ministerial act of reconsideration, the order should impose enforceable conditions: a fresh decision within fifteen days; reliance only on a legal and factual ground identified in the decision; an individualized Article 26 analysis; a non-sensitive written gist; and automatic issuance if the deadline expires or the Government fails to establish every constitutional element.
- 107.The exit visa should be addressed consistently with the agreed statement. Statement of Agreed Facts paragraph 19. The Court may order issuance once the passport is issued, or require decision within a short period under the same standards, subject to immediate review.
- 108.Fourth, the Court should construe Proclamation 24/1992, article 13(3), narrowly. “Security or interests of the country” should mean only the interests listed in Article 26(1), supported by individualized valid grounds, necessary and proportionate means, and Article 24 procedures. This reading preserves the statute while preventing unconstitutional application.
- 109.Fifth, limited prospective relief is appropriate. The Department should be ordered, within ninety days, to publish accessible passport and exit-visa application requirements, ordinary processing periods, permissible grounds for denial, a written-reason requirement, and a prompt reconsideration or review process consistent with Articles 19, 24, and 26.
- 110.Such an order states constitutional minimums and leaves the responsible branches to select details. It therefore respects Article 32’s legislative allocation while enforcing Article 28’s express remedial mandate. Constitution of Eritrea 1997, articles 28(2), 32.
111. As practiced elsewhere, supervisory jurisdiction is permissible where necessary to make a constitutional remedy effective. *Minister of Health v. Treatment Action Campaign* (No. 2), 2002 (5) SA 721 (CC) paragraphs 99, 104, 129-30 (S. Afr.). A compliance report followed by a short opportunity to respond is less intrusive than indefinite judicial management and more effective than an unenforced declaration.
- 112.The Court should require a sworn compliance report within one hundred twenty days and retain jurisdiction until it is satisfied that the individual and prospective orders have been implemented. The report should state when Thomas’s documents issued and identify the published procedure adopted.
- 113.Sixth, monetary compensation is expressly available where the applicant suffered damage. Constitution of Eritrea 1997, article 28(2). The agreed facts establish loss of the educational

opportunity, disappointment, and frustration, but do not quantify all pecuniary and nonpecuniary harm. Statement of Agreed Facts paragraph 18.

114. Liability and quantum should therefore be separated. The Court should declare entitlement to compensation caused by the passport and exit-document violations, direct the parties to submit an agreed damages statement within forty-five days under Rule 31, and reserve quantum. Rules of Procedure of the Supreme Court of Eritrea, rule 31.

115. Compensable categories may include documented application and administrative expenses, the provable value of the lost scholarship and associated economic opportunity to the extent causally established, nonpecuniary harm from prolonged arbitrary restriction, and nominal or vindictory damages if precise economic proof is incomplete. Constitution of Eritrea 1997, article 28(2); Human Rights Committee, General Comment No. 31, *supra*, paragraphs 15-17.

116. The damages phase must exclude loss caused solely by arrests, detention, or treatment in custody because those matters are reserved for separate litigation. Statement of Agreed Facts paragraph 15. It may consider the loss of the scholarship insofar as the parties agreed that repeated obstacles deprived Thomas of it. Statement of Agreed Facts paragraph 18.

117. Seventh, the Court should award reasonable costs if authorized under its rules or inherent remedial authority. A citizen who successfully vindicates a first-order constitutional right should not have the remedy materially consumed by the cost of obtaining it.

118. The remedies should operate prospectively without invalidating all passport regulation. The Government remains free to refuse a passport or exit visa in a future case if it identifies a precise legal basis, proves an Article 26(1) purpose with individualized grounds, uses the least restrictive proportionate measure, preserves essential content, gives an adequate reason, and provides review.

6.9. THE PROPOSED HOLDINGS RESPECT JUDICIAL RESTRAINT WHILE ESTABLISHING NECESSARY FOUNDATIONS

119. Rule 73 requires restraint, not judicial silence on questions essential to judgment. Rules of Procedure of the Supreme Court of Eritrea, rule 73. The scope of Article 19(9), the Article 26 test, Article 24 procedure, and Article 28 remedies are indispensable to deciding the pleaded claims.

120. The treaty holding can be equally restrained. The Court can identify the constitutional framework for treaty status and decide that international law is at minimum persuasive and harmonizing authority without resolving the domestic status of every treaty or every provision.

121. The Court should avoid two opposite errors. It should not transform a limitable right into an absolute one, and it should not transform the possibility of limitation into unreviewable discretion. Article 26's structured analysis preserves the constitutional space for both liberty and legitimate government.

122.As the first case, this judgment should be written so citizens and officials can apply it. Rule 76 favors clarity and accessibility. Rules of Procedure of the Supreme Court of Eritrea, rule 76. A stated burden, sequential limitations test, tiered treaty doctrine, and graduated remedy will give future courts and administrators usable law.

7. PRAYER FOR RELIEF

123.WHEREFORE, Thomas Samuel Aron respectfully requests that this Honourable Court:

124.DECLARE that the repeated denial of his passport and travel authorization without a stated legal or factual reason violated Constitution of Eritrea 1997, articles 19(9), 24, 26, and 28.

125.DECLARE that a limitation of a fundamental right is valid only when the Government establishes a sufficiently precise legal basis, an actual purpose enumerated in Article 26(1), rational connection, necessity or minimal impairment, proportionality, preservation of essential content, and fair procedures capable of review.

126.DECLARE that omission of Article 19(9) from Article 26(3) permits constitutionally justified limitations but does not itself authorize or justify any restriction.

127.DECLARE that the ICCPR and African Charter bind Eritrea internationally; that treaties ratified by National Assembly law possess domestic legislative authority below the Constitution; and that treaty law, international jurisprudence, and the UDHR shall in all events guide interpretation under Rule 74 where consistent with constitutional text.

128.DECLARE that the denials are null and void and SET THEM ASIDE.

129.ORDER the Department of Immigration and Nationality to issue Thomas an Eritrean passport within thirty days and to issue or decide the necessary exit authorization within fifteen days thereafter under the standards stated by this Court.

130.Alternatively, ORDER a constitutionally confined reconsideration within fifteen days, require written reasons and an individualized Article 26 determination, and direct automatic issuance upon noncompliance or failure to establish a lawful limitation.

131.CONSTRUE Proclamation 24/1992, article 13(3), to authorize only restrictions corresponding to Article 26(1), supported by valid individualized grounds and applied consistently with Articles 24 and 26.

132.ORDER the Department, within ninety days, to publish accessible requirements, ordinary processing periods, permissible denial grounds, written-decision procedures, and a prompt review mechanism for passport and exit-visa applications.

133.ORDER the Government to file a sworn compliance report within one hundred twenty days, permit the Plaintiff a response, and retain jurisdiction until the individual and prospective relief is implemented.

134.DECLARE Thomas entitled to monetary compensation under Article 28(2), direct a revised agreed statement on quantum within forty-five days, and reserve the amount of compensation for further order.

135.AWARD reasonable costs to the extent authorized and grant such further relief as is necessary and just.

8. PROPOSED FORM OF ORDER

136.The Court may enter judgment in the following form:

137.“The repeated denials of the Plaintiff’s passport applications, without a stated legal and factual basis and after compliance with every communicated requirement, violated Constitution of Eritrea 1997, articles 19(9), 24, 26, and 28, and are null and void.”

138.“A right not listed in Article 26(3) is capable of limitation but remains the rule. The Government bears the burden, after interference is shown, to establish every requirement in Article 26(1) and (2), including lawful authority, an enumerated actual purpose, necessity, proportionality, and preservation of essential content.”

139.“The Department shall issue the Plaintiff a passport within thirty days. It shall issue or decide any necessary exit authorization within fifteen days thereafter. Any refusal shall identify its precise legal basis, provide an intelligible non-sensitive statement of reasons, and demonstrate each Article 26 requirement. Failure to comply shall result in issuance.”

140.“Within ninety days the Department shall publish constitutionally compliant passport and exit-visa procedures and, within one hundred twenty days, shall file a sworn report of compliance. This Court retains jurisdiction.”

141.“The Plaintiff is entitled to compensation under Article 28(2). The parties shall file a revised Statement of Agreed Facts concerning quantum within forty-five days. Matters arising exclusively from arrest or detention remain excluded.”

Respectfully submitted,

Samuel Berhe, Esq.

1 Hadnet Ave # 203, Asmara, Eritrea

Tele: 112233 / Fax: 112234 / samuel.b@samlaw.com

Attorney for the plaintiff

Date: July 25, 2026

VERIFICATION

142.Counsel for the Plaintiff certifies that this Brief is based on the Complaint, the jointly filed Statement of Agreed Facts, the Rules of Procedure of the Supreme Court of Eritrea, and the constitutional, statutory, treaty, international, comparative, and academic authorities cited herein. Matters concerning arrest, detention, and treatment in custody are excluded in accordance with the parties' agreement.