

Amicus Curiae

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)

AMICUS CURIAE BRIEF
ON TREATY-MAKING IN ERITREA

PROOF OF SERVICE: Executed via CAAM on all parties.

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1. QUESTIONS PRESENTED

1. Suppose the President of Eritrea alone purported to conclude a treaty allowing another country to dispose of toxic waste in Eritrea, granting another country unfair control over Eritrea's mineral resources, transferring control of the Port of Assab to Ethiopia, or burdening Eritrea and future generations with substantial sovereign debt owed to another country or group of countries. *This case concerns human-rights treaties, but the rule announced by the Court will govern treaties generally. The same constitutional rule must apply to beneficial and harmful treaties alike.* The Court cannot excuse an unconstitutional treaty-making process because the treaty before it protects human rights while rejecting the same process when it produces exploitation, environmental destruction, substantial national indebtedness, or loss of territory or control over a national asset or even sovereignty.
2. The Court should therefore adopt a rule capable of governing the entire field of treaty-making: Eritrea may be bound only through the institutions and procedures authorized by its Constitution. Where the Constitution requires approval by the National Assembly, neither presidential signature nor executive deposit of a so-called ratification paper can substitute for that approval. Constitutional compliance in treaty-making does not weaken human rights.
3. With that caution in place, here are the issues this brief addresses:
 - 3.1. What does it mean, under the Constitution of Eritrea 1997, for an international treaty to bind Eritrea on the international plane and to operate as law in Eritrean courts?
 - 3.2. Which constitutional institution may negotiate, sign, ratify, enact, implement, or terminate a treaty, and what domestic rank follows from the identity and authority of the institution that acts?
 - 3.3. How should the Court determine whether a treaty provision is directly enforceable, requires implementing legislation, or may nevertheless guide constitutional and statutory interpretation?

2. INTEREST AND ASSISTANCE OF *AMICUS CURIAE*

4. The proposed *amicus* is an independent practitioner concerned with Eritrean constitutional law, public international law, and the institutional development of this Court. The *amicus* supports neither party. The interest of the *amicus* is in the development of a durable constitutional framework that preserves democratic lawmaking, constitutional government, and Eritrea's good-faith performance of validly assumed international obligations.
5. The parties' dispute makes the legal status of treaties unavoidable. The accumulated vocabulary of treaty law—including "monism," "dualism," "incorporation," "transformation," "domestication," "implementation," "self-execution," "direct effect,"

“signature,” “ratification,” “acceptance,” “approval,” and “accession”—may help describe particular processes, but these labels do not, by themselves, answer the constitutional questions before the Court. They are frequently used inconsistently, sometimes collapse distinct legal acts into a single concept, and may obscure more than they clarify.

6. The Court should therefore look beyond terminology and examine the underlying constitutional realities: who acted; from what source that person or institution derived authority; whether the constitutionally required lawmaker approved the treaty; whether the purported consent validly bound Eritrea internationally; whether the treaty became part of Eritrean law; what domestic rank it possesses; and whether a particular provision is judicially enforceable without further legislative or other action. This brief surveys Eritrean treaty-making practice and proposes an institution-based framework grounded in the text, structure, and allocation of public power established by the Constitution of Eritrea 1997.

3. SUMMARY OF ARGUMENT

7. The familiar monist-dualist vocabulary is a useful starting point but not a rule of decision. The Court must separately determine who possessed authority to act for Eritrea, whether valid international consent was expressed, whether the treaty entered domestic law, its domestic rank, and whether the provision invoked is judicially enforceable.
8. Eritrean practice does not supply a settled answer. The United Nations Commission of Inquiry, treaty bodies, and the African Commission have described Eritrea as dualist or requested evidence of domestication, while academic work describes an opaque and irregular treaty-making practice. These materials identify the problem but do not authoritatively construe the Constitution.
9. The Constitution does. It is supreme; the President negotiates and signs international agreements; and the National Assembly ratifies them “by law.” For treaties requiring ratification or accession, the normal constitutional sequence is executive negotiation, an Assembly Ratification Act, presidential signature and publication of that Act, and executive deposit of the international instrument.
10. The Assembly may delegate confined authority for technical, administrative, agency, or local arrangements. The domestic rank of any resulting treaty follows the authority of its maker: an Assembly-ratified treaty ordinarily has statutory rank below the Constitution, while a delegated agreement has subordinate rank. Direct enforceability remains a provision-specific inquiry.
11. International and domestic validity should not be divided casually. A facially unauthorized executive instrument should not bind Eritrea merely because a depositary accepted it. Treaty-making should ordinarily be one constitutionally valid transaction in both legal spheres. Although this Court cannot compel a depositary to amend its records, it can declare the governing constitutional rule and direct Eritrean authorities to pursue correction.
12. The Court should therefore require the complete ratification record for every treaty invoked and determine constitutional authority, international consent, domestic status, rank, and direct enforceability. The Constitution remains the principal rule of decision; valid

international commitments may guide the interpretation and permissible limitation of constitutional rights.

4. ARGUMENT

4.1. Historical Concepts Help Identify the Questions, but Do Not Decide Them

4.1.1. Monism and Dualism Arose from Different Accounts of Legal Authority

13. Classical monism treats international and municipal law as parts of one legal order. In its strongest form, a valid international rule enters the domestic legal system without a second legislative act and may prevail over inconsistent municipal law. Variants of monism differ on whether international law, the national constitution, or another foundational norm occupies the highest position. The theory's principal attraction is coherence: *a State should not promise one rule internationally and apply its opposite domestically.*
14. Classical dualism treats international and municipal law as distinct legal systems with different sources, subjects, and fields of operation. A treaty may bind the State internationally while creating no rule that a domestic judge may apply until the constitutionally competent lawmaker transforms or incorporates it. Its attraction is democratic legitimacy and institutional competence: an executive promise made abroad should not automatically become domestic legislation unless the domestic constitution authorizes that consequence.
15. Neither tradition has ever been singular. Moderate or qualified monist systems may give treaties direct effect but subordinate them to the constitution, deny direct effect to non-self-executing provisions, or give statutes priority in defined circumstances. Moderate dualist systems may use treaties to interpret statutes, recognize customary international law without transformation, or permit some legislatively approved treaties to operate directly. Modern legal systems are therefore frequently hybrid, sector-specific, and provision-specific.

4.1.2. Modern Terminology Separates Legal Acts That Older Theories Often Combined

16. Ratification has two possible legal settings that must be distinguished. In international law, ratification, acceptance, approval, and accession are acts by which a State establishes its consent to be bound on the international plane. Vienna Convention on the Law of Treaties articles 2(1)(b), 11–16, May 23, 1969, 1155 U.N.T.S. 331. In constitutional law, “ratification” may describe the legislature’s internal approval authorizing that international act. Constitution of Eritrea 1997, article 32(4), uses the constitutional expression “ratify international agreements, by law.” The international and constitutional acts are connected, but they are not identical.
17. Signature is equally dependent upon context. It may authenticate the negotiated text, preserve an interim obligation not to defeat a treaty’s object and purpose, or itself express consent when the treaty or negotiating parties so provide. Vienna Convention articles 10,

- 12, and 18. The Constitution of Eritrea gives the President authority to negotiate and sign international agreements but separately gives the National Assembly authority to ratify them by law. Constitution of Eritrea 1997, articles 32(4) and 42(6). Presidential signature therefore cannot ordinarily substitute for the legislative act expressly assigned to the Assembly.
18. Incorporation commonly means bringing a treaty rule into the domestic legal order. Transformation emphasizes restating treaty obligations in domestic statutory language. Domestication is often used more broadly for either process. Implementation describes the additional laws, regulations, institutions, appropriations, procedures, and remedies needed to perform a treaty.
 19. A short Ratification Act may incorporate sufficiently precise treaty provisions while leaving other provisions dependent upon implementing legislation. Ratification and implementation should therefore be distinguished even when they are contained in the same legislative instrument.
 20. “Self-executing,” “direct effect,” and “directly applicable” are related but not interchangeable concepts. A treaty can be part of domestic law yet contain provisions that are too general, programmatic, or institution-dependent for immediate judicial enforcement. Conversely, a sufficiently clear right or prohibition may be enforceable once the constitutionally required approval has occurred. *The inquiry concerns the particular provision and the domestic act that received it, not merely the treaty as a whole.*
 21. Rank is another independent issue. Domestic reception does not answer whether a treaty is equal to an ordinary statute, superior to later statutes, subordinate to the Constitution, or endowed with a special human-rights status. That question depends primarily upon the Constitution and the legal authority of the domestic act through which the treaty was received.

4.1.3. Contemporary Conditions Require a Functional Constitutional Analysis

22. Many of the assumptions underlying the traditional monist-dualist division have changed. International law now regulates individuals, commerce, labor, public health, criminal accountability, the environment, and human rights, not merely reciprocal relations among sovereign States. Individuals are rights holders and may participate before international courts, commissions, and treaty-monitoring bodies. Treaties may establish courts, reporting obligations, supervisory committees, and detailed rules intended for continuing domestic application.
23. African constitutional practice illustrates the resulting variety. Ethiopia provides that ratified agreements are an integral part of national law. Constitution of the Federal Democratic Republic of Ethiopia, article 9(4). Namibia makes binding international agreements part of domestic law unless the Constitution or an Act of Parliament otherwise provides. Constitution of Namibia, article 144. Kenya provides that treaties and conventions ratified by Kenya form part of Kenyan law. Constitution of Kenya 2010, article 2(6).

24. South Africa separately regulates executive negotiation, parliamentary approval, technical and administrative agreements, domestic enactment, self-executing provisions, and treaty-consistent interpretation. Constitution of the Republic of South Africa 1996, sections 231 and 233.
25. These examples demonstrate why asking whether a State is simply “monist” or “dualist” is inadequate. Each constitution distributes international and domestic authority in its own manner.
26. I have reflected on this issue for a long time and have observed the diminishing explanatory power and substantial inapplicability of the old theories to current realities. Simon Weldehaimanot, *Eritrea: Prepare for Transition* (LAP Lambert Academic Publishing 2017). Recent scholarship similarly criticizes the monist-dualist binary when it obscures mixed African practice and the special character of international human rights obligations. See Michelle Barnard, *Legal Reception in the African Union Against the Backdrop of the Monist/Dualist Dichotomy*, 55 *Comparative and International Law Journal of Southern Africa* 1 (2022); Itumeleng Shale, *Historical Perspective on the Place of International Human Rights Treaties in the Legal System of Lesotho: Moving Beyond the Monist-Dualist Dichotomy*, 19 *African Human Rights Law Journal* 193 (2019).
27. The answer, however, should not be to disregard the national constitution. The answer should be a more precise account of how constitutional authority and international obligation interact. The better approach is constitutional and functional. A court should identify the relevant actor, the constitutional source and limits of that actor’s authority, the kind of agreement involved, the domestic act relied upon, the rank of that act, and the nature of the particular treaty provision. *The Constitution of Eritrea, not an abstract label imported from another legal system, supplies the controlling answers.*

4.2. Eritrean Practice Has Been Described as Dualist, but Remains Insufficiently Documented

4.2.1. Pre-Constitutional and Post-Independence Practice Was Institutionally Uncertain

28. Eritrea’s early post-independence legal order was transitional. Proclamation 37/1993, Interim Government of Eritrea, allocated governmental responsibilities before adoption of the Constitution. Later practice did not consistently reveal whether treaty approval was legislative, executive, or both. The absence of a complete and publicly accessible Gazette record has made it difficult to distinguish international depositary action from domestic enactment.
29. Two Eritrean scholars carefully studied Eritrea’s post-independence lawmaking process, characterized it as “nebulous,” and identified irregularities concerning the identity of lawmakers, the publication of laws, and treaty ratification. Simon M. Weldehaimanot & Daniel R. Mekonnen, *The Nebulous Lawmaking Process in Eritrea*, 53 *Journal of African Law* 171, 186–89 (2009).

30. That account is important evidence of practice. Irregular practice, however, cannot amend the Constitution or transfer a power that the Constitution assigns to another institution. Repeated unconstitutional conduct does not mature into constitutional authority merely through repetition.

4.2.2. International Bodies Have Identified a Failure of Incorporation and Proof

31. The United Nations Commission of Inquiry stated that Eritrea “operates a dualist system” in which ratified treaties are not automatically part of domestic law and must be integrated through legislation, legal notices, or regulations. 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).
32. That observation is influential, but its function was international fact-finding rather than authoritative constitutional adjudication. The Commission did not identify and construe a complete collection of Eritrean Ratification Acts. It did not determine the domestic rank of a treaty properly enacted by the National Assembly. Nor did it analyze the separate constitutional functions assigned by articles 32 and 42.
33. In 2018, the African Commission on Human and Peoples’ Rights found that Eritrea had supplied no information about domestication or incorporation of the African Charter or other human-rights instruments. It recommended domestication of the African Charter and requested clarification of domestic enforcement. African Commission on Human and Peoples’ Rights, Concluding Observations and Recommendations on the Initial and Combined Periodic Report of the State of Eritrea, paragraphs 49 and 120(i)–(iii) (2018).
34. In 2019, the Human Rights Committee referred to Eritrea’s “dualist system,” expressed concern about the absence of information concerning incorporation and enforceability of the International Covenant on Civil and Political Rights, and urged reconvening the National Assembly so that it could undertake the necessary implementation measures. Human Rights Committee, Concluding Observations on the Initial Report of Eritrea, U.N. Doc. CCPR/C/ERI/CO/1, paragraphs 7–8 (2019).
35. The Human Rights Committee’s recommendation confirms the central institutional point: domestic legislative effect requires action through Eritrea’s constitutionally competent legislative institutions.
36. These international materials converge on three facts rather than a complete rule of decision: Eritrea has deposited instruments concerning important treaties; the public domestic record of constitutional ratification and incorporation is incomplete; and direct judicial enforceability has not been demonstrated. Their use of the term “dualism” should be understood as a summary of that incomplete record, not as a replacement for constitutional analysis.

4.2.3. International Deposit and Constitutional Authorization Must Be Distinguished

37. A depositary record establishes that an instrument purporting to express Eritrea's consent was deposited and accepted. Standing alone, however, it does not conclusively establish that the official who submitted the instrument had constitutional authority to bind Eritrea. The Court must therefore distinguish two questions. First, was Eritrea's purported consent to the treaty authorized through the constitutionally prescribed treaty-making process? Second, if so, did that validly concluded treaty require additional legislation before it could operate in Eritrean courts? The first question concerns the validity of Eritrea's consent; the second concerns the treaty's domestic legal effect.
38. International law generally requires treaties in force to be performed in good faith and prevents a party from invoking internal law merely to excuse nonperformance. Vienna Convention articles 26–27. That general rule does not eliminate every question of constitutional authority.
39. *Article 46 of the Vienna Convention recognizes that a violation of internal law governing competence to conclude treaties may invalidate consent where the violated rule is of fundamental importance and the violation was manifest.* Vienna Convention article 46. International law therefore recognizes, at least in exceptional circumstances, that valid international consent depends upon domestic constitutional authority.

4.3. The Constitution of Eritrea 1997 Controls Domestic Treaty Authority

4.3.1. Supremacy and Representative Lawmaking Are the Starting Principles

40. The Constitution is “the legal expression of the sovereignty of the Eritrean people” and “the supreme law of the country”; any inconsistent law, action, or agreement is null and void. Constitution of Eritrea 1997, articles 2(1) and 2(3). The National Assembly is the supreme representative and legislative body, enacts laws, and ratifies international agreements by law. *Id.* articles 31(1), 32(1), and 32(4). No other body may exercise legislative power unless authorized by the Constitution or an Assembly law. *Id.* article 32(2).
41. Accordingly, if a treaty is to govern citizens as Eritrean law, its domestic authority must be traceable to the Constitution and, ordinarily, to an Assembly Act—not to a negotiating conference, a depositary, or the President acting alone.

4.3.2. Negotiation, Signature, Ratification by Law, and Publication Are Distinct Steps

42. The President negotiates and signs international agreements and may delegate that authority. Constitution of Eritrea 1997, article 42(6). The President also presents legislative proposals to the National Assembly. *Id.* article 42(15). These functions suit the executive to negotiate and submit treaties for legislative consideration.

43. The National Assembly, however, ratifies international agreements “by law.” Id. article 32(4). Those words require a legislative act, not executive notification, international deposit, a press statement, or presidential signature upon the treaty text.
44. After Assembly approval, the President signs and publishes the law. Id. articles 33 and 42(4). Presidential signature of an international agreement under article 42(6) and presidential signature and publication of an Assembly law under articles 33 and 42(4) are distinct acts. Neither makes the President the domestic lawmaker.
45. Negotiation and treaty signature therefore resemble preparation and presentation of a bill: they place a developed instrument before the Assembly but do not replace its constitutional judgment. Accession follows the same logic—the Assembly approves it by law, and the executive deposits the instrument.

4.3.3. The Assembly Ratification Act Is the Domestic Source of Authority

46. A constitutionally sound Ratification Act can be concise. An example is helpful here: Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights. The Ratification Act might provide:
47. *“The National Assembly hereby approves the ratification by the State of Eritrea of the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights, reproduced in the Schedule to this Act, and authorizes deposit of the instrument of ratification subject to the reservations and declarations stated in this Act.”*
48. The Act should also state whether and when the scheduled treaty has domestic force. The complete authentic text—including its title, recitals, article numbering, authentic languages, and annexes—should be attached and published as a schedule. The Act records the Assembly’s decision; the Schedule identifies the instrument approved.
49. Ratification and implementation remain distinct. The Ratification Act may give sufficiently precise provisions immediate effect, while offences, taxes, expenditures, institutions, administrative powers, causes of action, or detailed procedures ordinarily require further legislation. The Act should make that division clear.

4.4. Limited Agreements May Be Made Under Delegated Authority, but Their Rank Follows Their Maker

50. Article 32(2) permits authority conferred by the Constitution or an Assembly law. The Assembly may therefore authorize defined technical or administrative agreements, provided the delegation specifies subject matter, purposes, limits, oversight, publication, and any required tabling or approval.
51. A delegated agreement cannot outrank its enabling law. An executive agreement made within delegated regulatory authority has regulatory status; an authorized local border arrangement has local or subordinate status. Calling that type of agreement a “treaty” cannot enlarge the delegation.

52. Such authority could support limited transboundary coordination concerning markets, sanitation, transport, grazing, emergency response, or local services. Without clear legislative authority, however, subordinate actors may not alter territory, nationality, constitutional rights, criminal liability, taxation, national appropriations, military obligations, or access to courts. Nor may delegation transfer the Assembly's essential legislative responsibility.
53. South Africa's Constitution illustrates this graded approach by separating executive negotiation, legislative approval, technical or administrative agreements, and domestic enactment. Constitution of the Republic of South Africa 1996, section 231. Eritrea's text differs, but the comparison confirms that not every international arrangement must occupy the same constitutional category.

4.5. Domestic Rank, Direct Enforceability, and International Validity Must Be Determined Separately

4.5.1. Domestic Rank Ordinarily Follows the Constitutionally Authorized Lawmaker

54. An Assembly Ratification Act has the rank of an Assembly law below the Constitution. A delegated executive, agency, or local agreement has the corresponding subordinate rank. The international origin of an instrument does not elevate it above the authority of its domestic maker.
55. Courts should harmonize enactments where the text reasonably permits. A Ratification Act is strong evidence that the Assembly intended compliance with the treaty, and a later general statute should not silently defeat a specific treaty implementation. Interpretation, however, cannot rewrite unambiguous legislation.

4.5.2. Domestic Legal Status Does Not Mean That Every Treaty Provision Is Immediately Enforceable

56. The Court should ask of each treaty provision: (1) Did the Ratification Act give the provision domestic force? (2) Is the provision expressed as a present right, prohibition, or rule rather than as a general objective for future policy? (3) Is it sufficiently precise for judicial application? (4) Does it require creation of an institution, appropriation of funds, definition of an offence, or a choice among policy alternatives? (5) Does the treaty itself contemplate further implementing legislation?
57. Provisions defining clear individual rights or prohibitions are more likely to be directly enforceable once the Ratification Act is passed. Provisions requiring States progressively to take measures, establish programs, enact offences, appropriate funds, or create institutions generally require further implementation. The labels "self-executing" and "non-self-executing" should be conclusions reached through this analysis, not substitutes for the analysis.

58. Criminal punishment, taxation, public expenditure, and coercive administrative authority demand particular clarity. A treaty should not be used to convict a person of an offence not defined by Eritrean legislation, impose a tax not authorized by law, spend funds not appropriated, or create coercive governmental authority not conferred by the Assembly.

4.6. Treaty-Making Should Constitute One Valid Transaction in Both the Constitutional and International Legal Orders

59. *The Court should reject the assumption that an internationally deposited treaty may bind Eritrea even when the act purporting to ratify it was constitutionally unauthorized.* International consent and domestic effect are analytically distinct, but they should ordinarily arise from one constitutional transaction: executive negotiation and signature, legislative ratification by law, presidential signature and publication of that law, and executive deposit.
60. If the National Assembly has not enacted a Ratification Act, the executive's subsequent deposit of an instrument of ratification cannot cure that omission. International deposit cannot substitute for the National Assembly's constitutionally required approval or confer treaty-making authority that the executive did not otherwise possess. Deposit cannot supply a legislative power withheld by the Constitution.

4.6.1. Recognition of an Official Does Not Establish the Scope of the Official's Authority

61. Corporate law supplies a useful analogy. A corporation acts through human agents, and a third party must distinguish an officer's identity from the officer's authority to undertake a particular transaction.
62. A corporate president may manage ordinary business yet lack authority to sell principal assets, incur extraordinary debt, merge, or dissolve the corporation without a board or shareholder resolution. A prudent counterparty therefore examines the charter, bylaws, resolutions, registry documents, or a legal opinion—especially as the transaction's consequence increases.
63. If a public charter reserves a transaction to the board, reliance on the president's unsupported assurance is unreasonable. The counterparty bears the risk that the purported agent could not bind the corporation.
64. A country deserves at least equal care, if not more. Treaties may affect territory, public finances, criminal law, jurisdiction, natural resources, military obligations, constitutional rights, and national freedom of action for generations. *Recognition of a person as President of Eritrea establishes identity, not unlimited authority. Where the Constitution reserves ratification to the National Assembly, recognition cannot convert executive signature into legislative consent.*

4.6.2. Depositaries Should Perform Reasonable Constitutional Due Diligence

65. International and regional depositaries should likewise distinguish identity from authority. Before accepting an instrument, a depositary should ask whether it was authorized under the State's publicly available constitution. Modern access to constitutions, gazettes, legislative records, and legal databases makes that inquiry practical.
66. Where legislative ratification is required, the depositary should request: (1) a certified Ratification Act or legislative resolution; (2) evidence of its enactment, constitutionally required signature, and publication; (3) the complete authentic treaty text and any approved reservations or declarations; (4) the executive instrument of ratification or accession; and (5) where a genuine question remains, an official legal opinion explaining constitutional compliance.
67. The depositary need not adjudicate every constitutional dispute. It should, however, suspend or reject an instrument facially inconsistent with an express constitutional requirement, request the missing authority, and notify the submitting State and, when appropriate, the treaty parties.
68. This approach develops the depositary's existing duty to examine whether an instrument is in "due and proper form" and to raise discrepancies. Vienna Convention article 77(1)(d). Current practice is largely formal, but modern conditions support a more meaningful inquiry. Correct diplomatic language, a seal, and an executive signature cannot cure the absence of legal authority.

4.6.3. Scrutiny Is Especially Necessary Under Unrepresentative Government

70. Verification of a country's legal order governing the entire treaty-making transaction is especially important when the submitting government is repressive, unrepresentative, or operating outside the constitutional order. That verification should determine which national institutions may negotiate, sign, approve, ratify, and deposit a treaty, and whether each constitutionally required step was completed. Because such a government may control the documents and communications through which the State presents itself internationally, accepting its unsupported account of the process would allow the very officials whose authority is disputed to determine the matter conclusively.
71. Governmental recognition must not be treated as ownership of the State or possession of every public power. International institutions should not enable an executive to accomplish abroad what it cannot lawfully accomplish at home. Treating the same unauthorized act as insufficient domestically but sufficient internationally elevates administrative convenience above the people's constitutional sovereignty.

4.6.4. Article 46 of the Vienna Convention Supports Constitutional Unity

72. Article 46 of the Vienna Convention permits a State to challenge purported consent when a manifest violation concerns an internal rule of fundamental importance governing competence to conclude treaties. A violation is manifest when objectively evident to

another State acting according to normal practice and in good faith. Vienna Convention article 46.

73. Although article 46 is narrow, treaty stability cannot render it meaningless. Constitutional government, popular sovereignty, representative lawmaking, and prevention of unauthorized executive power are also legitimate interests.
74. Article 32(4) of the Constitution of Eritrea 1997 is written, categorical, and fundamental: the National Assembly ratifies treaties “by law.” Article 42(6) of the Constitution separately authorizes the President to negotiate and sign. A presidential ratification unsupported by an Assembly Act therefore presents an objectively visible constitutional defect.
75. A depositary’s failure to investigate does not make a readily ascertainable violation less manifest. Manifestness concerns objective visibility, not a recipient’s decision to remain ignorant.

4.6.5. Depositary Acceptance Is Not Conclusive Proof of Valid Consent

76. A depositary record proves receipt and administrative treatment of an instrument; it does not conclusively prove constitutional authority. Filing an unauthorized corporate contract cannot supply a missing board resolution, and deposit cannot supply a missing Ratification Act.
77. The party asserting valid ratification should therefore produce the complete chain of authority. If no Ratification Act exists, the Court should declare the executive instrument unauthorized under Eritrean law and the purported consent affected by a manifest violation within article 46.
78. This Court cannot itself compel a depositary to alter its records. It can direct Eritrean authorities to transmit the judgment, invoke available international procedures, request correction, and refrain from future deposit without authenticated legislative authority.

4.6.6. The Governing Presumption Should Be Constitutional Unity

79. The Court should presume that, where legislative ratification is constitutionally required, international consent and domestic approval must form one valid transaction. Under that presumption: (1) executive negotiation and signature do not substitute for legislative ratification; (2) an Assembly Ratification Act authorizes consent and determines domestic status; (3) executive deposit communicates that authorized consent internationally; (4) a depositary should verify the supporting authority; (5) manifest absence of required legislative approval defeats consent in both spheres; and (6) depositary acceptance proves receipt, not constitutional validity.
80. This rule makes consent verifiable, preserves treaty stability through a clear procedure, and prevents an unrepresentative executive from using international recognition to evade constitutional limits.

4.6.7. Human-Rights Treaties Do Not Justify Unconstitutional Ratification

81. The importance of a human-rights treaty does not authorize executive displacement of the legislature. A desirable treaty adopted through unconstitutional means creates the same structural danger as an undesirable one.
82. Nor may a repressive government benefit from its own wrong. A government that represented the treaty as valid, accepted participation, submitted reports, or invoked treaty rights may be barred by good faith from denying the undertaking when citizens seek protection.
83. Independent obligations under customary international law, peremptory norms, the United Nations Charter, or other valid instruments remain unaffected. Defective ratification licenses no conduct prohibited by those sources.
84. The proper cure is prompt constitutional ratification through an Assembly Act identifying the treaty, attaching its authentic text, specifying domestic effect, and authorizing deposit.

4.6.8. The Court Should State the Governing Principle Despite Institutional Limits

85. The Court's inability to command a depositary does not require silence. It should declare the constitutional limit, determine the consequences within its jurisdiction, and direct responsible officials to pursue the remaining international remedy.
86. Administrative convenience cannot create authority, and international recognition cannot confer legislative power. Legitimate treaty-making requires one authorized decision, valid in both legal orders and supported by an ascertainable chain of constitutional authority.

4.7. The Court Should Require an Authoritative Record Before Classifying the Treaties Invoked in This Case

87. The present record should not rest upon secondary assertions that Eritrea "ratified" a treaty. For every treaty invoked, the Court should direct production of: (1) the complete authentic treaty text; (2) the treaty signature page, if applicable; (3) the National Assembly minutes and Ratification Act; (4) the Gazette publication; (5) any implementing proclamation, regulation, or legal notice; (6) the instrument deposited internationally; (7) the depositary notification; (8) any reservations or declarations; and (9) any later amendment, withdrawal, or denunciation.
88. The Court should then make separate findings concerning: (1) whether a purported instrument of consent was deposited and from what date; (2) whether the Constitution's domestic approval process occurred; (3) whether the person depositing the instrument possessed constitutional authority; (4) what domestic instrument received or implemented the treaty; (5) the domestic rank of that instrument; (6) whether the particular treaty provision is directly enforceable; and (7) whether the treaty otherwise informs constitutional or statutory interpretation.

89. The International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights recognize liberty of movement and the right to leave a country, subject to defined limitations. International Covenant on Civil and Political Rights article 12, Dec. 16, 1966, 999 U.N.T.S. 171; African Charter on Human and Peoples' Rights article 12, June 27, 1981, 1520 U.N.T.S. 217. Their relevance is substantial, but valid ratification and independent domestic enforceability must be proved.
90. The Constitution remains the principal domestic rule. Valid treaty materials may illuminate liberty, legality, necessity, proportionality, family interests, and remedies, but cannot displace the Constitution and proved domestic enactments.

4.8. A Bold but Disciplined Holding Can Establish a Durable Constitutional Framework

91. The Court need not choose pure monism or dualism. It should adopt the following institution-based framework: *First*, the President negotiates and signs under article 42(6); the National Assembly ratifies or approves accession by law under article 32(4); and executive signature or deposit cannot substitute for that Act. *Second*, a treaty received through an Assembly Act ordinarily has statutory rank below the Constitution. A validly delegated agreement has corresponding subordinate rank. *Third*, direct enforceability is determined provision by provision from the receiving Act, treaty text, precision, subject matter, and need for further legislative choices. *Fourth*, a party relying on a treaty must establish the constitutional chain of authority. Deposit proves receipt, not valid ratification; a manifest absence of required legislative approval implicates article 46. *Fifth*, because the relevant records are principally in Government custody, the Court may order their production and allow the custodian a fair opportunity to respond. *Sixth*, upon finding defective ratification, the Court should direct notice to the depositary and treaty parties, pursuit of correction, and proper presentation to the National Assembly. *Seventh*, future instruments should be accompanied by an authenticated Ratification Act unless made under a valid, specific delegation. The Court should encourage depositaries to undertake reasonable constitutional due diligence.

5. CONCLUSION

92. Treaty authority must be grounded in the Constitution. The executive negotiates and signs; the National Assembly ratifies by law; the President signs and publishes that Act; the executive deposits the instrument; and the depositary should verify the authority represented. *The maker determines domestic rank, and the receiving Act and treaty text determine direct enforceability.*
93. The Court cannot command international organizations to alter their records, but it can reject an unconstitutional process and direct Eritrean officials to pursue correction and lawful ratification. Institutional limits narrow the remedy, not the governing principle. Applying this constitutional-unity framework to an authenticated record will protect

democratic lawmaking, constitutional supremacy, the integrity of international consent, and the credibility of Eritrea's treaty obligations.

Respectfully submitted,

July 28 2026