

A.A. AND NINE OTHER WOMEN

V.

REPUBLIC OF ARAVANIA

VICTIMS

I. TABLE OF CONTENTS

I. Table of Contents	1
II. Index of Authorities	4
A. Legal Cases	4
A.1 Inter-American Court of Human Rights	4
Advisory Opinions	4
Contentious cases.....	4
A.2 Inter-American Commission on Human Rights.....	7
A.3 European Court of Human Rights.....	7
A.4 Other Human Rights Bodies	8
B. Legal books and Articles	8
B.1 Books.....	8
B.2 Articles	8
B.3 Legal instruments	8
B.4 Reports	9
B.5 Other contributions.....	10
III. Statement of Facts.....	11
IV. Legal Analysis.....	13
1) Preliminary objections	13

A.	The Court must dismiss the State’s preliminary objection regarding this Court’s competence <i>ratio personae</i>, as the nine other women in question are identifiable...	13
B.	The Court must dismiss the State’s preliminary objection regarding this Court’s competence <i>ratione loci</i>.....	15
C.	The Court must dismiss the State’s preliminary objection regarding the alleged violation of the principle of subsidiarity	16
2) Merits.....		18
A.	Application of the <i>iura novit curia</i> principle.....	18
B.	General considerations about the structural and intersectional discrimination against women in Aravania.....	18
C.	Regarding A.A. and the nine women, the State violated Article 6 ACHR, and therefore violated Articles 3, 5, 7 and 22 ACHR <i>juncto</i> Articles 1(1) and 2 ACHR	22
C.1	The State has violated Article 6 ACHR.	22
C.1.i.	Qualification of slavery.....	23
C.1.ii.	Qualification of servitude and forced labor	25
C.1.iii.	Qualification of human trafficking	28
C.2	The State has violated Articles 3, 5, 7, 22 ACHR <i>juncto</i> Articles 1(1) and 2 ACHR	30
C.2.i.	Violation of Article 3 ACHR	30
C.2.ii.	Violation of Article 5 ACHR.....	31
C.2.iii.	Violation of Articles 7 and 22 ACHR	32

C.3 Attribution of responsibility to the State	32
D. Regarding A.A., the State violated Articles 8 and 25 ACHR <i>juncto</i> Articles 1(1) and 2 ACHR and Article 7 CMV	36
D.1 Immunity	38
D.2 Effective remedy	40
D.3 Investigation.....	41
E. The nine other women are victims of enforced disappearance, therefore there is an automatic violation of Articles 3, 5, 7, 22, 8 and 25 ACHR <i>juncto</i> Articles 1(1) and 2 ACHR.....	43
E.1. Qualification enforced disappearance	43
E.1.1 Deprivation of liberty	43
E.1.2 State acquiescence and failure to act	44
E.1.3 Refusal to acknowledge the deprivation or provide information	44
E.2 Automatic violations because of the qualification as enforced disappearances....	44
E.3 Right to the truth for the next of kin.....	45
F. The State has violated Article 26 ACHR <i>juncto</i> Articles 1(1) and 2 ACHR.....	46
F.1. Right to work	47
F.2 Right to a healthy environment.....	49
V. Request for Relief.....	51

II. INDEX OF AUTHORITIES

A. Legal Cases

A.1 Inter-American Court of Human Rights

Advisory Opinions

Advisory Opinion OC-18/03, IACtHR, (17 September 2003).....	19
Advisory Opinion OC-21/14, IACtHR, (9 August 2014).....	15,32
Advisory Opinion OC-23/17, IACtHR, (15 November 2017).....	15,16,47,49

Contentious cases

<i>Case of Acevedo Buendía et al. v. Peru</i> (Judgment), IACtHR, (1 July 2009).....	40,48
<i>Case of Baena Ricardo et al. v. Panama</i> (Judgment), IACtHR, (2 February 200).....	36,40
<i>Case of Bámaca-Velásquez v. Guatemala</i> (Judgment), IACtHR, (25 November 2000).....	45
<i>Case of Bedoya Lima et al. v. Colombia</i> (Judgment), IACtHR (26 August 2016).....	20,37
<i>Case of Cantos v. Argentina</i> (Judgment), IACtHR, (28 November 2002).....	36
<i>Case of Carvajal Carvajal et al. v. Colombia</i> (Judgment), IACtHR, (13 March 2018).....	33
<i>Case of Castañeda Gutman v. Mexico</i> (Judgment), IACtHR, (6 August 2008).....	36,40
<i>Case of Castillo González et al. v. Venezuela</i> (Judgment), IACtHR, (27 November 2012).....	33
<i>Case of Castillo Páez v. Peru</i> (Judgment), IACtHR, (27 November 1998).....	40
<i>Case of Castillo Petruzzi et al. v. Peru</i> (Judgment), IACtHR, (30 May 1998).....	40
<i>Case of Contreras et al v. El Salvador</i> (Judgment), IACtHR, (31 August 2011).....	43,45
<i>Case of Cuscul Pivaral et al. v. Guatemala</i> (Judgment), IACtHR, (23 August 2018).....	46
<i>Case of Fernandez Ortega et al. v. Mexico</i> , IACtHR, (30 August 2010).....	37

<i>Case of Gelman v. Uruguay</i> (Judgment), IACtHR, (24 February 2011).....	45
<i>Case of Genie-Lacayo v. Nicaragua</i> (Judgment), IACtHR, (27 January 1995).....	36
<i>Case of Gomez Lund et al v. Brazil</i> (Judgment), IACtHR, (24 November 2010).....	43,45
<i>Case of Gonzalez et al. (“Cotton Field”) v. Mexico</i> (Judgment), IACtHR, (16 November 2009).....	19,33,37
<i>Case of Gonzalez Lluy et al. v. Ecuador</i> (Judgment and Concurring opinion of Judge Eduardo Ferrer Mac-Gregor), IACtHR,(1 September 2015).....	20
<i>Case of Hacienda Brasil Verde Workers v. Brazil</i> (Judgment), IACtHR, (20 October 2016).....	20,22,23,25,26,27,28,29,30,31,32,33,34,36,44
<i>Case of Heliodoro Portugal v. Panama</i> (Judgment), IACtHR, (12 August 2008).....	18,45
<i>Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago</i> (Judgment), IACtHR, (21 June 2002).....	18
<i>Case of I. V. v. Bolivia</i> (Judgment), IACtHR, (30 November 2016).....	20
<i>Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia</i> (Judgment), IACtHR, (1 September 2010).....	45
<i>Case of Kichwa Indigenous People of Sarayaku v. Ecuador</i> (Judgment), IACtHR, (27 June 2012).....	40
<i>Case of Lagos del Campo v. Peru</i> (Judgment and Separate opinion of Judge Roberto F. Caldas), IACtHR (31 August 2017).....	40,46
<i>Case of Las Palmeras v. Colombia</i> (Judgment), IACtHR, (6 December 2001).....	16
<i>Case of López Soto et al. v. Venezuela</i> (Judgment), IACtHR, (26 September 2018).....	23,30,31,32,33,41
<i>Case of Luna López v. Honduras</i> (Judgment), IACtHR, (10 October 2013).....	33

<i>Case of Mohamed v. Argentina</i> (Judgment), IACtHR, (23 November 2012).....	40
<i>Case of Núñez Naranjo et al v. Ecuador</i> (Judgment), IACtHR, (23 May 2023).....	45
<i>Case of Osorio Rivera and Family v. Peru</i> (Judgment), IACtHR, (26 November 2013).....	44
<i>Case of Peralta Armijos v. Ecuador</i> (Judgment), IACtHR, (15 November 2024).....	46
<i>Case of Poblete Vilches et al. v. Chile</i> (Judgment), IACtHR, (8 March 2018).....	20,47,48
<i>Case of Pueblo Bello Massacre v. Colombia</i> (Judgment), IACtHR (31 January 2006).....	29,33
<i>Case of Ramírez Escobar et al. v. Guatemala</i> (Judgment), IACtHR, (9 March 2018).....	28
<i>Case of Río Negro Massacres v. Guatemala</i> (Judgment), IACtHR, (4 September 2012).....	23,31,34,36
<i>Case of the Employees of the Fireworks Factory of Santo Antônio de Jesus and their families v. Brazil</i> (Judgment), IACtHR, (21 June 2021).....	47
<i>Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina</i> (Judgment), IACtHR, (6 February, 2020).....	18,47,49
<i>Case of the Ituango Massacres v. Colombia</i> (Judgment), IACtHR, (1 July 2006).....	26,27
<i>Case of the Landaeta Mejías Brothers et al. v. Venezuela</i> (Judgment), IACtHR, (27 August 2014).....	34
<i>Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence v. Peru</i> (Judgment), IACtHR, (8 October 2020).....	48
<i>Case of the Xákmok Kásek Indigenous Community v. Paraguay</i> (Judgment), IACtHR, (24 August 2010).....	19,31
<i>Case of Torres Millacura et al. v. Argentina</i> (Judgment), IACtHR, (26 August 2011).....	43
<i>Case of Trujillo-Oroza v. Bolivia</i> (Judgment), IACtHR, (27 February 2002).....	45
<i>Case of Velásquez Paiz et al. v. Guatemala</i> (Judgment), IACtHR, (19 November 2015).....	33

<i>Case of Velásquez Rodríguez v. Honduras</i> (Judgment), IACtHR, (29 July 1988).....	43,45
<i>Case of Veliz Franco et al. v. Guatemala</i> (Judgment), IACtHR, (19 May 2014).....	33
<i>Case of Yatama v. Nicaragua</i> (Judgment), IACtHR, (23 June 2005).....	36

A.2 Inter-American Commission on Human Rights

<i>Jessica Lenahan (Gonzales) et al. v. United States</i> (Merits), IACHR, (2011).....	19
<i>Jose Isabel Salas Galindo et al. v. United States</i> (Decision), IACHR, (2018).....	15
<i>Mario Roberto Chang Bravo v. Guatemala</i> (Admissibility), IACHR, (2008).....	13
<i>Victims of Anti-Immigrant Vigilantes v. United States</i> (Admissibility), IACHR, (2009).....	13
<i>Víctor Saldaño v. Argentina</i> (Admissibility), IACHR, (1999).....	15

A.3 European Court of Human Rights

<i>C.N. and V. v. France</i> , ECtHR, (2012).....	25
<i>Chowdury and others v. Greece</i> , ECtHR, (2017).....	27,28
<i>Kiliç v. Turkey</i> , ECtHR, (2000).....	33
<i>Opuz v. Turkey</i> , ECtHR, (2009).....	19
<i>Osman v. The United Kingdom</i> , ECtHR, (1998).....	33
<i>Rantsev v. Cyprus and Russia</i> , ECtHR, (2010).....	23
<i>Siliadin v. France</i> , ECtHR, (2005).....	25,32
<i>Tyrer v. UK</i> , ECtHR, (1978).	26
<i>Van der Müsselle v. Belgium</i> , ECtHR, (1983).....	28

A.4 Other Human Rights Bodies

<i>Case of Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)</i> , ICJ, (1970).....	23
<i>Mrs. A.T. v. Hungary</i> (Judgment), CEDAW, (2005).....	19
<i>Prosecutor v. Kunarac</i> , ICTY, (2001).....	23

B. Legal books and Articles

B.1 Books

Hennebel and Tigroudja, <i>The American Convention on Human Rights A Commentary</i> , (2022).....	30,31,36,40,45
Mesecvi, <i>Guide to the Application of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women</i> , (2014).....	19,37

B.2 Articles

Gogna, Pdosiedlik, Hlobil, <i>Diplomatic and State Immunity in Respect of Claims of Embassy Employees and Domestic Workers: Mapping the Problems and Devising Solutions</i> , (2015).....	39
Mardikian, <i>The Right to a Healthy Environment before the Inter- American Court of Human Rights</i> , (2023).....	47

B.3 Legal instruments

ILO Convention No. 155, (1981).....	47
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IACHR, Inter-American Principles on the Human Rights of all Migrants, Refugees, Stateless Persons and Victims of Human Trafficking, (2019).....	37,38
UN Convention on Special Missions, (1969).....	39
UN Guiding Principles for the Search for Disappeared Persons, (2019).....	45,46
UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (2000).....	41
UNCHR, The Due Diligence Standard as a Tool for the Elimination of Violence against Women, (2006).....	34

B.4 Reports

IACHR, <i>Report on the Access to Justice for Women Victims of Sexual Violence in Mesoamerica</i> , (2011).....	19
IACHR, <i>Report on the Access to Justice for Women Victims of Violence in the Americas</i> , (2007).....	19
IACHR, <i>Report on the Indigenous Women and Their Human Rights in the Americas</i> , (2017).....	19
UN, <i>Report of the Special Rapporteur on Violence against Women, its Causes and Consequences</i> , (2011).....	20
IACHR, <i>Report on Violencia y discriminacion contra mujeres, ninas y adolescentes: Buenas prácticas y desafíos en América Latina y en el Caribe</i> , (2019).....	37

B.5 Other contributions

ICC, *Office of the prosecutor: Policy on slavery crimes*, (2024).....23

III. STATEMENT OF FACTS

On 2 July 2012, The Republic of Aravania (Aravania or the State) and the Democratic State of Lusaria (Lusaria) entered into a Cooperation Agreement that entailed the relocation of workers from Aravania to Lusaria, where they would cultivate *Aerisflora*.¹ The Cooperation Agreement stipulated that Lusaria would oversee all matters concerning the production of *Aerisflora*.² Aravania agreed to a minimal role, well aware of the health risks associated with *Aerisflora*³ and of Lusaria's lacking labor protection.⁴ The Cooperation Agreement lasted until 1 July 2015, despite revelations of reported corruption in 2013.⁵

On 24 November 2014, 60 women and their dependents left Aravania for Lusarian farms. The women travelled in pursuit of a better life; Aravania has no public education or social security. Women face structural challenges on the labor market and nearly one in six people live in poverty.⁶ Furthermore, Aravania is plagued by extreme weather, long periods of drought and catastrophic flooding, all leading to the displacement of thousands of persons.⁷

A.A. and the other nine Applicants were amongst these 60 women. Their vulnerable profiles were deliberately targeted through *ClicTik*.⁸ Upon their arrival in Lusaria, the Applicants' identity documents were confiscated.⁹ The women had to work long hours in appalling conditions,

¹ Hypothetical Case (Hypothetical), §25.

² Hypothetical, §§46&47.

³ Hypothetical, §15.

⁴ Hypothetical, §21.

⁵ Clarification Questions (Questions), No.5; Hypothetical, §17.

⁶ Hypothetical, §§3&14.

⁷ Hypothetical, §4.

⁸ Hypothetical, §§33&34.

⁹ Hypothetical, §36.

often unpaid, under threat of violence and fear for their families.¹⁰ Eventually, the women were forced to live on the farms in deplorable circumstances.¹¹

On 5 January 2014, A.A. and the nine other Applicants were transferred to Aravania to resume the transplanting of *Aerisflora*. There, A.A. managed to escape the premises and contacted the Aravanian police.¹² Ultimately, the police failed to investigate the Applicants' story because one key actor involved, Mr. H. Maldini, was afforded immunity by the Cooperation Agreement, leaving A.A. and the other victims without any recourse for justice or accountability.¹³

¹⁰ Hypothetical, §§37,43,45&48.

¹¹ Hypothetical, §40.

¹² Hypothetical, §48.

¹³ Hypothetical, §51.

IV. LEGAL ANALYSIS

1) Preliminary objections

A. The Court must dismiss the State's preliminary objection regarding this Court's competence *ratio personae*, as the nine other women in question are identifiable

Article 44 of the American Convention on Human Rights (ACHR) grants any person, group of persons or nongovernmental entity the right to lodge petitions within the Inter-American system. The Inter-American Commission on Human Rights (IACHR or the Commission) has consistently interpreted this provision to require the presence of concrete victims for a petition to be admissible.¹⁴ However, these victims do not necessarily need to be fully identified at the outset, it suffices that they are either identified or identifiable.¹⁵

The Inter-American Court of Human Rights (IACtHR or the Court) has established that flexibility in the identification of victims is permissible, particularly in cases where individuals share common characteristics or where their identities can reasonably be established through available evidence.¹⁶ This approach ensures that procedural formalities do not create unjust barriers to justice, particularly in cases involving human trafficking, forced labor, or similar violations.

The nine other women in question are not anonymous, abstract claimants but rather specific individuals whose identities can be reasonably ascertained. They form a defined group: Aravanian

¹⁴ *Mario Roberto Chang Bravo v. Guatemala* (Admissibility), IACHR, (2008), §38.

¹⁵ *Ibid.*

¹⁶ *Victims of Anti-Immigrant Vigilantes v. United States* (Admissibility), IACHR, (2009), §41.

women recruited under the same conditions as A.A., transported together, and subjected to labor exploitation at Finca El Dorado.¹⁷ Their employers systematically recorded their identities, confiscating their documents under false pretenses.¹⁸ Although the confiscation of their documents made independent verification difficult, their identities can still be established through migration records, employment files, agreements between Aravana and Lusaria and the information on their dependents.¹⁹ The State, thus, has the means to verify these individuals' identities.

A.A.'s testimony further confirms their existence, detailing their ages, nationalities, and dependents, with at least three names – Maria, Sofia, and Emma – explicitly recalled.²⁰ Additionally, Lusarian authorities identified multiple victims in criminal proceedings against Mr. Hugo Maldini, some likely belonging to this group.²¹ All of this does not negate their right to seek justice, on the contrary.

In conclusion, the impossibility of immediate identification does not mean these women do not exist or that their claims should be dismissed. Given the available evidence and the circumstances of the case, the Court must find these women identifiable.

In conclusion, the case must be declared admissible.

¹⁷ Hypothetical, §46.

¹⁸ Hypothetical, §36.

¹⁹ Hypothetical, §36; Questions, Nos.3,13&23.

²⁰ Questions, No.3.

²¹ Hypothetical, §53.

B. The Court must dismiss the State’s preliminary objection regarding this Court’s competence *ratione loci*

The human rights violations occurred within the jurisdiction of Aravania, making the State internationally responsible.

Firstly, the obligation to uphold rights within a State’s jurisdiction generally refers to its territory.²² The Applicants allege that, from 5 to 14 January 2014, they were subjected to slavery, inhuman treatment, and deprivation of liberty and freedom of movement within Aravania.²³ Additionally, they assert that several elements of subsequent extraterritorial violations, such as recruitment through deception for human trafficking between 16 July and 31 August 2012, also took place on Aravanian territory.²⁴ Therefore, as the acts occurred within Aravanian territory, they fall within the State’s jurisdiction.

Secondly, the Court has clarified that the scope of a State’s jurisdiction can extend to persons outside its territory, insofar they are under the State’s authority, responsibility or control.²⁵ Through its accession to the Cooperation Agreement, the State has not only assumed responsibility for those persons charged with fulfilling the Cooperation Agreement’s stipulations, but – through monthly status reports and on-site inspections – it was in a position to exert effective control.²⁶ Consequently, the violations did occur within Aravania’s jurisdiction.

Thirdly, the Court has acknowledged that States carry the duty of preventing third parties from violating human rights in other jurisdictions if they possess the capacity to influence these

²² *Case of Jose Isabel Salas Galindo et al. v. United States* (Decision), IACHR, (2018), §308.

²³ Hypothetical, §§46-48.

²⁴ Hypothetical, §29.

²⁵ Advisory Opinion OC-21/14, IACtHR, (9 August 2014), §219; Advisory Opinion OC-23/17, IACtHR, (15 November 2017), §73; *Víctor Saldaño v. Argentina* (Admissibility), IACHR, (1999), §§17&19.

²⁶ Hypothetical, §25.

third parties.²⁷ Neighboring countries' proximity fosters interdependence and therefore influence.²⁸ This influence is further formalized by the Cooperation Agreement and its arrangements of reports and inspections.²⁹ The Cooperation Agreement inherently conferred Aravana a degree of leverage over Lusaria's domestic affairs and State agents, more specifically, their way of regulating working conditions in the plantation sector of *Aerisflora*.

Due to violations taking place on Aravanian territory and due to Aravana's control and influence over violations taking place in Lusaria, Aravana cannot evade responsibility by claiming jurisdictional limitations.

In conclusion, the case must be declared admissible.

C. The Court must dismiss the State's preliminary objection regarding the alleged violation of the principle of subsidiarity

This Court has articulated that the principle of subsidiarity applies only in instances where it has been determined under domestic law that there is a violation of an individual's human rights, and the question is definitively settled. When such a determination has been made, there is no need for the matter to be brought before the Court for mere confirmation of approval.³⁰

In casu, the State cannot plausibly invoke subsidiarity based on the arbitration procedures initiated on 8 March 2014 for two reasons.³¹

²⁷ Advisory Opinion OC-23/17, §151.

²⁸ *Ibid.*

²⁹ Hypothetical, §25.

³⁰ *Case of Las Palmeras v. Colombia* (Judgment), IACtHR, (6 December 2001), §33.

³¹ Hypothetical, §55.

First and foremost, neither the disputing parties, nor the disputed facts are the same. The parties involved in the dispute resolution proceedings were exclusively States, while the Applicants in the case before this Court were not part of those proceedings. The domestic arbitration proceedings did not involve a determination of the human rights violations that are the subject of the present case, nor did they provide a remedy for those human rights violations.

Secondly, the compensation granted to A.A. by Aravania was not a recognition of responsibility for the human rights violations under scrutiny by this Court. Rather, it was a compensatory measure for Lusaria's failure to respect the Cooperation Agreement.³²

To claim that there has been a conclusive and settled assessment of the human rights violations suffered by A.A. and nine other women is fundamentally incorrect. Therefore, the principle of subsidiarity cannot be invoked in this instance.

In conclusion, the case must be declared admissible.

³² Hypothetical, §55.

2) Merits

A. Application of the *iura novit curia* principle

The IACtHR has often used its judicial power under the *iura novit curia* principle to analyze possible violations of the ACHR that were not included in the filed petitions or briefs.³³ This is to ensure that a party will not lose the case simply by failing to invoke the correct legal ground. The Court concluded in *Hilaire et al.* that it had “the power and the duty to apply juridical provisions relevant to a proceeding, even when the parties do not expressly invoke them”³⁴.

The Applicants would like to invoke Articles 4 and 22 ACHR.

B. General considerations about the structural and intersectional discrimination against women in Aravania

Since this case is about women with a low socio-economic status³⁵, it is important to underscore their vulnerability before delving into the alleged violations. Not only their gender, but also the intersectionality of their identity significantly increases the State’s obligations towards them, stemming from the obligation of States to respect and ensure the full exercise of the rights and freedoms recognized in the ACHR “without any discrimination” and from the obligations

³³ *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina* (Judgment), IACtHR, (6 February, 2020), §200; *Case of Heliodoro Portugal v. Panama* (Judgment), IACtHR, (12 August 2008), §105; *Case of Velásquez Rodríguez v. Honduras* (Judgment), IACtHR, (29 July 1988), §163.

³⁴ *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago* (Judgment), IACtHR, (21 June 2002), §29.

³⁵ Hypothetical, §§3&31.

enshrined in the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará or CMV).³⁶

Firstly, the universal and regional human rights systems have recognized the close nexus that exists between discrimination, violence and due diligence, and have underscored that the State's failure to act with due diligence to protect women from violence is a form of discrimination and a denial of their right to equal protection of the law.³⁷ Both Court and Commission have invoked the due diligence standard as a reference for deciding cases and situations involving violence perpetrated against women, including violence perpetrated by private persons.³⁸

States carry a special duty of protection with regard to actions and practices of third parties that, with its tolerance or acquiescence, create, maintain or encourage discriminatory situations.³⁹ It is the State's duty to take measures to prevent the discrimination that perpetuates the problem of violence against women, by adopting measures to modify the social and cultural behavioral patterns of men and women and to eliminate prejudices, customary practices and other practices based on the idea of the inferiority of either sex and on the stereotyped roles for men and women.⁴⁰ This may include implementing laws and public policy, and installing law enforcement bodies that are capable of adequately and effectively preventing and responding to these problems.⁴¹

³⁶ *Case of the Xákmok Kásek Indigenous Community v. Paraguay* (Judgment), IACtHR, (24 August 2010), §§251-256.

³⁷ *Case of Gonzalez et al. ("Cotton Field") v. Mexico* (Judgment), IACtHR, (16 November 2009), §395; *Mrs. A.T. v. Hungary* (Judgment), CEDAW, (2005), §9.1; *Opuz v. Turkey*, ECtHR (2009), §§180,191&200; IACHR, *Report on the Indigenous Women and Their Human Rights in the Americas*, (2017), §66.

³⁸ IACHR, *Report on the Access to Justice for Women Victims of Violence in the Americas*, (2007), §§26-58.

³⁹ Advisory Opinion OC-18/03, IACtHR, (17 September 2003), §104.

⁴⁰ IACHR, *Report on the Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, (2011), §§42-43; *Jessica Lenahan (Gonzales) et al. v. United States* (Merits), IACHR, (2011), §§125-128.

⁴¹ Mesecvi, *Guide to the Application of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*, (2014), p.43.

However, State efforts to fulfill their due diligence obligation should not focus solely on legislative reform and service provision to victims; they must also address prevention. In this sense, States must be aware of the multiplicity of forms that violence against women takes on, as well as the different types of discrimination, to be able to adopt multi-faceted strategies to effectively prevent and combat it.⁴²

Secondly, the Court recognizes that intersectionality plays a crucial role in assessing the extent of discrimination in a specific case.⁴³ Discrimination is exacerbated when multiple factors, such as gender and economic status, interact in such way that they create a unique and distinct burden of discrimination and compounded harm.⁴⁴ The Court has indeed stressed that, unlike other human rights treaties, “the ‘economic status’ of an individual is one of the causes of discrimination prohibited by Article 1(1) of the American Convention”⁴⁵. For discrimination to be intersectional, the factors must be analytically inseparable – meaning they cannot be disaggregated into separate forms of discrimination – and must produce consequences that are distinct from those experienced by individuals affected by only one of the factors.⁴⁶ When these conditions are met, the severity of discrimination reaches a *jus cogens* level, requiring heightened State obligations.⁴⁷

In casu, there is a culture of discrimination that incited the violence directed against the Applicants. This culture can be seen in the whole of Aravania, especially in rural areas, where A.A. and possible other victims lived before they were trafficked⁴⁸, as well as in Aravania’s labor market

⁴² UN, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences*, (2011), §49.

⁴³ *Case of Gonzalez Lluy et al. v. Ecuador* (Judgment), IACtHR, (1 September 2015), §§28,288 &290; *Case of Bedoya Lima et al. v. Colombia* (Judgment), IACtHR, (26 August 2016), §126.

⁴⁴ *Case of Poblete Vilches et al. v. Chile* (Judgment), IACtHR, (8 March 2018), §§108-117.

⁴⁵ *Case of Hacienda Brasil Verde Workers v. Brazil* (Judgment), IACtHR, (20 October 2016), §335.

⁴⁶ *Gonzalez Lluy* (Concurring opinion of Judge Eduardo Ferrer Mac-Gregor), IACtHR, (1 September 2015), §11.

⁴⁷ *Case of I. V. v. Bolivia* (Judgment), IACtHR, (30 November 2016), §118.

⁴⁸ Hypothetical, §31; Questions, No.42.

and societal structures.⁴⁹ Women receive lower wages than men for the same work, and above that carry a disproportionate burden of unpaid work.⁵⁰ The failure to implement workplace inclusion policies and the absence of a preventative or multi-faceted approach, reveals the structural lack of State action.⁵¹ As a result, these women who are both economically and socially stigmatized, have little choice but to seek job opportunities abroad.

Furthermore, the violations suffered by these women cannot be fully understood without recognizing their intersectional nature. A.A. and other women were targeted because they were both female and economically marginalized.⁵² Their financial precarity made them more susceptible to manipulation and coercion, while their gender rendered them particularly vulnerable to exploitation and abuse within the workplace. The intersection of these factors is analytically inseparable; it was not possible to disaggregate their economic vulnerability from their gender-based oppression, as each factor reinforced and exacerbated the other.⁵³ Crucially, as the Court requires this for facts to amount to intersectional discrimination, the consequences they faced were distinct from those suffered by men in similar economic conditions.⁵⁴ While economically disadvantaged men may have also been susceptible to exploitative labor practices, they were not subjected to the same degree of disproportionate labor burdens, ingrained societal expectations and sexual violence that normalized their subjugation.⁵⁵

By failing to address these systematic and intersectional inequalities, Aravania has further entrenched women into customary practices and other practices based on the idea of the inferiority

⁴⁹ Hypothetical, §3.

⁵⁰ Hypothetical, §3&37.

⁵¹ Hypothetical, §35.

⁵² Hypothetical, §28.

⁵³ *Ibid.*

⁵⁴ Hypothetical, §37.

⁵⁵ Hypothetical, §§37&45.

of the female sex and on the stereotyped roles for women, perpetuating a cycle of discrimination that extends beyond its borders. This is a clear example of a State failing to take measures to prevent the discrimination that perpetuates the problem of violence against women, not only structurally but also intersectionally, which is an obligation resting on the State with its legal basis in Article 1(1) ACHR and Article 7 CMV.

In conclusion, the State has violated Article 7 CMV and Article 1(1) ACHR.

In the instant case, these violations constitute a cross-cutting issue to the other alleged violations, and, consequently, the Applicants ask the Court to take the structural and intersectional discrimination into account throughout this judgment. After all, violence against women is the symptom, not the disease.

C. Regarding A.A. and the nine women, the State violated Article 6 ACHR, and therefore violated Articles 3, 5, 7 and 22 ACHR *juncto* Articles 1(1) and 2 ACHR

C.1 The State has violated Article 6 ACHR.

Article 6 ACHR contains the right not to be subjected to slavery, servitude, forced labor or the slave trade and human trafficking. It has an absolute nature and is one of the cores of non-derogable rights according to Article 27(2) ACHR, because it cannot be suspended in case of war, public danger or other threats.⁵⁶

⁵⁶ *Hacienda Brasil*, §243.

C.1.i. Qualification of slavery

The prohibition of slavery, as enshrined in Article 6(1) ACHR, being an obligation *erga omnes* or *jus cogens*⁵⁷, imposes both a negative obligation on the State to refrain from any conduct that could result in enslavement, and a positive obligation to prevent, protect against, prohibit, investigate, prosecute and punish any practice that may result in slavery.⁵⁸ The Court considers that two fundamental aspects define a situation of slavery: (i) the situation or condition of a person and (ii) the exercise of any or all powers attaching to the right of ownership.⁵⁹ The Court understands slavery in an evolutive manner and affirmed that slavery may exist both *de jure* and *de facto*.⁶⁰ The latter may manifest through the restriction or control of an individual's autonomy, the loss or restriction of freedom of movement, the free will of victims being rendered impossible by deception or false promises, the use of physical force, the victim's position of vulnerability, exploitation and detention or captivity.⁶¹ Some destruction of the juridical personality is thus present.⁶²

Additionally, following the case law, the absence of the victim's consent or free will is only one of the elements that could assess the manifestation of the "powers attaching to the right of ownership" but is not a necessary element for slavery to occur.⁶³

The facts presented clearly establish that A.A. and other workers were deprived of their autonomy.

⁵⁷ *Hacienda Brasil*, §229; *Case of Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, ICJ, (1970), §34; ICC, *Office of the prosecutor: Policy on slavery crimes*, (2024), §33.

⁵⁸ *Hacienda Brasil*, §329; *Case of Río Negro Massacres v. Guatemala* (Judgment), IACtHR, (4 September 2012), §225.

⁵⁹ *Case of López Soto et al. v. Venezuela* (Judgment), IACtHR, (26 September 2018), §174; *Rantsev v. Cyprus and Russia*, ECtHR, (2010), §§137-145.

⁶⁰ *Hacienda Brasil*, §270.

⁶¹ *Hacienda Brasil*, §272; *López Soto*, §175; *Prosecutor v. Kunarac*, ICTY, (2001), §542.

⁶² *Hacienda Brasil*, §§259&273; *Prosecutor v. Kunarac*, ICTY, (2001), §117.

⁶³ See also ICC, *Office of the prosecutor: Policy on slavery crimes*, (2024), §§34&47.

Their passports were confiscated⁶⁴, eliminating their ability to freely leave the farm. When other women asked for their identity documents back, they were told that the documents had been handed over to labor authorities for "processing", effectively using document retention as a control mechanism.⁶⁵ A.A. feared losing her legal status in Lusaria, another form of pressure that forced her to stay.⁶⁶

The victims were required to live on-site, surrounded by a 2.5-meter-high metal fence and monitored by a 24/7 security system.⁶⁷ Entry and exit were actively controlled, effectively isolating the workers from the outside world.⁶⁸ A.A. could not leave because she lacked the money for a return trip, creating economic dependency.⁶⁹ A.A.'s statement to the police, in which she said "that they had no way of leaving, as everything was designed to pressure them into staying"⁷⁰, is telling.

The women workers were subjected to long hours under harsh conditions, deprived of sufficient rest and adequate wages⁷¹, pressured into doing unpaid work by cleaning and cooking for the working men and supervisors.⁷² They also faced overcrowded living quarters lacking basic facilities.⁷³ A.A. and her female colleagues were reduced to mere instruments for economic exploitation.

The abhorrent and compulsory working and living conditions – combined with threats of retaliation and several types of violence, and the fear of loss of legal status and lack of financial

⁶⁴ Hypothetical, §36.

⁶⁵ Hypothetical, §44.

⁶⁶ *Ibid.*

⁶⁷ Hypothetical, §39.

⁶⁸ *Ibid.*

⁶⁹ Hypothetical, §43.

⁷⁰ Questions, No.32.

⁷¹ Hypothetical, §§37&42.

⁷² Hypothetical, §§39&42.

⁷³ Hypothetical, §43.

support⁷⁴ – furthermore nullified any semblance of consent on their part and underscore their vulnerable and coerced position.

Given that the two essential elements of slavery are present in this case, it is evident that the Applicants were victims of slavery.

C.I.ii. Qualification of servitude and forced labor

Should the Court find that the conditions described do not amount to slavery, the Applicants submit that the facts clearly establish the presence of servitude. Servitude as interpreted by the IACtHR, following the European Court of Human Rights' definition⁷⁵, is “the obligation to perform certain services for others [...] that is imposed by the use of coercion”, and “the obligation for the ‘serf’ to live on another person's property and the impossibility of altering his condition”⁷⁶. It is an analogous form of slavery, characterized by both explicit and subtle forms of coercion.⁷⁷ The fundamental distinguishing feature between servitude and forced labor lies in the victim's feeling that their condition is permanent, and that the situation is unlikely to change.⁷⁸

In casu, A.A. and the nine other women were under the obligation to perform strenuous work for others, imposed upon them using coercion.⁷⁹ This coercion was exercised through deceptive recruitment practices, psychological pressure, restriction of movement, retention of identity

⁷⁴ Hypothetical, §§43,45,47.

⁷⁵ *Siliadin v. France*, ECtHR, (2005), §123.

⁷⁶ *Hacienda Brasil*, §280.

⁷⁷ *Hacienda Brasil*, §279.

⁷⁸ *C.N. and V. v. France*, ECtHR, (2012), §91.

⁷⁹ Hypothetical, §§37,41&42.

documents, and threats to their well-being and that of their families (*supra* III.2),C.1.i.).⁸⁰ This in combination with threats against those who complained⁸¹, the severe repression of dissenting workers, and the disappearance of one of the colleagues reinforced their fear that any attempt to change their circumstances could result in serious consequences.⁸²

This leads unambiguously to the conclusion that there is servitude in the present case.

Furthermore, even if the Court does not determine that the conditions constitute servitude, the Applicants argue that the evidence undoubtedly supports a finding of forced labor. Forced labor entails that the work is exacted under the menace of a penalty and performed involuntarily.⁸³

Not only the agreements related to a treaty must be considered, but also the system of which it is part.⁸⁴ This is why previously, the IACtHR found it useful and appropriate to use ILO Convention No. 29 concerning forced labor to interpret Article 6(2) ACHR. Aravanja is a Member State of this Convention, meaning that it agrees and is bound by the definition in Article 2 of said Convention. In that manner, the Court interpreted the menace of a penalty as “a real and actual presence of intimidation that can assume multiple forms and degrees, the most extreme of which are those that entail coercion, physical violence, isolation, or restriction of movement, as well as death threats addressed at the victims or their family members”⁸⁵. The involuntary aspect of forced labor was interpreted as “the absence of free choice at the time of beginning or continuing of the

⁸⁰ Hypothetical, §§29,36,39&43.

⁸¹ Hypothetical, §§39&43.

⁸² Hypothetical, §§36,42&44.

⁸³ *Hacienda Brasil*, §291; *Case of the Ituango Massacres v. Colombia* (Judgment), IACtHR, (1 July 2006), §§139&154-160.

⁸⁴ *Tyler v. UK*, ECtHR, (1978), §31.

⁸⁵ *Hacienda Brasil*, §293; *Ituango Massacres*, §161.

situation of forced labor”. The Court emphasized that “this can occur for different reasons, such as illegal deprivation of liberty, deception or psychological coercion”⁸⁶. Whether an individual offers his or her labor voluntarily is a factual determination, which “needs to be examined in the light of all the relevant circumstances of a case”⁸⁷.

Moreover, the Commission has stated there is a close relationship between forced labor, slavery and trafficking and labor exploitation, which supposes that one act can be classified under more than one abusive practice and are never mutually exclusive, as they overlap.⁸⁸

In casu, the “menace of a penalty” consisted of the restriction of movement, rumors about physical and sexual violence, and the indirect fear for the integrity of the victim’s next of kin (*supra* III.2).C.1.i.).⁸⁹ The combination of physical isolation, economic dependency, psychological pressure, and implicit threats of violence created a “menace of a penalty” for A.A. and the nine women.⁹⁰

The question whether an individual offers himself for work “voluntarily” is a factual question. In this context, there is an absence of free and informed consent, as it concerns vulnerable women who are disadvantaged by low socio-economic status and significant health issues.⁹¹ Although they may superficially appear to consent to conditions of forced labor, this seeming agreement is the result of coercion or a lack of viable options, rather than an authentic, independent decision. Also, the European Court of Human Rights has held that, where an employer abuses his

⁸⁶ *Ituango Massacres*, §164.

⁸⁷ *Chowdury and others v. Greece*, ECtHR, (2017), §§90&96.

⁸⁸ *Hacienda Brasil*, §§211&219.

⁸⁹ Hypothetical, §§39&45.

⁹⁰ Hypothetical, §§39&43.

⁹¹ Hypothetical, §32.

power or takes advantage of the vulnerability of his workers in order to exploit them, which was the case for the women.⁹² The prior consent of the victim is not sufficient to exclude the characterization of work as forced labor. Furthermore, that Court held that “relative weight” was to be attached to the prior-consent criterion.⁹³

This leads indisputably to the conclusion that there is forced labor in the present case.

C.1.iii. Qualification of human trafficking

Article 6(1) ACHR prohibits human trafficking. Although this Article only focuses on traffic in women, the scope of this Article was broadened to include trafficking in all persons⁹⁴ and can be defined as “(i) the recruitment, transfer, harboring or receipt of persons (ii) by means of threat or use of force or other forms of coercion, abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability [...] (iii) for the purpose of any kind of exploitation”⁹⁵. The IACtHR thus broadened its scope to the extent of the definition in Article 3(a) United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol).⁹⁶ Regarding the victims’ consent, this is considered irrelevant where any of the means in this definition have been used, following Article 3(b) Palermo Protocol.⁹⁷

⁹² *Chowdury*, §90; *Van der Müssele v. Belgium*, ECtHR, (1983), §37.

⁹³ *Ibid.*

⁹⁴ *Hacienda Brasil*, §289.

⁹⁵ *Hacienda Brasil*, §290.; *Case of Ramírez Escobar et al. v. Guatemala* (Judgment), IACtHR, (9 March 2018), §310.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

States have the obligation to guarantee that violations of Article 6 ACHR do not occur and the duty to prevent private individuals from violating this right. Therefore, States must adopt all appropriate measures to end such practices and prevent violations from happening.⁹⁸

The three constitutive elements of human trafficking, as defined in the landmark case *Hacienda Brasil* and in Article 3 Palermo Protocol, can be found in A.A. and the nine other women's situation.

In this case, Article 145 of the 1943 Criminal Code of Aravania contains anti-trafficking measures, yet several indicators of human trafficking were present and left unaddressed. Maldini targeted vulnerable women from rural areas using deceptive social media campaigns, targeting their desperation and promoting false promises of better opportunities.⁹⁹ The recruitment process further involved pressuring women by emphasizing urgency and portraying the job offer as a rare, fleeting opportunity.¹⁰⁰ After their transportation on busses with tinted windows, the women were subjected to atrocious conditions (*supra* III.2).C.1.i).

Given that the women were lured through deception and transferred to another country and given that they endured grave exploitation, the Applicants were victims of human trafficking.

⁹⁸ *Case of Pueblo Bello Massacre v. Colombia* (Judgment), IACtHR, (31 January 2006), §120; *Hacienda Brasil*, §317.

⁹⁹ Hypothetical, §§27-30.

¹⁰⁰ Hypothetical, §34&35.

C.2 The State has violated Articles 3, 5, 7, 22 ACHR *juncto* Articles 1(1) and 2 ACHR

C.2.i. Violation of Article 3 ACHR

Article 3 ACHR guarantees the right to juridical personality, affirming that every individual has the right to recognition as a person before the law. The Court has recognized that situations of slavery deprive individuals of the ability to exercise their rights before the law. The reduction of individuals to mere objects of exploitation constitutes a grave violation of the right to juridical personality, since their very legal existence is denied in these cases.¹⁰¹

Even in the absence of a formal finding of slavery, the same applies in cases of forced labor and human trafficking.¹⁰²

Additionally, if the Court decides there is no slavery, servitude or forced labor present, the right guaranteed under Article 3 ACHR continues to be relevant and was infringed upon, nonetheless. This recognition can be established through domestic legal instruments such as identity documents, since these documents serve as a means of self-determination and are fundamental to the exercise of human rights.¹⁰³

The confiscation of the Applicants' identity documents effectively deprived them of the attributes and characteristics that legally define them as persons before the law, placing them in a state of legal uncertainty.¹⁰⁴

¹⁰¹ *López Soto*, §178, *Hacienda Brasil*, §223.

¹⁰² Hennebel and Tigroudja, *The American Convention on Human Rights A Commentary*, (2022), p.124.

¹⁰³ *Ibid*, p.126.

¹⁰⁴ Hypothetical, §§36&44.

C.2.ii. Violation of Article 5 ACHR

Articles 5(1) and 5(2) ACHR guarantee the right to physical, mental and moral integrity, prohibiting torture and cruel, inhuman or degrading treatment. The Court has established that the complex nature of slavery violates individuals' integrity and therefore violates Article 5 ACHR.¹⁰⁵ The same applies in cases of forced labor and human trafficking.¹⁰⁶

Additionally, if the Court decides there is no slavery, servitude or forced labor present, the right guaranteed under Article 5(1) ACHR continues to be relevant and was infringed upon, nonetheless. Violations may affect not only bodily integrity but also mental and emotional well-being.¹⁰⁷ Moreover, the Court has explicitly recognized that inadequate living conditions may constitute a violation of Article 5 ACHR.¹⁰⁸

In this case, the Applicants suffered both physical and psychological abuse. They firstly suffered inhuman and degrading treatment, including severe labor conditions such as exposure to extreme weather¹⁰⁹, long working hours and lack of off-time.¹¹⁰ They lived in harsh conditions like overcrowded, makeshift housing and were constantly coordinated. Secondly, these physical abuses were accompanied by psychological abuse. The Applicants were living in constant fear, unable to address the situation they were living in.

¹⁰⁵ *Hacienda Brasil*, §223, *López Soto*, §178.

¹⁰⁶ *Hacienda Brasil*, §§221&231.

¹⁰⁷ Hennebel and Tigroudja, *The American Convention on Human Rights A Commentary*, (2022), p.206.

¹⁰⁸ *Xákmok Kásek* §244. *Río Negro Massacres*, §164.

¹⁰⁹ Hypothetical, §41.

¹¹⁰ Hypothetical, §37,39&42.

C.2.iii. Violation of Articles 7 and 22 ACHR

Articles 7(1) ACHR and 7(2) ACHR protect the right to liberty, which protects individuals from actions that deny them autonomy and control over their essential life decisions. The Court has determined that situations of slavery imply violations of Article 7 ACHR.¹¹¹ The same applies in cases of forced labor and human trafficking.¹¹²

Additionally, if the Court decides there is no slavery, servitude or forced labor present, the rights under Article 7 and 22 ACHR continues to be relevant and was infringed upon, nonetheless. Deprivation of liberty occurs when a person cannot or is unable to leave or abandon at will the place or establishment where she or he has been placed.¹¹³ Articles 22(1) and 22(2) ACHR protect the right to freedom of movement.

Following their recruitment through deception, the Applicants' identity documents were confiscated upon their arrival in Lusaria, under the guise of processing permits.¹¹⁴ This effectively immobilized them, denying them the possibility of leaving or returning home. Furthermore, the women were confined to live on a farm surrounded by high fences, monitored by constant video surveillance, with guards and controlled entry and exit.¹¹⁵

C.3 Attribution of responsibility to the State

Regarding violations committed by another State or by a non-State actor, the Court has asserted that certain obligations arise. These obligations involve adopting prevention and protection measures for private individuals in their relationships with each other and are subject to conditions.

¹¹¹ *Hacienda Brasil*, 223; *López Soto*, §178.

¹¹² *Siliadin*, §126; *Hacienda Brasil*, §§211&231.

¹¹³ Advisory opinion OC-21/14, §145.

¹¹⁴ Hypothetical, §36.

¹¹⁵ Hypothetical, §39.

First, the State must be aware of a situation of real and imminent danger to a specific individual or group of individuals. Second, the State must have reasonable possibilities of preventing or avoiding that danger.¹¹⁶

Consequently, it must be verified that (i) the State authorities know or should have known of the existence of a real and imminent risk to the integrity of the Applicants in this case and (ii) those authorities failed to adopt the necessary measures, within their terms of reference, that reasonably considered, could be expected to prevent or avoid that risk.¹¹⁷

When examining the reasonableness of the actions by the State, the Court assesses the actions addressing violence in general, and those adopted in the specific case when it was aware of the risk of serious harm to the integrity.¹¹⁸ When examining whether the State was aware or should have been aware of the danger, the Court has taken different elements and indications into account based on the different circumstances of the cases.¹¹⁹

The State obligations in relation to Article 6 ACHR have been defined in *Hacienda Brasil* and contain the duty to prevent both its agents as well as private individuals, from violating this right¹²⁰, and “the obligation to: (i) open, *ex officio* and immediately, an effective investigation that permits the identification, prosecution and punishment of those responsible, when a report has been filed or there is justified reason to believe that persons subject to their jurisdiction are subjected to one

¹¹⁶ *Pueblo Bello*, §123; *López Soto*, §§137-171; *Kiliç v. Turkey*, ECtHR, (2000), §§62&63; *Osman v. The United Kingdom*, ECtHR, (1998), §§115&116.

¹¹⁷ *Case of Castillo González et al. v. Venezuela* (Judgment), IACtHR, (27 November 2012), §128; *Case of Luna López v. Honduras* (Judgment), IACtHR, (10 October 2013), §124; *Case of Velásquez Paiz et al. v. Guatemala* (Judgment), IACtHR, (19 November 2015), §109; *Case of Carvajal Carvajal et al. v. Colombia* (Judgment), IACtHR, (13 March 2018), §161.

¹¹⁸ *López Soto*, §141.

¹¹⁹ *Cotton Field*, §§283&284; *Case of Veliz Franco et al. v. Guatemala* (Judgment), IACtHR, (19 May 2014), §§141-146.

¹²⁰ *Pueblo Bello*, §120; *Hacienda Brasil*, §317.

of the offenses established in Article 6(1) and 6(2) ACHR; (ii) eliminate any laws that legalize or tolerate slavery and servitude; (iii) define such offenses under criminal law, with severe penalties; (iv) conduct inspections or other measures to detect such practices, and (v) adopt measure of protection and assistance for the victims”¹²¹. The foregoing signifies the due diligence obligation States have in cases of servitude, slavery, trafficking and forced labor.¹²²

States cannot delegate these obligations to exercise due diligence, even when these functions are performed by another State or a non-State actor. Both the territorial State as well as any other States exercising jurisdiction or effective control in the territory remain, in the end, responsible for these due diligence obligations.¹²³

A different degree of responsibility, acquiescence, can occur when a specific violation has taken place with the tolerance of the public authorities or when those showed a lack of due diligence concerning prevention or response, leading to impunity.¹²⁴

In the present case, the State was both aware and should have been aware of the existence of a real and imminent risk to the integrity of the Applicants. Despite this knowledge, the State failed to take the necessary measures to prevent or respond to the existing risks, amounting to State acquiescence.

The State had direct knowledge of the risks faced by women in Campo de Santana as early as October 2012, when the Office of the Prosecutor General received an anonymous complaint alleging that women were being recruited via *ClicTik* videos for work in Lusaria under conditions

¹²¹ *Hacienda Brasil*, §319; *Río Negro Massacres*, §225.

¹²² *Hacienda Brasil*, §§320&329; *Río Negro Massacres*, §225.

¹²³ UNCHR, *The Due Diligence Standard as a Tool for the Elimination of Violence against Women*, (2006), §34.

¹²⁴ *Case of the Landaeta Mejías Brothers et al. v. Venezuela* (Judgment), IACtHR, (27 August 2014), §181.

indicative of forced labor.¹²⁵ Additionally, on 25 October 2013, a women personally reported to the Prosecutor 's Office that she had worked at Finca El Dorado under “extreme conditions”, had not been paid and that the promises made in Hugo Maldini’s videos had not been kept.¹²⁶ Furthermore, when A.A. filed her formal complaint on 14 January 2014, she detailed the coercive recruitment process, the confiscation of identity documents, the abusive working conditions, and instances of violence.¹²⁷ These complaints provided the State with clear indications that women from Aravanja were being subjected to exploitative labor conditions. Moreover, Aravanja knew about the risks associated with working in Lusaria.¹²⁸

Beyond its actual awareness, the State should have been aware of the risks that Aravanian women faced due to several contextual factors. Aravanja’s own official data indicated the difficulties of the women in these specific areas, as discussed above (*supra* III.2).B.).¹²⁹ Maldini’s recruitment strategy, being *ClicTik* videos, was of a public nature and the videos were widely accessible.¹³⁰ Lastly, Aravanja should have known about the dangers of working in the *Aerisflora* production because of the university research into the causal link to skin cancer.¹³¹

Crucially, Aravanja failed to show due diligence in its measures. This can be seen in the failure to carry out any inspection into the situation of the vulnerable workers for more than 18 months.¹³² Furthermore, the State failed to effectively install and enforce a legal and institutional framework to safeguard labor rights, workers’ physical and psychological integrity and their general safety and well-being. The State’s lack of due diligence shows that the State neglected its

¹²⁵ Hypothetical, §54.

¹²⁶ *Ibid.*

¹²⁷ Hypothetical, §48.

¹²⁸ Hypothetical, §17,18&21.

¹²⁹ Hypothetical, §3.

¹³⁰ Hypothetical, §29.

¹³¹ Hypothetical, §15.

¹³² Questions, Nos.10&22.

international responsibilities while it knew or should have known the risks present, as demonstrated above.¹³³

In conclusion, the State violated Articles 6, 3, 5(1), 5(2), 7(1), 7(2), 22(1) and 22(2) ACHR *juncto* Articles 1(1) and 2 ACHR.

D. Regarding A.A., the State violated Articles 8 and 25 ACHR *juncto* Articles 1(1) and 2 ACHR and Article 7 CMV

Article 8(1) ACHR establishes that every individual has the right to a hearing, with due guarantees and within reasonable time, by a competent, independent, and impartial tribunal.¹³⁴ Article 25 ACHR provides the right to simple and prompt recourse, or any other effective recourse for protection against the violation of fundamental rights.¹³⁵ Both Articles entail non-derogable rights and are part of the general obligation of States to ensure a right of access to justice without any discrimination as established in Article 1(1) ACHR.¹³⁶

Article 7(b) CMV establishes a crystal-clear obligation for States to apply due diligence for investigations into violence against women. This obligation has a complementary and enhancing role towards the obligations in the ACHR. It is established that, in cases of violence against women, in addition to the general obligations under the ACHR, States have a reinforced and

¹³³ *Hacienda Brasil*, §329.; *Río Negro Massacres*, §225.

¹³⁴ *Case of Genie-Lacoyo v. Nicaragua* (Judgment), IACtHR, (27 January 1995), §74; *Case of Yatama v. Nicaragua* (Judgment), IACtHR, (23 June 2005), §145.

¹³⁵ *Case of Castañeda Gutman v. Mexico* (Judgment), IACtHR, (6 August 2008), §§78&102.

¹³⁶ Hennebel and Tigroudja, *The American Convention on Human Rights A Commentary*, (2022), p.310; *Castañeda Gutman*, §102; *Case of Baena Ricardo et al. v. Panama* (Judgment), IACtHR, (2 February 200), §131; *Case of Cantos v. Argentina* (Judgment), IACtHR, (28 November 2002), §50.

additional obligation because of the special and differentiated risks that women suffer, as well as the high probability they have of becoming victims of violence.¹³⁷ It is especially important that the authorities in charge of the investigation take into account the society's duty to reject violence against women and the State's obligations to eradicate it and to give the victims confidence in State institutions for their protection.¹³⁸ The definition of violence against women under Article 1 CMV allows for a broad interpretation of the concept: it encompasses all forms of violence that are targeted at women because they are women, or that affect women disproportionately.¹³⁹ To find a violation of said Convention, the Court has held that the violence must be gender-based and must be perpetrated in an acknowledged context of violence against women.¹⁴⁰

Since the Applicants were migrants in Lusaria, the obligations of Article 8(1) and 25 ACHR are further enhanced. Principle 46 of the Inter-American Principles on the Human Rights of all Migrants, Refugees, Stateless Persons and victims of human trafficking (Inter-American Migrant Principles) states that "every migrant has the right to full reparation for any violation of their human rights" and "all migrants who have suffered traumas must be give special consideration and care to avoid re-traumatization during legal or administrative proceedings UNCHR designed to provide justice and reparation or any other public service"¹⁴¹.

¹³⁷ *Bedoya Lima*, §91.

¹³⁸ *Case of Fernandez Ortega et al. v. Mexico*, IACtHR, (30 August 2010), §193; IACHR, *Violencia y discriminacion contra mujeres, ninas y adolescentes: Buenas prácticas y desafios en América Latina y en el Caribe*, (2019), §96.

¹³⁹ Mesecvi, *Guide to the application of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*, (2014), p.21.

¹⁴⁰ *Cotton Field*, §231.

¹⁴¹ IACHR, *Inter-American Principles on the Human Rights of all Migrants, Refugees, Stateless Persons and Victims of Human Trafficking*, (2019).

In casu, the investigation by the Velora Police as a result of A.A.'s complaint was quickly put on hold because of the immunity of Maldini, granted in Article 50(1) Cooperation Agreement.¹⁴² Maldini was given the privileges, exemptions and immunities granted to the administrative and technical staff of a diplomatic mission under the Vienna Convention on Diplomatic Relations and the Convention on Special Missions.¹⁴³

Subsequently, the Ministry of Foreign Affairs of Aravania formally requested that Maldini's immunity would be waived by Lusaria, but this request was denied arguing that it is a fundamental principle of international law meant to protect diplomats.¹⁴⁴ The case was dismissed on 31 January 2014 by the Second Criminal Court Judge on grounds that the defendant enjoyed immunity based on the Cooperation Agreement and the case was closed without prejudice.¹⁴⁵

Given this information and pursuant to Articles 8 and 25 ACHR *juncto* Article 7(b) CMV, in the light of the Inter-American Migrant Principles, the following topics will be discussed: (1) immunity, (2) the right to an effective remedy, and (3) the investigation process.

D.1 Immunity

According to Article 32 *juncto* Article 37 Vienna Convention on Diplomatic Relations (VCDR) and Article 41 Convention on Special Missions, Maldini's immunity can be waived by the sending State.¹⁴⁶

¹⁴² Hypothetical, §49.

¹⁴³ Hypothetical, §25.

¹⁴⁴ Hypothetical, §50.

¹⁴⁵ Hypothetical, §51.

¹⁴⁶ UN Convention on Special Missions, (1969).

First of all, even though Lusaria was perfectly capable of waiving the immunity, the State simply accepted the refusal. It did not undertake any other action, such as diplomatic pressure, to be capable of prosecuting Maldini. Additionally, Aravana had the possibility of making a notification *persona non grata*, as stated in Article 9 VCDR.¹⁴⁷

Furthermore, diplomatic immunity does not stand in the way of an investigation by the receiving State, *in casu* Aravana. Immunity is not infringed upon by an order to investigate charges.¹⁴⁸ It is possible for the receiving State to prepare a file in anticipation of the ending of the function and diplomats can be asked to give evidence.¹⁴⁹ The State did not make use of this opportunity. Aravana reacted hastily after the notification of the immunity and promptly stopped the investigation. Before, the Velora police found unmade beds and women's clothing in Primelia.¹⁵⁰ This information could have served as evidence and the police could have used it to further investigate the case.

Additionally, Maldini was appointed as Lusaria's Special Attaché for Public and Commercial Relations for *Aerisflora* on 24 October 2012.¹⁵¹ There are no indications that this immunity is retroactive. This way, the State could have investigated the recruiting of the women by Maldini between 16 July and 31 August 2012.¹⁵²

¹⁴⁷ Gogna, Pdosiedlik, Hlobil, *Diplomatic and State Immunity in Respect of Claims of Embassy Employees and Domestic Workers: Mapping the Problems and Devising Solutions*, (2015), p.8.

¹⁴⁸ *Ibid*, p.9.

¹⁴⁹ *Ibid*.

¹⁵⁰ Hypothetical, §49.

¹⁵¹ Hypothetical, §30.

¹⁵² Hypothetical, §29.

D.2 Effective remedy

The guarantee of an effective remedy constitutes a basic pillar, not only of the ACHR, but of the rule of law in a democratic society.¹⁵³

The State is under the positive obligation to ensure that persons under its jurisdiction have access to an effective judicial remedy against any act likely to violate human rights.¹⁵⁴

For a remedy to be effective, at least three cumulative qualities need to be fulfilled: simplicity, promptness and effectiveness.¹⁵⁵ The remedy should allow the victims to assess whether a violation has occurred and facilitate the implementation of solutions to address the issue.¹⁵⁶ The absence of an effective remedy in itself constitutes a violation of the ACHR.¹⁵⁷

In casu, the quality of effectiveness of the remedy was not fulfilled. As the case of A.A. was dismissed by the Second Criminal Court Judge and there was no further investigation, it was impossible to determine whether there has been a violation.¹⁵⁸ A.A. also received US\$ 5,000 from Aravania; however, this payment was solely a consequence of Lusaria's failure to ensure adequate working conditions pursuant to the Cooperation Agreement and cannot be considered as a remedy for addressing the human trafficking situation A.A. endured.¹⁵⁹

¹⁵³ *Case of Castillo Páez v. Peru* (Judgment), IACtHR, (27 November 1998), §106; *Case of Mohamed v. Argentina* (Judgment), IACtHR, (23 November 2012), §82.

¹⁵⁴ *Case of Lagos del Campo v. Peru* (Judgment), IACtHR (31 August 2017), §174; *Baena Ricardo*, §79; *Case of Acevedo Buendía et al. v. Peru* (Judgment), IACtHR (1 July 2009), §214.

¹⁵⁵ *Acevedo Buendía*, §77; *Castañeda Gutman*, §102.

¹⁵⁶ Hennebel and Tigroudja, *The American Convention on Human Rights A Commentary*, (2022), p.751.

¹⁵⁷ *Case of Kichwa Indigenous People of Sarayaku v. Ecuador* (Judgment), IACtHR, (27 June 2012), §261; *Case of Castillo Petruzzi et al. v. Peru* (Judgment), IACtHR, (30 May 1998), §185; Hennebel and Tigroudja, *The American Convention on Human Rights A Commentary*, (2022), p.753.

¹⁵⁸ Hypothetical, §51.

¹⁵⁹ Hypothetical, §55.

D.3 Investigation

To conclude, the State needs to demonstrate due diligence for the investigation into violence against women, required by Articles 8 and 25 ACHR and enhanced by Article 7(b) CMV.

Additionally, the UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment oblige States to ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated.¹⁶⁰ Since human trafficking is often accompanied by severe forms of mistreatment, these UN principles can be interpreted as reinforcing the obligation of States to investigate such cases with heightened urgency and thoroughness.¹⁶¹

In casu, the enhanced obligation was applicable because the human trafficking scheme qualifies as violence against women: the conduct was based on their gender and caused physical, sexual, psychological harm and suffering to women, in the form of targeted content and deception, which led to differential treatment and exploitation on the farm, with indications of sexual violence committed by male guards, and in the form of non-action by the State despite having knowledge of the suffering they experienced in Aravania.

Human trafficking networks do not operate under the sole leadership of one individual but rather thrive through a network of perpetrators. Yet, despite this reality, the State only made a superficial and ineffectual effort to prosecute a single individual, one whose immunity was neither thoroughly investigated nor properly challenged. The Applicants denounce the State's failure to

¹⁶⁰ UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (2000), Principle 2.

¹⁶¹ *López Soto*, §184, 188.

investigate the crime of human trafficking, choosing instead to shield itself behind the pretext of the defendant's alleged immunity.

This failure is even more alarming in light of Article 7(b) CMV, given that the trafficking scheme in this case specifically targeted women. It is clear that the authorities did not take into account the societal and due diligence duty as imposed by CMV, and that victims' confidence in State institutions was not strengthened by their approach. The State has failed to act with the necessary due diligence to prevent the violation of rights, to investigate and punish acts of violence already committed, and to compensate their victims.

While the State's police confirmed the veracity of A.A.'s complaint – thus agreeing with the evident gender-based nature of the issue – the Second Criminal Court Judge nonetheless accepted the unsubstantiated justifications by the Democratic State of Lusaria to close the case.¹⁶² Their reasoning, as previously outlined, lacks legal foundation. For instance, their assertion regarding the exclusive nationality jurisdiction over criminal matters is not grounded in the Cooperation Agreement, rendering it a fabricated pretext.¹⁶³

In conclusion, the State has violated Articles 8(1) and 25 ACHR *juncto* Articles 1(1) and 2 ACHR and Article 7(b) CMV.

¹⁶² Hypothetical, §51.

¹⁶³ Hypothetical, §50.

E. The nine other women are victims of enforced disappearance, therefore there is an automatic violation of Articles 3, 5, 7, 22, 8 and 25 ACHR *juncto* Articles 1(1) and 2 ACHR

E.1. Qualification enforced disappearance

Enforced disappearance constitutes a serious violation of human rights, striking at the core of human dignity and leaving victims and their families in a perpetual state of complete defenselessness.¹⁶⁴ According to Article 2 of the Inter-American Convention on Forced Disappearance of Persons, enforced disappearance occurs when a person is deprived of their liberty by State agents or individuals acting with State acquiescence, followed by the refusal to acknowledge the deprivation or to disclose the person's whereabouts. The Court has consistently recognized enforced disappearance as a continuous violation that persists until the victim's fate is fully clarified.¹⁶⁵

E.1.1 Deprivation of liberty

The Court has established that even when the direct perpetrators are non-State actors, the State bears responsibility if it fails to prevent, investigate, or respond to such violations.¹⁶⁶ The removal of the nine women from Finca El Dorado constitutes an arbitrary deprivation of liberty. In this case, Aravanja failed to exercise due diligence in preventing the disappearance and did not initiate effective investigations (*supra* III.2).D.3.).

¹⁶⁴ *Case of Contreras et al v. El Salvador* (Judgment), IACtHR, (31 August 2011), §83.

¹⁶⁵ *Velásquez Rodríguez*, §155; *Case of Gomez Lund et al v. Brazil* (Judgment), IACtHR, (24 November 2010), §17; *Case of Torres Millacura et al. v. Argentina* (Judgment), IACtHR, (26 August 2011), §94.

¹⁶⁶ *Velásquez Rodríguez*, §172.

E.1.2 State acquiescence and failure to act

Aravania was fully aware of the risks faced by these women, particularly in light of previous reports of trafficking and forced labor. Despite this knowledge, it failed to take reasonable measures to protect them. The Court has repeatedly emphasized that where a State “was aware or should have been aware of the existence of a situation that involved a real and immediate risk to the life of an individual or a group of individuals, and failed to take the necessary measures”, it bears international responsibility.¹⁶⁷ The failure of Aravanian authorities to provide any safeguards or conduct proactive investigations constitutes a violation (*supra* III.2). C.3).

E.1.3 Refusal to acknowledge the deprivation or provide information

Aravania’s authorities have persistently failed to provide any information on the whereabouts of the nine women, creating a legal and social void that prolongs the suffering of their families.¹⁶⁸ The absence of the official records or any meaningful response from the State exacerbates the impact of the disappearance and denies the victims’ families access to legal remedies. This element is key in characterizing the crime as enforced disappearance (*supra* III.1).A.).¹⁶⁹

E.2 Automatic violations because of the qualification as enforced disappearances

The jurisprudence of the Court highlights the “multi-offensive” nature of enforced disappearance, as it simultaneously violates rights enshrined in Articles 3, 4, 5, and 7 ACHR.¹⁷⁰ This layered

¹⁶⁷ *Hacienda Brasil*, §324.

¹⁶⁸ *Questions*, §§3&13.

¹⁶⁹ *Case of Osorio Rivera and Family v. Peru* (Judgment), IACtHR, (26 November 2013), §210.

¹⁷⁰ *Velásquez Rodríguez*, §§155-159; *Gomez Lund*, §122; *Contreras*, §§84,88&90; *Heliodoro*, §182.

violation reflects the severity of the crime and underscores the imperative for the State to take immediate and effective measures to prevent, investigate, and provide reparations for such acts. By failing to prevent, investigate, and provide information on their whereabouts, Aravania has directly violated its obligations under international law.

In conclusion, the State bears international responsibility and violated Articles 3, 4, 5 and 7 ACHR.

E.3 Right to the truth for the next of kin

Related to enforced disappearance, is the right to the truth. This entails the right of the family of the victim to receive clarifications from the State about the facts at the origin of the violations and to know what happened to their relatives.¹⁷¹ As long as there is uncertainty about the fate of the person who disappeared, the State is under the obligation to investigate the case.¹⁷² The IACtHR held that “the deprivation of access to the truth regarding the whereabouts of a disappeared person constitutes a form of cruel and inhumane treatment to the close relatives”¹⁷³. Additionally, according to the Guiding Principles for the Search for Disappeared Persons, “the search for a disappeared person should continue until his or her fate and/or whereabouts have been determined with certainty”¹⁷⁴.

¹⁷¹ Hennebel and Tigroudja, *The American Convention on Human Rights A Commentary*, (2022), p.853-854; *Case of Bámaca-Velásquez v. Guatemala* (Judgment), IACtHR, (25 November 2000), §§201&197; *Case of Núñez Naranjo et al v. Ecuador* (Judgment), IACtHR, (23 May 2023), §110.

¹⁷² Hennebel and Tigroudja, *The American Convention on Human Rights A Commentary*, (2022), p.749.

¹⁷³ *Case of Gelman v. Uruguay* (Judgment), IACtHR, (24 February 2011), §133; *Case of Trujillo-Oroza v. Bolivia* (Judgment), IACtHR, (27 February 2002), §114; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia* (Judgment), IACtHR, (1 September 2010), §130.

¹⁷⁴ UN Guiding Principles for the Search for Disappeared Persons, (2019), Principle 7.

In casu, there was and still is no trace of the nine other women.¹⁷⁵ Even though the Velora Police found unmade beds and women's clothing, there was nothing done with this potentially interesting evidence and the investigation was dismissed.¹⁷⁶ This way, the family of the women is left in the lurch. There clearly still is uncertainty about the fate of the women, consequently the State bears the responsibility to investigate where they are and what happened to them.

In conclusion, the State violated the right to the truth, derived from Articles 8(1) and 25(1) ACHR to the detriment of the relatives from the nine women.

F. The State has violated Article 26 ACHR *juncto* Articles 1(1) and 2 ACHR

Article 26 ACHR requires State Parties 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.¹⁷⁷

In *Lagos Del Campo v. Peru*, the Article was established to be autonomously justiciable¹⁷⁸ and became substantially developed to enshrine at least four human rights; the right to a healthy environment¹⁷⁹, right to food, cultural life and safe water. States must adopt those measures internally and through international cooperation.¹⁸⁰

¹⁷⁵ Hypothetical, §49

¹⁷⁶ Hypothetical, §§49&50.

¹⁷⁷ *Case of Cuscul Pivaral et al. v. Guatemala* (Judgment), IACtHR, (23 August 2018), §78.

¹⁷⁸ *Lagos Del Campo* (Separate opinion of Judge Roberto F. Caldas), §1; *Case of Peralta Armijos v. Ecuador* (Judgment), IACtHR, (15 November 2024), §124.

¹⁷⁹ Advisory Opinion OC-23/17, §46

¹⁸⁰ *Cuscul Pivaral*, §§79&80; *Lhaka Honhat*, §1; Mardikian, *The Right to a Healthy Environment before the Inter-American Court of Human Rights*, (2023), p.28.

F.1. Right to work

The Court recognizes the right to just and favorable conditions that guarantee safety, health and hygiene in the workplace as a right protected by Article 26 ACHR.¹⁸¹ Since Articles 45(b) and (c), 46 and 34(g) OAS Charter explicitly define the right to work and establish concrete standards, this provides a sufficiently clear and specific foundation for recognizing the right to just and favorable working conditions within the Charter. This detailed formulation allows the Court to directly apply it, reinforcing its protection under Article 26 ACHR.

Article 45(b) OAS Charter establishes that work is a right and a social duty, it gives dignity to the one who performs it, and it should be performed under conditions, including a system of fair wages, that ensure life, health and a decent standard of living for the worker and his family, both during his working years and in his old age, or when any circumstance deprives him of the possibility of working.

Aravania's responsibility under Article 26 ACHR is based on its obligations under Articles 1(1) and 2 ACHR, interpreted in light of international law. It has been established internationally that States must guarantee just and favorable working conditions, including occupational safety, fair wages, and protections against discrimination.¹⁸² This obligation includes both immediate enforcement of core labor rights and a progressive duty to enhance protections without regression.¹⁸³

¹⁸¹ *Case of the Employees of the Fireworks Factory of Santo Antônio de Jesus and their families v. Brazil* (Judgment), IACtHR, (21 June 2021), §153; *Poblete Vilches*, §103.

¹⁸² Article 4 ILO Convention No. 155.

¹⁸³ *Mutatis mutanda cf. Poblete Vilches*, §104, and *Cuscul Pivaral*, §98; cf. *Acevedo Buendía*, §§102&103; *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence v. Peru* (Judgment), IACtHR, (8 October 2020), §173.

In casu, Aravania violated Article 26 ACHR on several counts.

First, it failed to ensure workplace inclusion for women, particularly those in rural areas like Campo de Santana. Official data confirmed gender disparities in employment, yet Aravania did not implement policies to address these inequalities.¹⁸⁴ This omission constitutes discrimination by exclusion, denying women equal access to the labor market.

Second, the State violated the principle of non-retrogressivity by contracting with Lusaria despite knowing that workers there would receive fewer rights and protections than in Aravania.¹⁸⁵ An Aravanian delegation explicitly acknowledged the labor conditions on Lusarian plantations were worse, yet the government proceeded with the Cooperation Agreement.¹⁸⁶ This decision actively diminished workers' rights, as those sent to Lusaria lost the fair wages, workplace safety standards, and legal protections they had in Aravania. By facilitating this downgrade in labor conditions, Aravania directly undermined its obligation to progressively realize labor rights.

Thirdly, workers at Finca El Dorado and Primelia worked in hazardous conditions without protective equipment, safety information, or oversight. Aravania failed to monitor their condition or ensure compliance with labor protections, despite having full knowledge of the risks involved and despite the fact that this was a possibility in the Cooperation Agreement.¹⁸⁷ The right to work under Article 26 ACHR includes a strong non-discrimination component, as affirmed by General Comment No. 23 of the Committee on Economic, Social and Cultural Rights. Here, discrimination was twofold: women were systematically excluded from employment opportunities, and migrant

¹⁸⁴ Hypothetical, §3

¹⁸⁵ Hypothetical, §18.

¹⁸⁶ Hypothetical, §21.

¹⁸⁷ Hypothetical, §25.

laborers were subjected to worse conditions than domestic workers, reinforcing structural inequalities.

Given the prolonged and systematic nature of these violations, Aravania failed to uphold its duty to prevent occupational harm, ensure fair wages, and protect workers from discrimination and regressive labor policies.

F.2 Right to a healthy environment

The autonomous status of the right to a healthy environment has been explicitly recognized by this Court.¹⁸⁸ In *Lhaka Honhat*, the Court articulated that the right to a healthy environment protects multiple components of the environment, including forests, rivers and seas, even in the absence of certainty or evidence of a risk to individuals. In terms of State obligations, the Court referred to the Working Group on the Protocol of San Salvador which identified five such obligations: to guarantee everyone a healthy environment to live in, to guarantee basic public services, to promote environmental protection, to promote environmental conservation and the improvement of the environment.¹⁸⁹

In casu, Aravania did establish an international cooperation with Lusaria, whom may indeed be the most natural partner for Aravania, given the proximity and the international role Lusaria took on regarding its fight against climate change, however this cooperation does not entail a progressive achievement of the targeted rights.

¹⁸⁸ *Lhaka Honhat*, §203; Advisory Opinion OC-23/17, §62.

¹⁸⁹ *Lhaka Honhat*, §205.

In conclusion, the State has violated Articles 26 ACHR *juncto* 1(1) and 2 ACHR.

V. REQUEST FOR RELIEF

Based on the foregoing submissions, the Applicants respectfully request this Honorable Court to declare the present case admissible and to rule that Aravania has violated Articles 3, 4 5, 6, 7, 8, 22, 25, 26 ACHR *juncto* Articles 1(1) and 2 ACHR and Article 7 CMV. Additionally, the Applicants respectfully request that this Honorable Court:

1. Declares that Aravania should take responsibility and take public acknowledgement by the authorities through different means;
2. Declares that Aravania award pecuniary compensation to all Applicants for the violated human rights;
3. Orders medical and psychological care for the Applicants and their dependents in specialized centra to effectively process their trauma;
4. Orders the codification of specific human rights violations such as enforced disappearance in the criminal code of the respondent State or the amendment of existing provisions which are not in line with international human rights standards;
5. Orders educational support, the building of educational centers and schools and their entitlement to the victims through the addition of a commemorative plate on the occasion of a public ceremony;
6. Orders an investigation of the facts leading to the enforced disappearance, and the prosecution and sanction of the authors, accomplices, accessories and all those who may have had some part in the events. The results of the investigations should be made public and be circulated through the media;
7. Orders cooperation with rural areas to enhance resilience against climate change, while respecting the worker's rights;

8. Orders the creation of an Office of the Special Commissioner on Trafficking.