

A.A. AND NINE OTHER WOMEN

V.

REPUBLIC OF ARAVANIA

STATE

TABLE OF CONTENTS

I. INDEX OF AUTHORITIES	4
A. Legal Cases	4
A.1 Inter-American Court of Human Rights	4
<i>A.1.i Advisory Opinions</i>	4
<i>A.1.ii. Contentious cases</i>	4
A.2 Inter-American Commission on Human Rights.....	6
A.3 Other Human Rights Bodies	7
B. Legal books and Articles	7
B.1 Books.....	8
B.2 Articles	8
B.3 Legal instruments	8
B.4 Reports	8
II. STATEMENT OF FACTS	10
III. LEGAL ANALYSIS	12
1) Preliminary Objections	12
A. The Court should find the Applicants’ claim inadmissible <i>ratione personae</i> as nine women are not identified	12
B. The Court should find the Applicants’ claim inadmissible <i>ratione loci</i> as the facts underlying the alleged violations occurred outside its jurisdiction	14

C. The Court should find the Applicants’ claim inadmissible based on a violation of the principle of subsidiarity as A.A. received reparations from the State for the alleged harm.....	16
2) Merits	17
A. The State did not violate Article 26 ACHR because it pursued progressive development for all	17
A.1. Article 26 ACHR <i>juncto</i> Articles 1(1) and 2 ACHR is not justiciable before this Court	17
A.2. Aravania did comply with Article 26 ACHR <i>juncto</i> Articles 1(1) and 2 ACHR in relation to progressive development	19
B. The State did not violate Article 6 ACHR because there is no forced labor, no human trafficking, nor State attribution.....	21
B.1. The State did not violate Article 6(2) ACHR.....	21
B.2. The State did not violate Article 6(1) ACHR.....	26
C. The State did not violate Article 3 ACHR because it took all necessary measures to prevent the denial of legal personality and provided effective remedies for potential violations	30
D. The State did not violate 7 ACHR because the deprivation of liberty cannot be attributed to the State.....	32
E. The State did not violate Article 5 ACHR because it took all necessary preventive and responsive measures once it became aware of a real and immediate risk.....	34

F. The State did not violate Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women because it is inapplicable, or alternatively, the State met its obligations	36
F.1 The State did not violate Article 7 of the Convention of Belém do Pará	37
<i>F.1.i The Convention of Belém do Pará is not applicable in this case.....</i>	<i>37</i>
<i>F.1.ii. Even if the Convention of Belém do Pará were applicable, the State has complied with Article 7 Convention of Belém do Pará</i>	<i>38</i>
F.2. There is no violation of Article 7 Convention of Belém do Pará that would amount to a form of discrimination under Article 1(1) ACHR.	41
G. The State did not violate Articles 8 and 25 ACHR because it provided effective investigations and remedies, upholding due process	43
IV. REQUEST FOR RELIEF	4747

I. INDEX OF AUTHORITIES

A. Legal Cases

A.1 Inter-American Court of Human Rights

A.1.i Advisory Opinions

Advisory Opinion OC-21/14, IACtHR, (19 August 2014).....15,32

Advisory Opinion OC-23/17, IACtHR, (15 November 2017).....14,15

A.1.ii. Contentious cases

Case of Aloeboetoe et al v Suriname (Judgment), IACtHR, (10 September 1993).....16

Case of Anzualdo Castro v. Peru (Judgment), IACtHR, (22 September 2009).....30,43

Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela (Judgment), IACtHR, (5 August 2008).....44

Case of Bayarri v. Argentina (Judgment), IACtHR, (30 October 2008).....35

Case of Blanco-Romero et. al. v. Venezuela (Monitoring Compliance with Judgment and Concurring Opinion of Judge Vio Grossi), IACtHR (22 November 2011).....19

Case of Castañeda Gutman v. Mexico (Judgment), IACtHR, (6 August 2008).....44

Case of Cuscul Pivaral et al. v. Guatemala (Judgment), IACtHR, (23 August 2018).....17,19

Case of expelled Dominicans and Haitians v. Dominican Republic (Judgment), IACtHR, (28 August 2014).....32

Case of Fairén-Garbi and Solís-Corrales v. Honduras (judgment), IACtHR, (15 March 1989)..14

Case of Garibaldi v. Brazil (Judgment), IACtHR, (23 September 2009).....43

Case of Godínez-Cruz v. Honduras (Judgment), IACtHR, (20 January 1989).....45

<i>Case of Gonzales Lluy et al. v. Ecuador</i> (Concurring Opinion of Judge Alberto Pérez Pérez), IACtHR, (1 September 2015).....	19
<i>Case of González et al. (“Cotton Field”) v. Mexico</i> (Judgment), IACtHR,(16 November 2009).....	37,39,40,41,43
<i>Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala</i> (Judgment), IACtHR, (20 November 2012).....	43
<i>Case of Guzmán Albarracín et al. v. Ecuador</i> (Judgment), IACtHR, (24 June 2020).....	35
<i>Case of I.V. v. Bolivia</i> (Judgment), IACtHR, (30 November 2016).....	41
<i>Case of Kíchwa Indigenous People of Sarayaku v. Ecuador</i> (Provisional Measures), IACtHR, (6 July 2004).....	13
<i>Case of La Oroya Population v. Peru</i> (Judgment and Partially Dissenting Opinion of Judges Sierra Porto and Pérez Goldberg), IACtHR, (27 November 2023).....	18,19
<i>Case of Lagos Del Campo v. Peru</i> (Judgment, Partially Dissenting Opinion of Judge Sierra Porto and Separate Opinion of Judge Roberto Caldas), IACtHR, (31 August 2017).....	18,19
<i>Case of Landaeta Mejías Brothers et al. v. Venezuela</i> (Judgment), IACtHR, (27 August 2014)....	34
<i>Case of Las Palmeras v. Colombia</i> (Judgment), IACtHR, (6 December 2001).....	16
<i>Case of López Sosa v. Paraguay</i> (Judgment), IACtHR, (17 May 2023).....	43
<i>Case of López Soto et al. v. Venezuela</i> (Judgment), IACtHR, No. 362, (26 September 2018).....	24,32,33,35
<i>Case of Núñez Naranjo et al. v. Ecuador</i> (Judgment), IACtHR, (23 May 2023).....	44
<i>Case of Peralta Armijos v. Ecuador</i> (Judgment), IACtHR, (15 November 2024).....	18
<i>Case of Perozo et al. v. Venezuela</i> (Judgment), IACtHR, (28 January 2009).....	37
<i>Case of Poblete Vilches et al. v. Chile</i> (Judgment), IACtHR, (8 March 2018).....	17

<i>Case of Ramírez Escobar et al. v. Guatemala</i> (Judgment), IACtHR, (9 March 2018).....	27
<i>Case of the “street children” (Villagrán Morales et al.) v. Guatemala</i> (Judgment), IACtHR, (19 November 1999).....	44
<i>Case of the Hacienda Brasil Verde Workers v. Brazil</i> (Judgment), IACtHR, (20 October 2016).....	21,23,24,27,28,32,33,36
<i>Case of the Ituango Massacres v. Colombia</i> (Judgment), IACtHR, (1 July 2006).....	21
<i>Case of the Mapiripán Massacre v. Colombia</i> (Judgment), IACtHR, (15 September 2015).....	44
<i>Case of the Massacres of El Mozote and Nearby Places v. El Salvador</i> (Judgment), IACtHR, (25 October 2012).....	43
<i>Case of the Pueblo Bello Massacre v. Colombia</i> (Judgment), IACtHR, No. 140 (31 January 2006).....	24,32,34
<i>Case of V.R.P., V.P.C. et al. v. Nicaragua</i> (Judgment), IACtHR, (8 March 2018).....	44
<i>Case of Vargas Areco v. Paraguay</i> (Judgment), IACtHR, (26 September 2006).....	35
<i>Case of Velásquez Rodríguez v. Honduras</i> (Reparations), IACtHR, (21 July 1989).....	16,43,44
<i>Case of the Xákmok Kásek Indigenous Community v. Paraguay</i> (Judgment), IACtHR, (24 August 2010).....	30

A.2 Inter-American Commission on Human Rights

<i>Coard et al. v. United States</i> (Merits), IACHR, (1999).....	14
<i>Ferry Echaverry v. Nicaragua</i> (Admissibility), IACHR, (2007).....	12
<i>Janet Espinoza Feria et al. Peru</i> (Admissibility), IACHR, (2002).....	12
<i>Maria Da Penha Maia Fernandes v. Brazil</i> (Merits), IACHR, (2000).....	39
<i>Parque Metropolitano v. Panama</i> (Inadmissibility), IACHR, (2018).....	12

<i>Stephen Schmidt v. Costa Rica</i> (Decision), IACHR, (1984).....	14
<i>Victims of Anti-Immigrant Vigilantes v. United States</i> (Admissibility), IACHR, (2009).....	12
<i>Victor Saldaño v. Argentina</i> (Inadmissibility), IACHR, (1999).....	14,15
<i>Peace community of San José de Apartadó</i> (Admissibility), IACHR, (2016).....	13

A.3 Other Human Rights Bodies

<i>Case of Daktaras v. Lithuania</i> , ECtHR, (2000).....	44
<i>Case of Fatma Yildirim v. Austria</i> (Judgment), CEDAW, (2007).....	39
<i>Case of Mrs. A.T. v. Hungary</i> (Judgment), CEDAW, (2005).....	39

B. Legal books and Articles

B.1 Books

Burbano-Herrera and Haeck, <i>Extraterritorial obligations in the Inter-American human rights systems</i> , (2021).....	14
CIM, OAS, ICCLR, ILANUD, <i>Violence in the Americas: A Regional Analysis (including a Review of the Implementation of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, (Convention of Belém do Pará)</i> , (2001).....	37
Gogna, Pdosiedlik and Hlobil, <i>Diplomatic and State Immunity in Respect of Claims of Embassy Employees and Domestic Workers: Mapping the Problems and Devising Solutions</i> , (2015).....	45
Hennebel and Tigroudja, <i>The American Convention on Human Rights A Commentary</i> , (2022).....	22,32,34
IACHR, <i>Digest of the Inter-American Commission on Human Rights on its Admissibility and Competence Criteria</i> , (2020).....	12

Mesecvi, <i>Guide to the Application of the Inter-American Convention on the Prevention</i> , (2014)..	38
Zabyelina, <i>The Immunity Challenges in Cases of the Labor Trafficking of Diplomatic Household Workers' in Between Immunity and Impunity: External Accountability of Political Elites for Transnational Crime</i> , (2023).....	45

B.2 Articles and Online Sources

Cavallaro and Schaffer, <i>Rejoinder: Justice before Justiciability: Inter-American Litigation and Social Change</i> , (2006).....	17
Livermore, <i>The Issues Involved in Using the “Persona Non-Grata” Option</i> , (2023), retrieved from: https://www.cips-cepi.ca/2023/05/09/the-issues-involved-in-using-the-persona-non-grata-option/ (March 2025).....	45
Rapnouil, <i>The Brutalisation of diplomacy?</i> , (2024).....	45
Ruiz-Chiriboga, <i>The American Convention and the Protocol of San Salvador: Two Intertwined Treaties</i> , (2013).....	19

B.3 Legal instruments

ILO Convention No. 29, (1930).....	22
ICJ, <i>The Right to a Remedy and Reparation for Gross Human Rights Violations</i> , (2018).....	16
ILO Standards on Forced Labour - The new Protocol and Recommendation at a Glance, (2016).....	21,22

B.4 Reports

IACHR, <i>Access to justice for women victims of violence in the Americas</i> , (2007).....	42
---	----

ICJ, <i>Report on Jurisdictional Immunities of the States (Germany v. Italy)</i> , (2012).....	45
ILC, <i>Global report: Resolutions adopted by the International Labour Conference at its 93rd Session</i> , (2005).....	22,23

II. STATEMENT OF FACTS

The Republic of Aravania has long grappled with deep-rooted structural challenges, including poverty, social inequalities, and the ever-present threat of its precarious geography.¹ Despite these hardships, Aravania has consistently worked towards improving conditions for its citizens, for example by creating plans to strengthen infrastructure, boost economic resilience and investment, and tackle climate challenges.²

The catastrophic weather events of 2012 have brought upheaval, forcing communities from their homes and dealing heavy economic blows.³ In the urgency to find a viable solution, Aravania sought cutting-edge solutions through the conduct of a rapid yet thorough evaluation, ultimately turning to Lusaria, renowned for its expertise in *Aerisflora*-based water management.⁴ This collaboration resulted in the Bilateral Cooperation Agreement for the Transplantation of *Aerisflora* (Cooperation Agreement). This Cooperation Agreement included comprehensive provisions to protect workers' rights on the farms, and created employment opportunities for those most in need, including women from rural areas who often faced limited economic prospects.⁵

Upon receiving allegations of misconduct by private actors, Aravanian authorities swiftly launched investigations.⁶ However, legal proceedings hit a wall due to diplomatic immunity provisions under the Agreement.⁷ Undeterred, Aravania pursued legal action against Lusaria for violating the Cooperation Agreement and successfully secured compensation for the harm suffered by A.A.⁸

¹ Hypothetical Case (Hypothetical), §§2-4.

² Hypothetical, §7.

³ Hypothetical, §20.

⁴ Hypothetical, §§21-23.

⁵ Hypothetical, §25.

⁶ Hypothetical, §§48,49&54.

⁷ Hypothetical, §§49-51.

⁸ Hypothetical, §55.

While challenges and obstacles remain, Aravania stands by its commitment to justice, international cooperation and the well-being of its people.

III. LEGAL ANALYSIS

1) Preliminary Objections

A. The Court should find the Applicants' claim inadmissible *ratione personae* as nine women are not identified

The Inter-American Commission on Human Rights (the Commission or IACHR) has consistently interpreted Article 44 of the American Convention on Human Rights (ACHR) to require for a petition to be admissible that there must be concrete victims.⁹ Article 46(1)(d) ACHR requires that alleged victims are identified for a claim to be admissible. The Inter-American Court of Human Rights (the Court or IACtHR) has recognized flexibility in cases where victims share specific, identifiable characteristics, such as belonging to a particular community or group affected by a systematic pattern of violations.¹⁰ However, the Court has consistently rejected *acciones populares*.¹¹

The Applicants claim that, in addition to A.A., nine other women were subjected to human rights violations. However, the available information regarding these women is vague and insufficient for identification. The only details provided, indicate that they were Aravanian women aged between 23 and 35, had dependents in Lusaria, and traveled with A.A. to Aravanja.¹²

⁹ IACHR, *Digest of the Inter-American Commission on Human Rights on its Admissibility and Competence Criteria*, (2020), p.19.

¹⁰ *Victims of Anti-Immigrant Vigilantes v. United States* (Admissibility), IACHR, (2009).

¹¹ *Ferry Echaverry v. Nicaragua* (Admissibility), IACHR, (2007), §31; *Parque Metropolitano v. Panama* (Inadmissibility), IACHR, (2018), §34; *Janet Espinoza Feria et al. Peru* (Admissibility), IACHR, (2002), §34.

¹² Clarification Questions (Questions), No.34.

One woman was allegedly named Maria, and another Sofia, who was traveling with her sister, Emma. However, no further identifying information – such as last names, legal documentation, or residence details – has been submitted to establish their identities.¹³

Furthermore, during the investigation, the Velora Police attempted to identify these individuals by reviewing immigration records for the relevant period. However, they determined that due to the high number of migrants passing through the Campo de Santana border crossing, and the lack of identifying information, it was impossible to verify their identities.¹⁴ Similarly, in the criminal proceedings against Mr. Maldini in Lusaria, seven women were recognized as victims of abuse of authority, but none were linked to the nine women in Aravania.¹⁵

The Applicants' failure to provide concrete information on the nine women means they cannot be considered identifiable victims under Article 46(1)(d) ACHR. While the Court has shown flexibility in past cases, such flexibility has been applied where victims could be recognized through common, specific characteristics, such as being a member of an indigenous community¹⁶ or residents of a particular region.¹⁷ Here, the alleged victims do not form a clearly defined group, nor do they share distinct, verifiable characteristics beyond general socio-economic status and their temporary employment at Finca El Dorado. The information provided is too broad to individualize the victims and too vague even to qualify for the Court's flexible approach.

In conclusion, the claims regarding the nine unidentified women must be declared inadmissible for lack of competence *ratione personae*.

¹³ *Ibid.*

¹⁴ Questions, No.3.

¹⁵ Hypothetical, §53.

¹⁶ *Case of Kichwa Indigenous People of Sarayaku v. Ecuador* (Provisional Measures), IACtHR, (6 July 2004), p.8.

¹⁷ *Peace community of San José de Apartadó* (Admissibility), IACHR, (2016), §39.

B. The Court should find the Applicants' claim inadmissible *ratione loci* as the facts underlying the alleged violations occurred outside its jurisdiction

States are not responsible for human rights violations outside of their jurisdiction.¹⁸ The mere presence under the State's jurisdiction at the time of the petition is insufficient,¹⁹ nor does nationality alone create a jurisdictional nexus.²⁰ For extraterritorial jurisdiction to apply, individuals must be subject to the effective control or authority of the State, typically through the acts of its agents abroad.²¹ Nonetheless, conditions for establishing extraterritorial jurisdiction must be interpreted restrictively, justified by the specific circumstances of each case.²²

In casu the vast majority of alleged violations took place in Lusaria, rather than in Aravania. Key actors like Mr. Maldini and Ms. Torres, as well as the companies involved – EcoUrban, which operated under Lusaria's Ministry of Economy and Development, and the farm Finca El Dorado – are all Lusarian actors.²³

Therefore, the State is convinced that it does not have jurisdiction over the alleged violations committed on Lusarian soil by Lusarian actors. The State underlines that no Aravanian actors were involved and that the Applicants were not subjected to the control or authority of Aravania. For that reason, the State asks that the Court finds the Applicants' claim inadmissible as the alleged violations occurred outside of Aravania's jurisdiction.

¹⁸ *Coard et al. v. United States* (Merits), IACHR, (1999), §37.

¹⁹ *Ibid.*; *Stephen Schmidt v. Costa Rica* (Decision), IACHR, (1984), §3.

²⁰ *Victor Saldaño v. Argentina* (Inadmissibility), IACHR, (1999), §22.

²¹ *Case of Fairén-Garbi and Solís-Corrales v. Honduras* (Judgment), IACtHR, (15 March 1989), §157; Advisory Opinion OC-23/17, IACtHR, (15 November 2017), §81.

²² Burbano-Herrera and Haeck, *Extraterritorial obligations in the Inter-American human rights systems*, (2021), p.121.

²³ Hypothetical, §§26,30,36-44.

The Court has stated that in the case of companies registered in one State that develop activities on another State's territory, these activities should be regulated by the State where the companies are registered.²⁴ In that regard, the State emphasizes that the Court has long established that a State's jurisdiction can extend to persons outside its territory, insofar they are under the State's effective control.²⁵

Between 5 and 14 January 2014, A.A. and the nine other women worked in Primelia, Aravania, as part of their employment at the Lusarian El Dorado farm. Even though work was carried out in Aravania, the premises were exclusively coordinated by Lusarian staff who monitored entry and exit of all persons.²⁶ Aravanian authorities were only able to enter the premises because of the consent of the Lusarian security authorities and Mr. Malini.²⁷

Given the facts, it is critical to recognize that the alleged human rights violations, while occurring on the territory of Aravania, fall within the effective control and authority of Lusaria. Lusaria's authoritative presence, administrative control and overall governance over the premises indicate that Lusaria is engaged for the purposes of determining human rights obligations and responsibility under the Convention. The focus of this Court should be on Lusaria's effective control as the primary determinant of jurisdiction in this case, without the need to assess the formal territorial authority of Aravania.

²⁴ Advisory Opinion OC-23/17, §§79&151.

²⁵ Advisory Opinion OC-21/14, IACtHR, (9 August 2014), §219; Advisory Opinion OC-23/17, §73; *Victor Saldaño v. Argentina* (Inadmissibility), IACHR, (1999), §§17&19.

²⁶ Hypothetical, §46.

²⁷ Questions, No.10.

In conclusion, the Applicant's claims must be declared inadmissible for lack of competence *ratione loci*.

C. The Court should find the Applicants' claim inadmissible based on a violation of the principle of subsidiarity as A.A. received reparations from the State for the alleged harm

The Court has articulated that, when the juridical situation of an individual has already been resolved by a definitive sentence with the authority of *res judicata*, there is no need for the matter to be brought before the IACtHR.²⁸ Moreover, the Court has consistently held that States have an obligation to provide full and effective reparation when a human rights violation occurs.²⁹

In casu, the States engaged in dispute resolution proceedings which resulted in a definitive sentence, namely an arbitration procedure ruling in favor of Aravania, which decided to grant A.A. an appropriate compensation of US\$5,000.

Thus, given that A.A. has already received reparations through a binding legal process, the principle of *res judicata* applies. The case does not warrant further adjudication by this Court, as doing so would undermine the finality and legitimacy of prior legal determinations.

In conclusion, the Applicants' claim must be declared inadmissible based on a violation of the principle of subsidiarity.

²⁸ *Case of Las Palmeras v. Colombia* (Judgment), IACtHR, (6 December 2001), §33.

²⁹ *Case of Velásquez Rodríguez v. Honduras* (Reparations), IACtHR, (21 July 1989), §25; *Case of Aloeboetoe et al v Suriname* (Judgment), IACtHR, (10 September 1993), §49; ICJ, *The Right to a Remedy and Reparation for Gross Human Rights Violations*, (2018).

2) Merits

A. The State did not violate Article 26 ACHR because it pursued progressive development for all

A.1. Article 26 ACHR *juncto* Articles 1(1) and 2 ACHR is not justiciable before this Court

Article 26 ACHR articulates the State obligation to progressively achieve economic, social, cultural and environmental (ESC) rights. However, the provision does not recognize individual, immediately, justiciable rights. Instead, it refers to the State obligation to develop policies for progressive realization.³⁰ The text of Article 26 ACHR does not clearly confer jurisdiction on the Court to examine complaints regarding breaches of specific ESC rights as autonomous, directly enforceable rights.

Article 19(6) of the Protocol of San Salvador (PSS) limits the justiciability of ESC rights within the Inter-American Human Rights System to two specific rights: trade union rights and the right to education.³¹ This Article, read in conjunction with the ACHR, leads to the conclusion that the drafters of these instruments did not intend to grant the Court the authority to rule on claims of ESC rights violations under Article 26 ACHR. If ESC rights are justiciable under Article 26 ACHR, Article 19(6) PSS would be superfluous.

³⁰ *Case of Poblete Vilches et al. v. Chile* (Judgment), IACtHR, (8 March 2018), §100; *Case of Cuscul Pivaral et al. v. Guatemala* (Judgment), IACtHR, (23 August 2018), §141.

³¹ Cavallaro and Schaffer, *Rejoinder: Justice before Justiciability: Inter-American Litigation and Social Change*, (2006), p.362.

Although the Court has, in some cases, interpreted Article 26 ACHR as justiciable³², this remains a point of legal contention. The Court recognized Article 26 ACHR as a basis for directly justiciable ESC rights for the first time in the *Lagos del Campo v. Argentina* case. However, Dissenting Opinions in recent cases show that not all Judges follow this interpretation.

In *La Oroya v. Peru*³³, the Court held that Peru violated ESC rights under Article 26 ACHR. However, Judges Humberto Sierra Porto of Colombia and Patricia Pérez Goldberg of Chile issued Dissenting Opinions, rejecting the majority's interpretation of Article 26 ACHR as directly justiciable.³⁴ Their dissent raised concerns that such a wide interpretation of Article 26 ACHR lacks legal basis in the ACHR and undermines the principle of State sovereignty. They recalled that the Court must not overstep its jurisdiction beyond what has been intended by the ACHR drafters.³⁵

The dissent of Judge Sierra Porto in *Lagos del Campo* argued that this interpretation was an unwarranted expansion of the Court's jurisdiction. While ESC rights are fundamental, their enforcement falls under the principle of progressive realization and should be monitored through political and legislative mechanisms rather than judicial adjudication.³⁶

The Court's approach to Article 26 ACHR has led to legal uncertainty, as it has inconsistently applied justiciability to ESC rights. By recognizing such rights as immediately justiciable, the Court risks creating obligations for States that exceed their commitments under the ACHR. The

³² *Case of Lagos Del Campo v. Peru* (Judgment and Separate Opinion of Judge Roberto Caldas), IACtHR, (31 August 2017); *Case of Peralta Armijos v. Ecuador* (Judgment), IACtHR, (15 November 2024).

³³ *Case of La Oroya Population v. Peru* (Judgment), IACtHR, (27 November 2023), §266.

³⁴ *La Oroya*, (Partially Dissenting Opinion of Judges Sierra Porto and Pérez Goldberg), §§7&8; *Lagos del Campo*, (Partially Dissenting Opinion of Judge Sierra Porto), §6.

³⁵ *Ibid.*

³⁶ *Lagos del Campo*, (Partially Dissenting Opinion of Judge Sierra Porto).

role of the Inter-American system is to ensure human rights protection in a manner that respects State sovereignty and the legal framework established by the Convention and its Protocols.³⁷

Given the limitations imposed by the Protocol of San Salvador and the ongoing legal debate surrounding the justiciability of Article 26 ACHR, the Court should refrain from interpreting Article 26 ACHR as a basis for directly enforceable ESC rights. The Dissenting Opinions in the cases *La Oroya* and *Lagos del Campo* provide strong legal reasoning against the expansive interpretation.³⁸

In conclusion, the State submits that Article 26 ACHR *juncto* Articles 1(1) and 2 ACHR cannot be justiciable before this Court.

A.2. Aravania did comply with Article 26 ACHR *juncto* Articles 1(1) and 2 ACHR in relation to progressive development

Article 26 ACHR requires States to adopt measures with the goal of achieving progressively the full realization of the rights implicit in the economic, social, educational, scientific and cultural standards set forth in the Charter of the Organization of American States.³⁹ Aravania recognizes and has fulfilled its obligations regarding collective rights under Article 26 ACHR. However, it does not acknowledge Article 26 ACHR as a basis for directly enforceable individual rights.⁴⁰

³⁷ Ruiz-Chiriboga, *The American Convention and the Protocol of San Salvador: Two Intertwined Treaties*, (2013), 162, 167, 184; *Case of Blanco-Romero et. al. v. Venezuela* (Monitoring Compliance with Judgment and Concurring Opinion of Judge Vio Grossi), IACtHR (22 November 2011), p. 4.

³⁸ *La Oroya*, (Partially Dissenting Opinion of Judges Sierra Porto and Pérez Goldberg), §§7&8; *Lagos del Campo*, (Partially Dissenting Opinion of Judge Sierra Porto), §6.

³⁹ *Case of Cuscul Pivaral et al. v. Guatemala* (Judgment), IACtHR, (23 August 2018), §78.

⁴⁰ *Case of Gonzales Lluy et al. v. Ecuador* (Concurring Opinion of Judge Alberto Pérez Pérez), IACtHR, (1 September 2015), §9.

Aravania has taken significant steps to ensure the progressive realization of economic, social, cultural, and environmental rights in compliance with Article 26 ACHR. Through the *Impulso 4 Veces* Development Plan, Aravania implemented innovative climate strategies, including sponge cities, to mitigate the effects of severe flooding.⁴¹ Recognizing the urgency of the crisis, Aravania carefully selected Lusaria as a partner based on its expertise, technical capacity, and financial feasibility.⁴²

Furthermore, the Cooperation Agreement with Lusaria was designed to promote economic growth while maintaining labor protections. The Cooperation Agreement required Lusaria to comply with labor laws and provide dignified working conditions, while also allowing Aravania to monitor compliance through reporting and inspections.⁴³ Aravania's legal framework, including Articles 9 and 51 of its Constitution, further underscores its commitment to labor rights and fair compensation.⁴⁴

Aravania's engagement in international cooperation, environmental initiatives, and labor protections demonstrates its commitment to progressive development in line with Article 26 ACHR.

In conclusion, the State did not violate Article 26 ACHR *juncto* Articles 1(1) and 2 ACHR.

⁴¹ Hypothetical, §7.

⁴² Hypothetical, §22; Questions, No.28.

⁴³ Hypothetical, §25; Questions, No. 18.

⁴⁴ Hypothetical, §8.

B. The State did not violate Article 6 ACHR because there is no forced labor, no human trafficking, nor State attribution

B.1. The State did not violate Article 6(2) ACHR

Article 6(2) ACHR prohibits forced labor. Forced labor, by definition, entails that the work is exacted under the menace of a penalty and performed involuntarily.⁴⁵ The menace of a penalty needs to be understood as “a real and actual presence of a threat” which – in the extreme – implies “coercion, physical violence, isolation or confinement, or the threat to kill the victim or his next of kin”⁴⁶. The second element of forced labor requires that the victim was unwilling to perform, which “consists in the absence of consent or free choice at the time of beginning or continuing the situation of forced labor”⁴⁷. The unwillingness “can occur for different reasons, such as the unlawful deprivation of liberty, deception or psychological coercion”⁴⁸. This means that the worker is free to enter into an employment relationship and is free to leave said relationship at any time. An interference with their freedom would occur, for example, if false promises were made to trick a person into taking a job.⁴⁹

Forced labor cannot simply be equated with low wages or poor working conditions, nor does it cover situations of pure economic necessity, as when a worker feels unable to leave a job because of the real or perceived absence of employment alternatives. Forced labor represents a

⁴⁵ *Case of the Ituango Massacres v. Colombia* (Judgment), IACtHR, (1 July 2006), §160; *Case of the Hacienda Brasil Verde Workers v. Brazil* (Judgment), IACtHR, (20 October 2016), §292.

⁴⁶ *Ituango Massacres*, §§161-163.

⁴⁷ *Ituango Massacres*, §§164-165; *Hacienda Brasil*, §293.

⁴⁸ *Ibid.*

⁴⁹ ILO Standards on Forced Labour - The new Protocol and Recommendation at a Glance, (2016), p.5.

severe violation of human rights and restriction of human freedom, as defined in the ILO Conventions on the subject.⁵⁰

Nevertheless, Article 6(3) ACHR lists four situations where involuntary labor cannot be qualified as forced labor.⁵¹ Article 6(3)(c) ACHR sets out situations in which “services exacted in times of danger or calamity that threaten the existence or the well-being of the community” do not constitute forced or compulsory labor and therefore, are compatible with the ACHR. The scope of this qualification can be clarified under Article 2(2)(d) of the ILO Convention No. 29, of which Aravania is a member State.⁵² It contains the conditions in which “a calamity or threatened calamity, such as fire, flood, famine, earthquake, [...], and, in general, any circumstance that would endanger the existence or well-being of the whole or part of the population”⁵³ takes place.

First of all, the two basic elements necessary for a labor situation to arise to forced labor under Article 6(2) ACHR are not present in the case of A.A. and the nine women. While the State sees that a menace of a penalty can take different forms and does not need to be in the form of penal sanctions, this menace still needs to be understood as “a real and actual presence of a threat”. The State recognizes that the Applicants may have feared for these things to happen to them, but this fear is not enough to constitute the required “menace of a penalty”. There were no death threats addressed to the Applicants or their family members nor were the workers indebted to the owner

⁵⁰ ILC, *Global report: Resolutions adopted by the International Labour Conference at its 93rd Session*, (2005), §13.

⁵¹ Hennebel and Tigroudja, *The American Convention on Human Rights A Commentary*, 2022, p.267.

⁵² *Ibid.*, p.269; Hypothetical, §10.

⁵³ Article 2(2)(d) ILO Convention No. 29; ILO Standards on Forced Labour - The new Protocol and Recommendation at a Glance, (2016), p.3.

of the *hacienda*.⁵⁴ Most importantly *in casu*, the requirement that these elements either were present, or credibly about to happen, is necessary and is not met. Therefore, the first element is not present.

In regard to the second element of freedom of choice, the women were able to give an informed consent before entering the work arrangement.⁵⁵ While the *ClicTik* videos of Mr. Maldini might have overexaggerated the job, the informed consent was present as they got to read and sign the employment offer beforehand.⁵⁶ In the offer, the conditions and job description were clearly stated and therefore, gave transparency about the real working conditions and workload. The State wants to reiterate that a forced labor situation is not determined by the type of activity performed, however hard or hazardous the conditions of work may be, but by the nature of the relationship between a person and an “employer”⁵⁷. Afterwards, they received what was promised to them in the employment offer, such as a working permit, free transportation to Lusaria, social security benefits such as childcare, education for the dependents and free food and housing.⁵⁸

Alternatively, should the Court find that the second element is fulfilled, the situation of the Applicants clearly falls under Article 6(3)(c) ACHR and cannot be qualified as a form of forced labor that constitutes a violation of Article 6(2) ACHR. The drafting of the Cooperation Agreement took place in a time of extreme urgency.⁵⁹ The environmental disaster in May 2012, when Aravania was struck by one of the worst floods in its history, brutally reminding the country to the threats of climate change, sparked an immediate imperative for services to transplant *Aerisflora*.⁶⁰ The

⁵⁴ *Cf. Hacienda Brasil*, §212.

⁵⁵ Hypothetical, §§34&35.

⁵⁶ Hypothetical, §35.

⁵⁷ ILC, *Global report: Resolutions adopted by the International Labour Conference at its 93rd Session*, (2005), §16.

⁵⁸ Hypothetical, §36.

⁵⁹ Hypothetical, §23.

⁶⁰ Hypothetical, §20.

flood of 2012 gravely endangered a large portion of Aravanian people's well-being, caused the immediate displacement of at the very least 150,000 people and destroyed over a thousand homes.⁶¹ The urgency and sheer scale of the crisis undoubtably constitutes a textbook example of Article 6(3)(c) ACHR. Therefore, even if the Court were to decide that a lack of consent can be found, the services do not constitute forced labor as they were exacted in time of danger. The measures were necessary to prevent such catastrophe from ever happening again. In the face of this devastation, the Convention serves not only as a protector of rights, but as a guardian of life itself.

Even if the Court decides that the conditions present do not fall under the scope of Article 6(3)(d) ACHR and there is forced labor present, the State argues that it has done everything it reasonably could within the limited means and therefore is not internationally responsible for the alleged forced labor. The alleged violations cannot be attributed to the State given that the exploitation was conducted by State-agents from a third country and the State was not aware of the abuses happening in Lusaria. As soon as they did know, they acted promptly.

According to consistent case law of the Court, that to be held responsible, a State must be aware or should have been aware of a situation posing a real and imminent danger at the time of the facts to a specific individual or group of individuals and must have reasonable means to prevent or avoid that danger.⁶²

⁶¹ *Ibid.*

⁶² *Case of the Pueblo Bello Massacre v. Colombia*, (Judgment), IACtHR, (31 January 2006), §123; *Hacienda Brasil*, §214; *Case of López Soto et al. v. Venezuela* (Judgment), IACtHR, (26 September 2018), §153.

Firstly, the State was not aware of the specific situation on the El Dorado farm. The State reviewed the construction in Primelia and visited the site several times, with the consent of the Lusarian security authorities and Mr. Maldini, before the women were taken to transplant the *Aerisflora*.⁶³ Additionally, the State was properly informed through reports of Lusaria, which detailed the status of the planting. They also received copies of the contracts signed with the workers, as well as other information, such as whether any labor complaints or lawsuits had been filed.⁶⁴ Moreover, in January 2013, the State received information from the designated inspector, who determined that the conditions and contracts complied with the labor laws, and workers had given positive reviews regarding the benefits of the work for their families' social security coverage. It was also noted that brochures were distributed with information about labor rights, potential violations of those rights, and how to access justice in the case of an employment-related violation.⁶⁵ A clear distinction must be made between having a general awareness of poor working conditions and an increase in trafficking, and having knowledge of a specific, known threat on a specific farm. The State relied on their general knowledge to establish a secure framework in the Cooperation Agreement.⁶⁶ In conclusion, the State had no reason to doubt the credibility of Lusaria. Aravana was unaware of any real and immediate risk occurring on the work premises.

Secondly, in July 2013, Lusaria reported that they were going to alter the premises with the goal of ensuring more safety and productivity.⁶⁷ Fundamentally, based on these reports and the fact that the activity took place in another jurisdiction, there was no reason for the State to question the integrity of its neighboring State. However, in October 2013, the State received information,

⁶³ Questions, No.10.

⁶⁴ Questions, No.22.

⁶⁵ Questions, No.45.

⁶⁶ Hypothetical, §25.

⁶⁷ Questions, No.22.

through a complaint, that could possibly indicate a risk. In response, the State immediately requested a new report on El Dorado's working conditions.⁶⁸ After reviewing this report, the State's authorities determined that there was no need to visit Lusaria, as the conditions did not differ from those outlined in the initial contracts⁶⁹, nor did they contravene the Cooperation Agreement. Subsequently, with additional information from the complaint filed by A.A. with the Velora Police,⁷⁰ the State decided to initiate arbitration proceedings, as stipulated in Article 71 Cooperation Agreement, specifically to ensure the labor conditions were being met.⁷¹ Following the arbitration panel's ruling, the Ministry of Foreign Affairs of Aravania issued Resolution 2020 to prevent such conditions from occurring in the future.⁷² Therefore, the State fully complied with its due diligence obligations.

In conclusion, the State did not violate Article 6(2) ACHR *juncto* Articles 1(1) and 2 ACHR.

B.2. The State did not violate Article 6(1) ACHR

Article 6(1) ACHR prohibits human trafficking, defined as “the recruitment, transfer, harboring or receipt of persons by means of threat, use of force or other forms of coercion, abduction, fraud, deception or of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve consent by a person having control over another person [...] for

⁶⁸ Questions, No.10; Hypothetical, §35.

⁶⁹ *Ibid.*

⁷⁰ Hypothetical, §48.

⁷¹ Questions, Nos.10,31&46; Hypothetical, §25.

⁷² Questions, No.8.

the purpose of exploitation”⁷³. This last element “purpose” is not limited to forced labor or sexual exploitation, but may include any other form of exploitation.⁷⁴

The Court interprets Article 6(1) ACHR in accordance with the scope of “trafficking in persons” as defined in Article 3(1) United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol).⁷⁵ The Applicants’ consent is considered irrelevant if any of the means defined above have been used, according to Article 3(b) Palermo Protocol.⁷⁶

The State has a negative obligation to refrain from violating rights, as well as a positive duty to prevent and investigate cases of forced labor or human trafficking, and to adopt comprehensive measures to act with due diligence in such cases.⁷⁷

Aravania cannot be held internationally responsible for the events that occurred in Primelia or at the Finca El Dorado farm.

Firstly, there was no use of force, coercion, abduction, fraud or deception, nor was there any abuse of power, exploitation of vulnerability, or the giving or receiving of payments or benefits to obtain the consent by a person controlling the women. The women were able to read the employment offer carefully and without pressure before signing it. At the time they left for Lusaria, each of them possessed a valid employment contract and legal work permits.⁷⁸ Consequently, Article 3(b) Palermo Protocol does not apply. Therefore, the lack of consent cannot be considered

⁷³ *Hacienda Brasil*, §290; *Case of Ramírez Escobar et al. v. Guatemala* (Judgment), IACtHR, (9 March 2018), §310.

⁷⁴ *Ramírez Escobar*, §312.

⁷⁵ *Hacienda Brasil*, §290; *Ramírez Escobar*, §310.

⁷⁶ *Ibid.*

⁷⁷ *Hacienda Brasil*, §§319&320.

⁷⁸ *Hypothetical*, §§34-36; Questions, No.24.

grounds for human trafficking. *In casu*, it becomes clear the women were all willing to leave under their legitimate employment contracts and no lack of consent can be detected. In conclusion, there is no human trafficking in this case.

Secondly, the State wishes to emphasize its adequate legal framework for the protection, prosecution and punishment of human trafficking, particularly, Article 145 of its Criminal Code which fully complies with Article 3 Palermo Protocol. The State has also acceded to many international instruments, such as ILO-conventions no. 29 and 105, the Palermo Protocol, the UN Convention Against Transnational Organized Crime and the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation and the Prostitution of Others.⁷⁹ Therefore, the State stands firm it abided by the positive duty to adopt comprehensive measures and legislation.⁸⁰

Thirdly, the State was neither aware, nor should it have been aware of any risk of human trafficking. At the outset, there was no reason to believe that such risk existed, as all the women held legal employment contracts and valid work permits when leaving Aravania. Furthermore, they left voluntarily, without any threat of a penalty.⁸¹ Furthermore, the State should not have been aware of an imminent risk, as the State did not have jurisdiction on the El Dorado farm and visited the Primelia farm multiple times before the employees arrived.⁸² Moreover, Lusaria complied with international standards for the prevention and eradication of forced labor. Specifically, it provided information and raised awareness among employees.⁸³ Lastly, under Article 23(2) Cooperation Agreement, the State ensured the training of inspectors and established a clear

⁷⁹ Hypothetical, §§9&10.

⁸⁰ *Hacienda Brasil*, §§319&320.

⁸¹ Hypothetical, §§35&36; Questions, No.24.

⁸² Questions, No.10.

⁸³ Questions, No.45.

supervising mechanism guaranteeing periodic reporting and transparency.⁸⁴ There was no reason for the State to question the integrity of Lusaria. Without mutual trust, cooperation is not possible. In conclusion, the State cannot be attributed international responsibility.

In conclusion, the State did not violate Article 6(1) ACHR *juncto* Articles 1(1) and 2 ACHR.

⁸⁴ Hypothetical, §25.

C. The State did not violate Article 3 ACHR because it took all necessary measures to prevent the denial of legal personality and provided effective remedies for potential violations

Article 3 ACHR guarantees every individual the right to recognition as a person before the law, ensuring they can exercise rights, access legal protection, and participate in society. It imposes both negative and positive obligations onto States: they must refrain from denying legal personality and must provide protection and remedies against possible violations.⁸⁵

Regarding the prevention of denial of legal personality, Article 23(2)(c) of the Cooperation Agreement mandates the maintenance of records and reports on employees involved in cooperation and investment projects⁸⁶, ensuring that the identity of every individual is known to the State. Secondly, Aravania's immigration authorities registered everyone entering or leaving Aravania or Lusaria, recording passport details.⁸⁷ A.A. and the nine other women also presented their passports as well as their work permits.⁸⁸ At that time, the State had no way of knowing these identity documents would later be taken away.⁸⁹ Lastly, El Dorado was inspected in January 2013. This inspection confirmed that the workers' contracts complied with the country's labor laws. Following this inspection, the State received monthly reports from the inspector.⁹⁰

⁸⁵ *Case of the Xákmok Kásek Indigenous Community v. Paraguay* (Judgment), IACtHR, (24 August 2010), §248; *Case of Anzaldo Castro v. Peru* (Judgment), IACtHR, (22 September 2009), §87.

⁸⁶ Hypothetical, §25.

⁸⁷ Questions, No.13.

⁸⁸ *Ibid.*

⁸⁹ Hypothetical, §36.

⁹⁰ Questions, No.45.

The Cooperation Agreement's requirement to maintain records and reports for every employee, along with the registry tracking all border crossings, shows that the State took all reasonable measures to prevent the denial of legal personality. In fact, they actively verified the presence of the necessary documents, when the Applicants entered or left the country.

Regarding providing effective remedies, Article 23(2)(b) Cooperation Agreement explicitly outlines the required governmental actions of the Parties to ensure compliance with their respective labor laws, including the establishment of mechanisms for addressing complaints regarding any labor law violation.⁹¹ In accordance with this provision, brochures were distributed to the workers, informing them of their rights and the complaint process in Lusaria.⁹²

Additionally, Article 71 Cooperation Agreement specifically included an arbitration clause to ensure that any issues would be resolved efficiently and effectively.⁹³

Lastly, once A.A. reported her complaint to the Velora Police, the State acted immediately, sending officers to investigate in Primelia that same afternoon.⁹⁴

These facts demonstrate that the State took all necessary measures to provide effective remedies for potential violations of Article 3 ACHR. The Cooperation Agreement required the establishment of a specific complaint mechanism. The State ensured that every worker was informed of their rights and the complaint procedure. Once an effective complaint was made, the State acted promptly and efficiently.

⁹¹ Hypothetical, §25.

⁹² Questions, No.45.

⁹³ Hypothetical, §25.

⁹⁴ Hypothetical, §§48&49.

The State fully acknowledged the fundamental importance of this right as a cornerstone of human dignity and the basis for the enjoyment of all other rights. Nevertheless, it acted diligently, both in preventing the denial of legal personality and in providing effective remedies.

In conclusion, the State did not violate Article 3 ACHR *juncto* Articles 1(1) and 2 ACHR.

D. The State did not violate 7 ACHR because the deprivation of liberty cannot be attributed to the State

Article 7 ACHR protects the right to personal liberty. Deprivation of liberty occurs when a person “cannot or is unable to leave or abandon at will the place or establishment where he or she has been placed”⁹⁵. The State has the negative obligation to refrain from depriving individuals from their personal liberty, as well as the positive obligation to protect individuals’ personal liberty.⁹⁶ The Court has affirmed the State’s responsibility and positive obligation in two main situations: deprivation of liberty by paramilitary groups,⁹⁷ and deprivation of liberty by private persons regardless of relationship with the State, when the State made the deprivation or its sequestration possible due to its “gross negligence”⁹⁸.

The Applicants faced strict supervision on the farms.⁹⁹ Furthermore, the Lusarian State agents, acting in this context, confiscated workers’ identity documents, further restricting the Applicants’

⁹⁵ Advisory Opinion OC-21/14, §145; *Case of expelled Dominicans and Haitians v. Dominican Republic* (Judgment), IACtHR, (28 August 2014), §347; *Hacienda Brasil*, §293.

⁹⁶ Hennebel and Tigroudja, *The American Convention on Human Rights A Commentary*, (2022), p.280.

⁹⁷ *López Soto*, §146.

⁹⁸ *López Soto*, §§137,167,170&182; *Pueblo Bello*, §111.

⁹⁹ *Hypothetical*, §39.

personal liberty.¹⁰⁰ Notably, this deprivation of liberty occurred without interference of Aravian State agents and despite Aravia's multiple visits to the site and thorough evaluation of periodic reports.

Firstly, there were no paramilitary groups involved over which the State had control. Consequently, the first scenario in case law is not applicable to the situation, therefore, in this regard, there is no violation of Article 7 ACHR.

Secondly, Aravia recognizes that the Applicants' faced violations of their right to personal liberty by Lusarian State agents. However, their deprivation of liberty, nor its sequestration was made possible by gross negligence of the State, effectively making the second scenario not applicable.

Lack of gross negligence is especially apparent compared to previous cases before this Court. Current facts are unlike the case *López Soto*, where the State failed to log a complaint up to six times while the victim was handcuffed and threatened to be shot.¹⁰¹ In the case *Hacienda Brasil*, the police sent away victims because it was carnival time while the victims had defied the threat of death to escape and make the complaint.¹⁰² The State argues that current facts were nowhere this extreme and that it has taken adequate measures to respond in accordance with their knowledge at the time.

In addition, the State refers to its precaution to include provisions on working conditions in the Cooperation Agreement,¹⁰³ and its several inspections.¹⁰⁴ The State highlights that it has received

¹⁰⁰ Hypothetical, §36.

¹⁰¹ *López Soto*, §154.

¹⁰² *Hacienda Brasil*, §327.

¹⁰³ Hypothetical, §25.

¹⁰⁴ Questions, No.10.

and thoroughly reviewed all periodic reports, especially the report on the working conditions in El Dorado.¹⁰⁵ Lastly, the State refers to its prompt investigative action in response to complaints.¹⁰⁶

The State argues that these illustrate due diligence and reasonable care.

In conclusion, the State did not violate Articles 7(1) and 7(2) ACHR *juncto* Articles 1(1) and 2 ACHR.

E. The State did not violate Article 5 ACHR because it took all necessary preventive and responsive measures once it became aware of a real and immediate risk

Article 5(1) and 5(2) ACHR safeguards the right to physical, mental and moral integrity, prohibiting torture and cruel, inhuman or degrading treatment. Under this provision, States bear both negative and positive obligations.¹⁰⁷ States must not only refrain from committing direct violations against individuals under their control¹⁰⁸ but also actively protect and ensure this right for those who are subject to the State jurisdiction.¹⁰⁹ This entails adopting general measures to prevent ill-treatment and violations.

Regarding the positive obligations, the Court has determined that to establish a breach, it must be shown “that i) State authorities knew, or should have known of a real and immediate risk to personal integrity; and ii) those authorities failed to take the necessary measures within the scope

¹⁰⁵ *Ibid.*

¹⁰⁶ Hypothetical, §§48&54.

¹⁰⁷ *Pueblo Bello*, §119.

¹⁰⁸ Hennebel and Tigroudja, *The American Convention on Human Rights A Commentary*, (2022), p.232.

¹⁰⁹ *Case of Landaeta Mejías Brothers et al. v. Venezuela* (Judgment), IACtHR, (27 August 2014), §126.

of their powers that, judged reasonably, could be expected to prevent or avoid that risk”¹¹⁰. Moreover, the positive obligation includes a procedural dimension, requiring the State to conduct an *ex officio* investigation into alleged violations.¹¹¹

Firstly, Aravania took all the general measures necessary to prevent any violation of Article 5 ACHR. Articles 9 and 51 of the 1967 Constitution of Aravania explicitly protects the right to security, work and fair wages.¹¹² Above that, Aravania is a Member State to multiple human rights instruments.¹¹³ Furthermore, the Cooperation Agreement specifically installed an arbitration settlement procedure to resolve any dispute arising under the Agreement.¹¹⁴

Secondly, there was no indication of any mistreatment prior to A.A.’s complaint in January 2014.¹¹⁵ Any earlier complaints were thoroughly investigated, but the evidence did not support the existence of any real and immediate risk.¹¹⁶ Additionally, Aravania took substantial preventive steps, including conduction of pre-agreement investigations, ensuring periodic oversight through monthly reports, and providing for on-site visits.¹¹⁷ There was no reason for the State to question the integrity of its neighboring country. Without mutual trust, international cooperation cannot exist. For these reasons, Aravania did not know nor should have known of any ongoing alleged violations.¹¹⁸ Once the State did become aware, it fully complied with its duty to take the necessary measures. The Court has established that the duty to prevent violations requires a State to adopt

¹¹⁰ *López Soto*, §140; *Case of Guzmán Albarracín et al. v. Ecuador* (Judgment), IACtHR, (24 June 2020), §106.

¹¹¹ *Case of Bayarri v. Argentina* (Judgment), IACtHR, (30 October 2008), §92; *Case of Vargas Areco v. Paraguay* (Judgment), IACtHR, (26 September 2006), §81.

¹¹² Hypothetical, §8.

¹¹³ Hypothetical, §10.

¹¹⁴ Hypothetical, §25.

¹¹⁵ Hypothetical, §48.

¹¹⁶ Hypothetical, §54.

¹¹⁷ Hypothetical §25; Questions, No.10&22.

¹¹⁸ Questions, No.22.

reasonable and proportionate measures within the scope of their powers, based on the information available at the time, including procedural obligations.¹¹⁹

The State took immediate action upon learning of a credible risk. The States' authorities responded promptly by swiftly investigating the complaint and arresting the suspect. The Velora Police arrested Mr. Maldini within 24 hours.¹²⁰ Aravania formally requested the waiving of Mr. Maldini's immunity so that he could be prosecuted, but Lusaria refused.¹²¹ As a result, any failure to hold Mr. Maldini accountable cannot be attributed to Aravania. Nonetheless, it pursued legal remedies through dispute resolution under Article 71 of the Cooperation Agreement.¹²² In order to prevent any similar situations from happening again in the future, Resolution 2020 was issued by the Ministry of Foreign Affairs of Aravania with the goal of securing effective mechanisms to enable employment-related claims and to ensure ILO-rights on an international level.¹²³

In conclusion, the State did not violate Article 5 ACHR *juncto* Articles 1(1) and 2 ACHR.

F. The State did not violate Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women because it is inapplicable, or alternatively, the State met its obligations

The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (the Convention of Belém do Pará, CMV) is a regional treaty that is specifically aimed at combating violence against women. Article 1 of this Convention defines violence against

¹¹⁹ *Hacienda Brasil*, §324.

¹²⁰ Hypothetical, §49.

¹²¹ Hypothetical, §50.

¹²² Hypothetical, §55.

¹²³ Questions, No.8.

women as “any act of conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or private sphere”. The provisions of this Convention should be seen as complementary to the ACHR and to the International *Corpus Juris* regarding the prevention and punishment of violence against women.¹²⁴

First, the State argues that there has been no violation of Article 7 Convention of Belém do Pará, since alleged violations in this case do not qualify as gender-based violence under Article 1 of said Convention and since the State has fulfilled its due diligence obligations.

Second, even if gender-based violence were to be established, this does not amount to discrimination under Article 1(1) ACHR.

F.1 The State did not violate Article 7 of the Convention of Belém do Pará

F.1.i The Convention of Belém do Pará is not applicable in this case

While the State acknowledges the suffering endured by A.A. and other women, it must be determined first whether their experiences qualify as violence against women under Article 1 CMV. It is important to stress that this Court has articulated that not all human rights violations committed against women necessarily imply a violation of CMV in the form of violence against women.¹²⁵ In order for the Court to find a violation of that Convention, the violence must be gender-based. That means that a conduct qualifies as violence especially addressed to women because they are women, or is proven to affect women disproportionately.¹²⁶

¹²⁴ CIM, OAS, ICCLR, ILANUD, *Violence in the Americas: A Regional Analysis (including a Review of the Implementation of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará)*, (2001), p.29.

¹²⁵ *Case of Perozo et al. v. Venezuela* (Judgment), IACtHR, (28 January 2009), §295; *Case of González et al. (“Cotton Field”) v. Mexico* (Judgment), IACtHR, (16 November 2009), §227.

¹²⁶ *Cotton field*, §231; *Perozo*, §295.

In casu, the events over which the State exercised control did not occur on the basis of gender. While the State sees that there are culturally entrenched mindsets in the private sphere regarding how women should live their lives, the State denies that its conduct towards women has its roots in concepts of inferiority of women.

Furthermore, the available information indicates that working and living conditions applied equally to all workers, regardless of gender,¹²⁷ which contradicts the claim that violations were disproportionately directed at women.

F.1.ii. Even if the Convention of Belém do Pará were applicable, the State has complied with Article 7 Convention of Belém do Pará

Subsidiarily, if the Convention of Belém do Pará were to be found applicable, the State needs to prove that it complied with its obligations under Article 7 CMV. This Article charges States with negative and positive obligations. This Article enumerates all State duties but focuses especially on taking measures to ensure that State agents “refrain from engaging in any act or practice of violence against women” and that they “apply due diligence to prevent, investigate and impose penalties for violence against women”¹²⁸. This is thus the Convention’s benchmark for ascertaining a State’s international responsibility for failure to comply with its obligations.

In order to comply with the obligation to investigate, enshrined and enhanced in Article 7(b) CMV, the State has to start, *ex officio* and without delay, a serious, impartial and effective investigation once the authorities become aware of the facts. Based on practice and *opinio juris*, this is even considered a norm of customary international law. The established jurisprudence of

¹²⁷ Hypothetical, §§37&39.

¹²⁸ Mesecvi, *Guide to the Application of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*, (2014), p.39.

this Court has found the due diligence obligation in Article 7(b) of the concerned Convention violated by the State when it fails to convict perpetrators for over a decade, despite numerous submitted complaints and widespread awareness of a context of violence against women.¹²⁹ Cases ruled by the Committee on the Elimination of Discrimination against Women (CEDAW), which this Court has referenced, share one common element: a clear negligence in the protection of women.¹³⁰

The Court also refers to the guidelines by the UN Special Rapporteur on violence against women to interpret State obligations, including: “ratification of the international human rights instruments; constitutional guarantees on equality for women; existence of national legislation and administrative sanctions providing adequate redress for women victims of violence; executive policies or plans of action that attempt to deal with the question of violence against women; availability and accessibility of support services, and collection of data and statistics on violence against women”¹³¹.

In casu, there are three reasons why it cannot be denied that the State fulfilled its obligations under Article 7 CMV.

Firstly, there is an important assumption of voluntary international commitment by a State when it ratified the Convention of Belém do Pará.¹³² The State reaffirms this commitment and wishes to refer to its concrete legal and institutional measures and efforts demonstrated in the following paragraphs.

¹²⁹ *Maria Da Penha Maia Fernandes v. Brazil*, IACHR, (2000), §§55-65.

¹³⁰ *Case of Mrs. A.T. v. Hungary* (Judgment), CEDAW, (2005), §§9.2-9.3; *Case of Fatma Yildirim v. Austria* (Judgment), CEDAW, (2007), §§12.1.4-12.1.5.

¹³¹ *Cotton Field*, §256.

¹³² *Maria Da Penha Maia Fernandes v. Brazil*, IACHR, (2000), §55.

Secondly, the State wishes to reiterate its strong institutional infrastructure and capacity to ensure that investigations are effective in cases of violence against women, as well as the concrete implementation of these infrastructural principles in projects such as the Cooperation Agreement, which is particularly visible in its specific provisions. The State fully meets the requirements of ratification of human rights instruments¹³³ and upholds constitutional guarantees on gender equality, since human rights instruments have constitutional status in Aravia according to Article 2 of its Constitution.¹³⁴ Moreover, the Criminal Code provides protection for women who are victims of violence and is recognized as part of a comprehensive policy for preventing and punishing human trafficking, which is a human rights violation that often particularly affects women.¹³⁵ Furthermore, the Aravian authorities conducted multiple reviews and on-site inspections of the special mission in Primelia before the women were brought in, demonstrating Aravia's proactive oversight.¹³⁶ Lastly, the obligation of prevention is one of means and not results, and failure to comply with it is not proved merely because a right has been violated.¹³⁷ Taking all of this in consideration, it is impossible to deny that the State's efforts align with the criteria emphasized by the UN Special Rapporteur on violence against women.

Thirdly, concerning the investigative aspect, the State demonstrated a swift and effective response to gaining knowledge about possible violence against women. Both the complaint received by A.A. and the complaint of 25 October 2013, were handled immediately. A.A's complaint was brought before the appropriate court within 24 hours, and that court reacted the following

¹³³ Hypothetical, §10.

¹³⁴ Questions, No.38.

¹³⁵ Hypothetical, §52.

¹³⁶ Questions, No.10.

¹³⁷ *Cotton Field*, §251.

day.¹³⁸ The other complaint was followed by a request on the working conditions just five days later.¹³⁹ That the prompt responses of the State were ultimately obstructed, respectively by a wall of rejection by the neighboring State¹⁴⁰ and by a legitimate conclusion¹⁴¹, shows Aravania's commitment to lawful and structured conflict resolution, rather than an omission of its responsibilities. This course of action is a clear example of a genuine and comprehensive investigative effort by the State, carried out diligently until it encounters external obstacles beyond its control. Lastly, the obligation of investigation is one of means and not of results and has been interpreted to entail an obligation towards a sincere and thorough effort to investigate¹⁴², which has been proven to be present in this paragraph.

In conclusion, the State did not violate Article 7 CMV.

F.2. There is no violation of Article 7 Convention of Belém do Pará that would amount to a form of discrimination under Article 1(1) ACHR.

Gender-based violence under the Convention of Belém do Pará can constitute discrimination under Article 1(1) of the ACHR, just like any other human rights violation can, when a State does not respect and ensure these rights without any discrimination. While the Court has articulated that gender-based violence can be a form of discrimination,¹⁴³ the Court has also clarified that a violation of the right not to be discriminated against requires more than the existence of systemic issues.

¹³⁸ Hypothetical, §§48-50.

¹³⁹ Hypothetical, §54.

¹⁴⁰ Hypothetical, §§50-51.

¹⁴¹ Hypothetical, §54.

¹⁴² *Case of I.V. v. Bolivia* (Judgment), IACtHR, (30 November 2016), §315.

¹⁴³ *Cotton Field*, §§294-295.

It must be shown that the State either tolerated such practices or failed to take reasonable measures to address them.¹⁴⁴

Firstly, the information in the present case indicates that both male and female workers were employed on the farm, and that all workers, regardless of gender, were required to live and sleep at the farm when the work intensified,¹⁴⁵ suggesting equal treatment in terms of working and living conditions. Based on the reports and the fact that no lawsuits or complaints had been sent in by female workers,¹⁴⁶ and on the fact that it happened in another jurisdiction, the State could assume that there were no systemic issues.

Secondly, Article 23(3) of the Cooperation Agreement, particularly in conjunction with the right to health care and education for the worker's dependents, provides specific support for women in the labor sphere.¹⁴⁷ These provisions should be understood as measures that help remove barriers that disproportionately affect women's economic participation, ultimately ensuring greater access to essential services that facilitate women's economic and social empowerment.

If the Court still were to see an unjustified difference in treatment between male and female workers, this happened by private individuals, on alien territory, without knowledge or tolerance of Aravania, which is why this alleged human rights violation could and cannot be attributed to Aravania.

In conclusion, the State did not violate Article 7 CMV *juncto* Articles 1(1) and 2 ACHR.

¹⁴⁴ IACHR, *Access to justice for women victims of violence in the Americas*, (2007), p.60.

¹⁴⁵ Hypothetical, §39.

¹⁴⁶ Questions, Nos.10&22.

¹⁴⁷ Hypothetical, §§25&35.

G. The State did not violate Articles 8 and 25 ACHR because it provided effective investigations and remedies, upholding due process

First, the State reiterates its preliminary objections, emphasizing that Articles 8 and 25 ACHR do not apply because the rights to a fair trial and to judicial protection only concern alleged violations within the State's jurisdiction.¹⁴⁸ The State asserts it cannot be held internationally responsible for not investigating and trying actions outside its jurisdiction. However, if the Courts finds the State does have jurisdiction over the alleged violations in Lusaria, the State argues that the facts demonstrate full adherence to Articles 8 and 25 ACHR. Additionally, the State is confident it respected these Articles regarding any alleged violations that occurred during the brief time spent in Aravaian territory.

The Court has affirmed that, under the Convention, States Parties are obligated to provide effective judicial remedies to victims of human rights violations.¹⁴⁹ These remedies must be implemented in compliance with the principles of due process under Articles 8 and 25 ACHR. Procedural fairness begins with rigorous investigation.¹⁵⁰ States carry a duty of means to ensure that individuals receive a fair, impartial, and timely investigation.¹⁵¹ Investigations cannot merely be a formality,

¹⁴⁸ *La Oroya*, §110.

¹⁴⁹ *Case of the Massacres of El Mozote and Nearby Places v. El Salvador* (Judgment), IACtHR, (25 October 2012), §242; *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala* (Judgment), IACtHR, (20 November 2012), §229; *Case of López Sosa v. Paraguay* (Judgment), IACtHR, (17 May 2023), §109.

¹⁵⁰ *Velásquez Rodríguez*, §177; *Massacres of El Mozote*, §243.

¹⁵¹ *Cotton Field*, §289; *Anzualdo Castro*, §123; *Case of Garibaldi v. Brazil* (Judgment), IACtHR, (23 September 2009), §113.

but must be carried out seriously and without prejudice.¹⁵² Furthermore, States must provide effective remedies that are simple, accessible, prompt and effective.¹⁵³ The latter entails that the remedy is capable of producing the result for which it is designed.¹⁵⁴ Lastly, the case must be heard by a competent, independent and impartial tribunal, previously established by law. In its case law, the Court has established that impartiality is presumed unless there is evidence to the contrary.¹⁵⁵ In other words, there must be substantial and proven grounds for alleged bias.

In October 2012, the Office of the Prosecutor General of Aravania received an anonymous complaint through its emergency hotline regarding alleged forced labor. A year later, the Office personally met with a woman to hear a similar complaint. Both cases were promptly and meticulously investigated. On 30 October 2013, the Office requested a report on working conditions. Upon receiving it on 10 December 2013, authorities carefully concluded that there were no grounds to suspect a violation of the Cooperation Agreement, and any potential breaches would, in any event, fall outside the State's jurisdiction.¹⁵⁶

On 14 January 2014, A.A. filed a complaint with the Velora Police.¹⁵⁷ Police investigated immediately and arrested Mr. Maldini that same day after a warrant was issued by the Second

¹⁵² *Case of the Mapiripán Massacre v. Colombia* (Judgment), IACtHR, (15 September 2015), §226; *Case of the "street children" (Villagrán Morales et al.) v. Guatemala* (Judgment), IACtHR, (19 November 1999), §226; *Case of V.R.P., V.P.C. et al. v. Nicaragua* (Judgment), IACtHR, (8 March 2018), §151; *Case of Núñez Naranjo et al. v. Ecuador* (Judgment), IACtHR, (23 May 2023), §106.

¹⁵³ *Case of Castañeda Gutman v. Mexico* (Judgment), IACtHR, (6 August 2008), §102.

¹⁵⁴ *Velásquez Rodríguez*, §66.

¹⁵⁵ *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela* (Judgment), IACtHR, (5 August 2008), §56; *Case of Daktaras v. Lithuania*, ECtHR, (2000), §30.

¹⁵⁶ Questions, No.10; Hypothetical, §54.

¹⁵⁷ Hypothetical, §48.

Criminal Court Judge of Velora.¹⁵⁸ Within 24 hours, Mr. Maldini was brought before Court. However, since Lusaria refused the Aravanian Ministry of Foreign Affairs' request to waive Mr. Maldini's diplomatic immunity, the Second Criminal Judge had to dismiss the case.¹⁵⁹ This decision was confirmed by the Velora Court of Appeals.¹⁶⁰

Given the facts, the State asserts that it has rigorously investigated all complaints with due diligence and that it provided prompt, accessible and effective remedies. The State asserts that there are no reasons to doubt fairness and impartiality. The duty to provide remedies and the duty to investigate alleged violations are not breached merely because the outcomes were not favorable or satisfactory.¹⁶¹ While the State regrets that diplomatic immunity hindered full effect of its efforts and is disappointed by Lusaria's refusal to waive immunity¹⁶², it stands firm that allegations of human rights violations cannot take precedence over international immunity rules.¹⁶³ Nonetheless, Aravania did everything in its power to obtain the Applicants justice, by initiating dispute resolution proceedings under Article 71 of the Cooperation Agreement.¹⁶⁴ In the wake of this, the State afforded A.A. US\$250.000 compensation.¹⁶⁵ The State alleges that further escalating the situation diplomatically could have risked overshadowing the alleged human rights violations, making it even more challenging to resolve the matter and jeopardizing future cooperation to safeguard human rights.¹⁶⁶

¹⁵⁸ Hypothetical, §49.

¹⁵⁹ Hypothetical, §50.

¹⁶⁰ Hypothetical, §51.

¹⁶¹ *Case of Godínez-Cruz v. Honduras* (Judgment), IACtHR, (20 January 1989), §188.

¹⁶² Hypothetical, §50.

¹⁶³ Zabyelina, *The Immunity Challenges in Cases of the Labor Trafficking of Diplomatic Household Workers' in Between Immunity and Impunity: External Accountability of Political Elites for Transnational Crime*, (2023), p.102-105; ICJ, *Report on Jurisdictional Immunities of the States (Germany v. Italy)*, (2012), p.99.

¹⁶⁴ Hypothetical, §55.

¹⁶⁵ Hypothetical, §55; Questions, No.31.

¹⁶⁶ Gogna, Pdosiedlik and Hlobil, *Diplomatic and State Immunity in Respect of Claims of Embassy Employees and Domestic Workers: Mapping the Problems and Devising Solutions*, (2015), 44, 55-58; Livermore, *The Issues Involved in Using the "Persona Non-Grata" Option*, (2023); Rapnouil, *The Brutalisation of diplomacy?*, (2024), p.727.

In conclusion, the State did not violate Articles 8 and 25 ACHR *juncto* Articles 1(1) and 2 ACHR.

IV. REQUEST FOR RELIEF

Based on the foregoing submissions, the respondent State of Aravania respectfully requests this Honorable Court to declare and adjudge in favor of the State that:

- 1) The request of the Applicants is declared inadmissible.
- 2) In the alternative, the State did not violate its international obligations under Articles 3, 5, 6, 7, 8, 25, 26 *juncto* 1(1) and 2 ACHR and Article 7 of the Convention of Belém do Pará *juncto* Articles 1(1) and 2 ACHR and dismiss the claim for reparations.