

A.A. AND NINE OTHER WOMEN

VICTIMS

V.

THE REPUBLIC OF ARAVANIA

STATE

,

MEMORIAL FOR THE VICTIMS

,

TABLE OF CONTENTS

INDEX OF AUTHORITIES	3
I. STATEMENT OF FACTS	6
II. LEGAL ANALYSIS	8
A. ADMISSIBILITY	8
1. The Inter-American Court has proper jurisdiction of this case because (1) <i>ratione personae</i> , (2) <i>ratione temporis</i> , and (3) <i>ratione loci</i> have all properly been established.	8
2. Exhaustion of Domestic Remedies.....	11
B. ARGUMENT ON THE MERITS	12
1. The Republic of Aravania violated Article 3 (Right to Juridical Personality) in conjunction with Articles 1(1) and Article 2 of the ACHR	12
2. The Republic of Aravania violated Article 6 (Freedom from Slavery) of the ACHR in conjunction with Article 1(1) and Article 2	15
3. The Republic of Aravania violated Article 7 (Right to Personal Liberty) in conjunction with Articles 1(1) and Article 2 of the ACHR	19
4. The Republic of Aravania violated Article 5 (Right to Humane Treatment), and the Convention of Belém do Para in conjunction with Article 1(1) and Article 2 of the ACHR.....	22
A. The Republic of Aravania violated Article 5 of the ACHR in relation to the victims' next of kin.....	27
5. The Republic of Aravania violated Article 26 (Progressive Development) in conjunction with Articles 1(1) and Article 2 of the ACHR.	28
6. The Republic of Aravania violated Article 8 (Right to a Fair Trial), Article 25 (Right to Juridical Protection) of the ACHR and Article 7 of the Convention of Belém do Para in conjunction with Articles 1(1) and Article 2 of the ACHR	34
III. REQUEST FOR RELIEF	42

INDEX OF AUTHORITIES

Legal Cases

<i>Case of Andrade Salmon v. Bolivia</i> . Merits, Reparations, and Costs. Judgment of December 1, 2016. Series C No. 330.....	20
<i>Case of Apitz Barbera (First Court of Administrative Disputes) et al. v. Venezuela</i> . Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 5, 2008. Series C No. 182..	35
<i>Case of Barbosa de Souza et al. v. Brazil</i> . Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 7, 2021. Series C No. 435.....	35
<i>Case of Bueno Alves v. Argentina</i> , Merits, Reparations, and Costs. Judgment of September 18, 2003.....	23
<i>Case of Fernandez Ortega et al. v. Mexico</i> . August 30, 2010. Series C No. 215.....	24
<i>Case of Gangaram Panday v. Suriname</i> . Preliminary Objections. Judgment of January 21, 1994. Series C No. 12.....	20
<i>Case of Gomez Paquiyauri Brothers v. Peru</i> . Merits, Reparations, and Costs. Judgment of November 22, 2005. Series C No. 110.....	23
<i>Case of Gonzalez et al. (Cotton Field) v. Mexico</i> . November 16, 2009. Series C No. 205.....	37
<i>Case of Lagos del Campo v. Peru</i> . Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2017. Series C No. 340.	28
<i>Case of Lopez Alvarez v. Honduras</i> . Merits, Reparations, and Costs. Judgment of February 1, 2006. Series C No. 141.....	36
<i>Case of Lopez Lone et al. v. Honduras</i> . Preliminary Objection, Merits, Reparations, and Costs. Judgment of October 5, 2015. Series C No. 396.....	11
<i>Case of Miguel Castro Castro Prison v. Peru</i> , Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160.....	24
<i>Case of Pacheco Tineo family v. Bolivia</i> . November 25, 2013. Series C No. 272.....	36

<i>Case of People of Saramaka v. Suriname</i> . Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172.	13
<i>Case of Ramirez Escobar et al. v. Guatemala</i> . Merits, Reparations, and Costs. Judgment of March 9, 2018. Series C No. 351.	20
<i>Case of Rios et al. v. Venezuela</i> . Preliminary Objections, Merits. Judgment of September 2, 2019. Series C No. 111.	23
<i>Case of Rosendo Cantu et al. v. Mexico</i> . August 31, 2010. Series C No. 216.	24
<i>Case of Suarez Rosero v. Ecuador</i> . Reparations and Costs. Judgment of November 12, 1997. Series C No. 35.	34
<i>Case of the Hacienda Brazil Verde Workers v. Brazil</i> . Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 20, 2016. Series C No. 318.	15, 16
<i>Case of Tibi v. Ecuador</i> . Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 7, 2004. Series C No. 114.	23
<i>Case of Valle Jaramillo et al. v. Colombia</i> . Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192.	27
<i>Case of Velasquez Rodriguez v. Honduras</i> . Merits. Judgment of July 29, 1988. Series C No. 4 11, 19, 34	
<i>Case of Women Victims of Sexual Torture in Antenco v. Mexico</i> . November 28, 2018. Series C No. 371.	24
<i>Case of Workers of the Fireworks Factory in Santo Antonio de Jesus and their Familise v. Brazil</i> . Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 15, 2020. C Series No. 407.	29
<i>Inter-Am. Comm. H.R. La Cantuta v. Peru</i> . Decision on Admissibility of March 11, 1999. Petition No. 11.045. Report No. 42/99.	12
<i>Inter-Am. Comm. H.R. Carlos Arturo Betancourt Estrada and family v. Colombia</i> . Decision on the Merits of April 22, 2020. Case 12.780. Report 25/20.	9
<i>Inter-Am. Comm. H.R. Gabriel Alejandro Vasco Toapanta et al. v. Ecuador</i> , Decision on Admissibility of April 24, 2020. Petition No. 1011/11. Report No. 75/20.	9

<i>Inter-Am. Comm. H.R. Jose Isabel Salas Galindo et al. v. United States.</i> Decision of October 5, 2018. Case No. 10 573. Report No. 121/18	9
<i>Inter-Am. Comm. H.R. Mossville Environmental Action Now v. United States.</i> Decision on Admissibility of March 17, 2010. Petition No. 242-05. Report No. 43/10.....	11
<i>Inter-Am. Comm. H.R. Nicaragua v. Costa Rica,</i> Decision on Admissibility of March 8, 2007. Report Case No. 10.970. Report No. 5/96.	9
<i>Siliadin v. France.</i> Judgment of July 26, 2005. Application No. 25803/94	19
<i>Eur. Court H.R. Agrokompleks v. Ukraine.</i> Judgment of October 6, 2011. Application No. 23465/03 ¶137	35
Other Authorities	
Hennebel, Ludovic; Tigroudja, Helene, <i>The American Convention on Human Rights: A Commentary</i> (Oxford University Press 2022)	12, 13
<i>International Labor Organization Convention No. 105.</i>	16
<i>International Labor Organization Convention No. 29.</i>	16
<i>The Convention of Belém do Para.</i>	36, 37
<i>The Protocol of San Salvador</i>	28
<i>The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children</i>	13
<i>The Vienna Convention on the Law of Treaties (VCLT, 1969) Article 26</i>	8
<i>The American Convention on Human Rights</i>	
Article 3.....	12
Article 5.....	23
Article 6.....	15
Article 7.....	20
Article 8.....	34, 35
Article 25.....	36
Article 26.....	28, 31
Article 44.....	9
Article 46.....	11

I. STATEMENT OF FACTS

The Republic of Aravania has experienced extreme weather events over the last 50 years, including prolonged periods of drought and catastrophic flooding.¹ In 2011, a young business leader, Carlos Molina, was elected president of Aravania, and as part of his mandate, Molina implemented the “Impulso 4 Veces” Development Plan, which included an innovative strategy for tackling the challenge of heavy rain and floods, with the creation of “sponge cities” in urban areas.²

Meanwhile, a Lusarian researcher identified a native plant species, AERISFLORA, with pollutant-filtering properties.³ Engineers designed systems to maximize the potential of AERISFLORA, creating a sustainable and efficient model for large-scale rainwater treatment.⁴ AERISFLORA thus became the most effective plant for use in “sponge cities.”⁵

On July 2, 2012, Aravania and Lusaria entered into the agreement for the transplantation of AERISFLORA in the territory of Aravania.⁶ Lusaria agreed to send monthly status reports to Aravania on working conditions.⁷ Aravania was allowed to conduct unannounced, on-site, activity supervision visits.⁸

On July 16, 2012, El Dorado, one of the farms used to grow AERISFLORA for transplantation, hired Hugo Maldini to recruit more workers.⁹ Between July 16 and August 31, 2012, Maldini

¹ *Id.*

² *Id.* ¶7

³ *Id.* ¶13

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* ¶25

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* ¶26

posted videos on his ClicTik account showing women smiling while planting AERISflora and touting the plant's benefits to the environment.¹⁰ In August 2012, A.A. came across the videos posted on Hugo Maldini's ClicTik account and was attracted by the possibility of working in a place that understood the challenges faced by mothers with newborns.¹¹

On November 24, 2012, a group of sixty women and their dependents, including A.A. and her family, traveled to Lusaria for work.¹² Once in Lusaria, A.A. started working at El Dorado.¹³ She reported to work at 6:00 a.m. every day.¹⁴ Every day, she was exposed to the scorching sun or pouring rain, as well as to the chemicals used to preserve the plants for shipping.¹⁵ At noon she took her only break and went to the cafeteria where she and other women working at the farm collected food delivered by Isabel Torres and prepared meals for everyone who worked at El Dorado.¹⁶ Afterward, they were also responsible for cleaning up.¹⁷ A.A. usually got home at 11:00 p.m., where she would continue to perform tasks related to the care of her daughter and her mother.¹⁸ On weekends, the women were responsible for cleaning the residences and washing the men's clothes, while the men left the farm.¹⁹

On January 3, 2014, ten women from the farm, including A.A., were told that they had been chosen to travel to Aravania for a week to transplant the AERISflora, and that Hugo Maldini would go with them.²⁰ On January 14, 2014, A.A., frustrated and exhausted with the working

¹⁰ *Id.* ¶29

¹¹ *Id.* ¶33

¹² *Id.* ¶36

¹³ *Id.* ¶37

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* ¶45

conditions, went to the Velora Police in Aravania to file a complaint.²¹ That afternoon, the Velora Police found the structure described by A.A., pieces of Aerisflora, and Hugo Maldini, who was arrested after a warrant was issued by the Second Criminal Court Judge of Velora.²² Although they failed to locate any of the nine women that A.A. mentioned, they saw the residence she had described, with unmade beds and women's clothing, as if someone had left the place quickly.²³ Hugo Maldini subsequently told the judge that he had immunity.²⁴

On January 31, 2014, the Second Criminal Court Judge dismissed the case on the grounds that the defendant enjoyed immunity, and ordered the case closed without prejudice.²⁵ A.A. approached the Trafficking Victims Support and Reintegration Clinic in Aravania, which appealed the decision of the Second Criminal Court of Velora on February 5, 2014, on behalf of the ten women, and the Velora Court of Appeals later affirmed the decision of the lower court on April 17, 2014.²⁶

II. LEGAL ANALYSIS

A. ADMISSIBILITY

1. **The Inter-American Court has proper jurisdiction of this case because (1) *ratione personae*, (2) *ratione temporis*, and (3) *ratione loci* have all properly been established.**

Ratione temporis establishes that the jurisdiction of the Inter-American Court is limited by the date of entry into force of the international obligations the State has breached.²⁷ It follows that

²¹ *Id.* ¶48

²² *Id.* ¶49

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* ¶51

²⁶ *Id.* ¶51

²⁷ *The Vienna Convention on the Law of Treaties (VCLT, 1969)* Article 26

the rights established in the American Convention on Human Rights (hereinafter “ACHR” or “the Convention”) must be exercised against a State Party who has ratified the ACHR.²⁸

Ratione Personae requires that (1) a petitioner (2) alleges a violation of human rights attributed to a State Party (2) with adequate identification of the victims. Article 44 of the Convention asserts that a petitioner can be “any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization.”²⁹ While many of the actions carried out in this case were perpetrated by private actors, State Parties may be held responsible for violations committed by private persons, if it can be shown that the State has not taken the necessary measures to prevent, punish, or redress the violation of the rights enshrined in the Convention.³⁰ Furthermore, even though the nine women in this case were not specifically identified by name, it is not necessary for admissibility to specifically identify each and every victim in the alleged violation for *ratione personae* to be satisfied.³¹ It is enough for the petition to refer to a specific group of victims composed of individuals who can be distinguished.³² The identification of some of the victims among a group is enough to satisfy the *ratione personae* criterion.³³

Under *ratione loci*, the Court’s competence covers primarily incidents that occurred on a particular State’s territory.³⁴ However, under specific circumstances, it may be competent to

²⁸ *Id.*

²⁹ *The American Convention on Human Rights*. Article 44

³⁰ *Inter-Am. Comm. H.R. Carlos Arturo Betancourt Estrada and family v. Colombia. Decision on the Merits of April 22, 2020. Case 12.780. Report 25/20, ¶41*

³¹ *See Inter-Am. Comm. H.R. Nicaragua v. Costa Rica*, Decision on Admissibility of March 8, 2007. Report Case No. 10.970. Report No. 5/96. ¶193

³² *Id.*

³³ *See Inter-Am. Comm. H.R. Gabriel Alejandro Vasco Toapanta et al. v. Ecuador*, Decision on Admissibility of April 24, 2020. Petition No. 1011/11. Report No. 75/20, ¶13.

³⁴ *See Inter-Am. Comm. H.R. Jose Isabel Salas Galindo et al. v. United States*. Decision of October 5, 2018. Case No. 10 573. Report No. 121/18, ¶313

examine a situation that occurred outside the territory of the State in question if agents of the state establish and maintain control and authority over the territory where the incidents occurred.³⁵

Ratione temporis is satisfied because Aravania ratified the Convention prior to committing the human rights violations in this case. Aravania accepted the contentious jurisdiction of the Inter-American Court when it ratified the Convention in 1985.³⁶ This Court has subject matter jurisdiction in this case because the petitioners allege violations falling under Articles 3, 5, 6, 7, 8, 25 and 26 of the Convention, in addition to Article 7 of the Convention of Belém do Para, in conjunction with Articles 1.1 and 2 of the Convention.³⁷ Because the alleged violations occurred after Aravania ratified the Convention, the requirement of *ratione temporis* is satisfied, and the Court has temporal jurisdiction over these proceedings.

Ratione personae is satisfied, and the Court has personal jurisdiction over this case. The petitioner is a third-party organization who filed the petition denouncing violations of human rights to third persons. While not all the victims in this case were identified, A.A. and her next of kin were specifically identified, and are members of a specific, identifiable group—Aravanian women coerced into working in El Dorado. While identifying the specific victims through immigration records proved impossible, Aravania failed to properly exhaust all means of identification through investigative techniques such as questioning Hugo Maldini, Isabel Torres, and Joaquin Diaz, or examining employment records or surveillance video from either location. Further, the violations in this case, while conducted by private actors, can be imputed onto the State because Aravania failed to prevent, punish, or redress the violations protected by the Convention.

³⁵ *Id.*

³⁶ *Hypothetical ¶10*

³⁷ *Id.* ¶58

Ratione loci is satisfied, and this Court has territorial jurisdiction over this case. This case involves an agreement between Aravania and Lusaria which provided Aravania contractual power to mandate certain working conditions for their citizens.³⁸ The contract allowed Aravania to make unannounced visits to verify the working conditions of the farms on which its own citizens had been employed, further providing control to Aravania over the working conditions the victims were subjected to.³⁹ Aravania signed the contract well aware that the working conditions were subpar to the conditions within their own country.⁴⁰ In addition to having control over the working conditions in El Dorado, several human rights violations occurred while the victims were within Aravanian territory transplanting the AERISflora. Therefore, Aravania had control and authority governing the situation suffered by the victims in this case, and the Court has territorial jurisdiction.

2. Exhaustion of Domestic Remedies

Article 46(1)(a) of the Convention requires petitioners to pursue and exhaust domestic remedies before the Commission will admit the petition.⁴¹ The Court has consistently held that resorting to domestic remedies should not be a senseless formality, and that the domestic remedies must be capable of providing redress to victims.⁴² In *Lopez Lone et al. v. Honduras*, the Court held that the exhaustion of domestic remedies would amount to a senseless formality if the judiciary lacks the independence to rule with impartiality.⁴³

³⁸ *Hypothetical* ¶24

³⁹ *Id.* ¶25

⁴⁰ *Id.* ¶21

⁴¹ *The American Convention on Human Rights*. Article 46.

⁴² *Velasquez Rodriguez v. Honduras*. (July 29, 1988). Series C No. 4, ¶66.; *Inter-Am. Comm. H.R. Mossville Environmental Action Now v. United States*. Decision on Admissibility of March 17, 2010. Petition No. 242-05. Report No. 43/10, ¶32.

⁴³ *Lopez Lone et al. v. Honduras*. October 5, 2015. Series C No. 396. ¶247

In this case, the domestic institutions were structurally prohibited from addressing human rights violations.⁴⁴ Because this case involved an intervention by the Minister of Foreign Affairs, a high-ranking member of the Executive Branch, and a refusal of the Executive Branch to waive the immunity of Hugo Maldini, the courts in this case were unable or unwilling to take actions to remedy the human rights violations. The courts were neither independent nor impartial because the Executive Branch exerted power and influence over the court's authority. Therefore, effective domestic review was not, and is not, available to the victims in this case.

B. ARGUMENT ON THE MERITS

1. The Republic of Aravania violated Article 3 (Right to Juridical Personality) in conjunction with Articles 1(1) and Article 2 of the ACHR

Aravania's failure to protect the victims from human trafficking constitutes a violation of Article 3. Article 3 of the Convention guarantees the right to juridical personality, ensuring that every person is recognized as a person before the law, a fundamental protection that Aravania has failed to uphold.⁴⁵ This right is fundamental to the protection of human rights, as it establishes the legal existence of individuals, and their capacity to exercise their rights.⁴⁶ The scope of Article 3 of the Convention is broad including any person in a situation of vulnerability, including children, undocumented migrants and stateless persons, and thus applies to the victims in this case.⁴⁷

⁴⁴ See *Inter.-Am. Comm. H.R. La Cantuta v. Peru*. Decision on Admissibility of March 11, 1999. Petition No. 11.045. Report No. 42/99, ¶43.

⁴⁵ *The American Convention on Human Rights*. Article 3

⁴⁶ Hennebel, Ludovic; Tigroudja, Helene, *The American Convention on Human Rights: A Commentary* (Oxford University Press 2022) Pg. 118-19

⁴⁷ *Id.* Pg. 123

A violation of the right to juridical personality entails an absolute failure on behalf of the Aravanja to recognize or acknowledge the capability of a person to exercise and enjoy their rights enshrined in the Convention, which in turn places the person in a vulnerable position in relation to the state or third parties.⁴⁸ Aravanja has the positive obligations to (1) ensure the recognition of the legal personality of anyone under their jurisdiction, (2) ensure the legal and administrative conditions that secure for those persons the exercise of their rights, and (3) to prevent the violation of this right.⁴⁹

Such as the case here, the very legal existence of an individual is denied by Aravanja or by private persons in situations of human trafficking and slavery.⁵⁰ In fact, slavery, forced labor, and human trafficking may be considered as blatant violations of the right to legal personality and Aravanja may be held responsible for failing to prevent or to protect against these violations.⁵¹

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereinafter “TIP”), provides a definition and framework for defining human trafficking, “which includes recruitment, transportation, transfer, harboring, or receipt of persons through coercive means for the purpose of exploitation”.⁵² TIP emphasizes the necessity of a comprehensive international approach to effectively combat human trafficking.⁵³ Furthermore, it mandates that Aravanja criminalize such conduct and implement measures to protect and assist victims of human trafficking, with full respect to their human rights with an emphasis on non-discrimination.⁵⁴ Article 9 of TIP further outlines the need for comprehensive policies and

⁴⁸ *Xakmok Kasek Indigenous Community v. Paraguay*. August 24, 2010. Series C No. 214. ¶248

⁴⁹ *People of Saramaka v. Suriname*. November 28, 2007. Series C No. 172. ¶173-174

⁵⁰ Hennebel, Ludovic; Tigroudja, Helene, *The American Convention on Human Rights: A Commentary* (Oxford University Press 2022) Pg. 124

⁵¹ *Id.*

⁵² *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. Article 3

⁵³ *Id.* Article 9

⁵⁴ *Id.* Article 5

programs to prevent trafficking, including addressing factors such as poverty and lack of equal opportunity that make individuals vulnerable to trafficking.⁵⁵

The actions of Aravania, in failing to protect A.A. and the other women from human trafficking and forced labor, constitute a denial of their legal personality in violation of Article 3 of the Convention. The victims were “recruit[ed], transport[ed], and harbor[ed] through coercive means for the purpose of exploitation.” Hugo Maldini created targeting content directed at mothers, particularly those with newborns and living in rural areas.⁵⁶ He created a video showing women smiling while planting Aerisflora.⁵⁷ The videos conveyed a sense of wellbeing, showing peaceful landscapes and testimonials from women who said that, “thanks to their work, they had daycare for their children, healthcare, and education”.⁵⁸ The video created and broadcasted by Hugo Maldini was coercive, misleading, and targeting of vulnerable women. Once the victims had been transferred to the farm, they were exploited for financial gain through excessive and unpaid labor through requiring the performance of additional, unpaid duties such as cooking, cleaning, and laundry duties. These conditions effectively stripped them of their autonomy and ability to exercise their rights, a clear violation of Article 3 of the Convention.

Aravania has a positive obligation to ensure the recognition of legal personality and to prevent violations by private parties. Upon discovering the coercive videos targeting a vulnerable group, the initial complaints were dismissed because the videos were not deemed unlawful.⁵⁹ After deeming the videos lawful, Aravania failed to take measures to protect women in the future from coercive videos such as the ones used in this case. Aravania was made aware of the allegations of

⁵⁵ *Id.* Article 9

⁵⁶ *Hypothetical* ¶28

⁵⁷ *Id.* ¶29

⁵⁸ *Id.*

⁵⁹ *Id.* ¶54

human trafficking and took no measures to protect the victims or implement laws deterring the use of coercive videos.

The failure to investigate and prosecute the alleged human trafficking and forced labor, despite unmistakable evidence and complaints, demonstrates a breach of this obligation under Article 3 of the Convention. Aravania's inaction and reliance on diplomatic immunity to shield perpetrators from accountability has further violated Article 3 of the ACHR by leaving the petitioners without legal recourse. The additional human rights violations are a direct consequence of Aravania's failure to protect the victims from human trafficking and exploitation.

2. The Republic of Aravania violated Article 6 (Freedom from Slavery) of the ACHR in conjunction with Article 1(1) and Article 2

As is the case here, forced labor is often closely related to human trafficking. Article 6(1) of the Convention categorically prohibits slavery, human trafficking in women, and servitude in all their forms.⁶⁰ Article 6(2) of the Convention further prohibits forced or compulsory labor, except under specific circumstances that do not apply in this case.⁶¹ Slavery is characterized by domination and economic exploitation, including the restriction of autonomy and freedom of movement, detention or captivity, use of physical or psychological violence, and the exploitation of the individual for profit without their consent.⁶² Involuntary servitude further involves coercion to perform work and live on another's property without the possibility of changing that condition.⁶³

⁶⁰ *The American Convention on Human Rights*. Article 6

⁶¹ *Id.*

⁶² *Hacienda Brazil Verde Workers v. Brazil*. October 20, 2016. Series C No. 318. ¶272

⁶³ *Id.* ¶280

Additionally, Aravania is a founding member of the United Nations and has acceded to Convention No. 105 and Convention No. 29.⁶⁴ Much like TIP, these Conventions underscore the international community's commitment to upholding human rights by explicitly prohibiting forced labor in various forms. This commitment is crucial in the present case, where A.A. and the nine women were victims of forced labor practices. Convention No. 29 defines forced or compulsory labor as "all work or service which is exacted from any person under the menace of any penalty" and which is involuntary.⁶⁵ Convention 105 prohibits forced labor in contexts such as political coercion, economic development, and discrimination which is directly relevant to the victims' claims.⁶⁶ By acceding to these Conventions, Aravania has undertaken to eliminate these practices and has failed to do so.

The status and condition of the victims as well as the extent to which the property owners at Finca El Dorado exercised power or control over the victims to the point of nullifying their legal personality, supports a finding of involuntary servitude.⁶⁷ The victims were subjected to involuntary servitude because they were forced to work under threat and without sufficient remuneration, thereby nullifying their legal personality and autonomy. The victims were further coerced into labor through threats and deception, with no freedom to alter their circumstances.

In *Brasil Verde Workers v. Brasil (Brasil)*, the Court recognized discrimination based on the economic status of the 85 workers on a private estate, which contributed to their vulnerability and exploitation.⁶⁸ The Court determined that the victims shared certain characteristics of particular victimization and vulnerability which made them more prone to be recruited into slavery

⁶⁴ *Hypothetical* ¶10

⁶⁵ *International Labor Organization Convention No. 29*. Article 2

⁶⁶ *International Labor Organization Convention No. 105*. Article 1

⁶⁷ See *Hacienda Brazil Verde Workers v. Brazil*. October 20, 2016. Series C No. 318. ¶288

⁶⁸ *Id.* ¶46

by means of false promises and deceit.⁶⁹ With respect to the state's obligations, the Court held that in cases of slavery, human trafficking, and forced work, states have an enhanced due diligence obligation to prevent and end those crimes, and that States must adopt comprehensive and specific measures to address potential and actual risk factors, provide adequate legal framework and investigate any evidence or complaint of slavery.⁷⁰

The women in Aravanja were high school educated, single mothers who, like the workers in *Brasil*, were suffering from financial difficulties and of a lower economic status.⁷¹ They were reliant on the work for childcare as well as medical treatment. Like the workers in *Brasil*, the women were of a particular vulnerability (women, often single mothers, poor, lower education) which made them vulnerable to victimization through deceit or false promises. As in the case of *Brasil*, the women were not only vulnerable to deceit and false promises but fell victim to it and were coerced by those false promises into entering compulsory labor. Like *Brasil*, Aravanja had an obligation to protect women from victimization through comprehensive and specific measures to address potential risk factors, and they failed. Aravanja failed to investigate the complaints they had already received regarding the conditions on the farm, and they further failed to address the coercive and deceitful videos used to lure women to working on the farms.

The victims in this case were working under threat of menace of penalty including physical and psychological violence. One victim had been severely repressed after complaining about working conditions.⁷² Two victims requested their identity documents back and were refused.⁷³ A fourth victim who had complained about the working conditions was no longer seen at the

⁶⁹ *Id.* ¶339-340

⁷⁰ *Id.* ¶445

⁷¹ *Hypothetical* ¶31, 33

⁷² *Id.* ¶43

⁷³ *Id.* ¶44

residence.⁷⁴ Not only did these women suffer express threats or acts of psychological violence, but the violence they suffered further functioned as a threat of penalty to those who witnessed or heard of these acts, such as A.A. The conditions faced by the victims met the definition of forced labor under Convention No. 29, which is prohibited by Article 6 of the ACHR, as they were coerced into labor through deceptive recruitment practices and were subjected to penalties, including threats of violence and loss of legal status, if they attempted to leave.

The victims were subjected to restriction of autonomy and freedom of movement. They were detained and held in captivity through the actions of staff and the work environment. The accommodation for the victims was surrounded by a metal mesh fence, and their movements were monitored with a 24-hour surveillance system as well as staff at the entrances and exits.⁷⁵ They were transported to their work site in a bus with tinted windows, and their identity documents were confiscated once they arrived.⁷⁶ They worked long hours, but during that time, did not make enough money for a return trip to their lodging, ensuring they were continually reliant on the work. Aravania, by allowing private parties to exert power and control over the victims when the victims were within the State's jurisdiction by forcing them to work long hours, live onsite, and control when they were allowed to leave the farm, violated Article 6 of the Convention.

The victims, including A.A., were recruited to work on the Aerisflora farms in Lusaria under conditions that constitute forced labor as defined by Convention No. 29 and violative of Article 6 of the ACHR. The recruitment process involved deception and manipulation, targeting vulnerable women in Aravania, promising them better living conditions and opportunities for their families. Upon arrival in Lusaria, the victims were subjected to harsh working conditions,

⁷⁴ *Id.*

⁷⁵ *Hypothetical ¶39*

⁷⁶ *Id.* ¶36

restricted freedom, and threats, which align with the definition of forced labor under the Convention No. 29 in conjunction with the prohibition outlined in Convention No. 105 and Article 6 of the ACHR.

The *A.A. and Nine other Women v. The Republic of Aravania* is analogous to previous international cases where states have been held accountable for failing to prevent and punish forced labor. The European Court of Human Rights, in *Siliadin v. France*, emphasized the state's positive obligation to protect individuals from forced labor and to provide effective remedies.⁷⁷ Similarly, the Court has recognized the duty of states to prevent human trafficking and forced labor, as seen in *Velásquez Rodríguez v. Honduras*.⁷⁸

Furthermore, the lack of effective legal action against the perpetrators, and the invocation of diplomatic immunity to shield Hugo Maldini from prosecution, demonstrate a failure to enforce the penal sanctions required by Convention No. 29 and Article 6 of the ACHR. The facts of the case clearly demonstrate that the victims were subjected to forced labor in violation of the ACHR, Convention No. 29, and Convention No. 105. Aravania has failed to fulfill its obligations under these Conventions to prevent, punish, and eradicate forced labor. Further human rights violations occurred as a direct result of Aravania's failure to protect the victims from human trafficking and forced labor.

3. The Republic of Aravania violated Article 7 (Right to Personal Liberty) in conjunction with Articles 1(1) and Article 2 of the ACHR

The restrictions on the freedom of movement and autonomy, as part of the forced labor the victims were subjected to, is a direct result of Aravania's failure to take measures to prevent

⁷⁷ See generally, *Siliadin v. France*. July 26, 2005. Application No. 25803/94

⁷⁸ *Velasquez Rodriguez v. Honduras*. July 29, 1988. Series C No. 4. ¶166

instances of human trafficking and is a violation of Article 7 of the Convention. Article 7(2) of the Convention stipulates that no one shall be deprived of personal liberty and security except for reasons and under conditions established by law.⁷⁹ Deprivation of liberty occurs when a person is unable to leave of their own free will.⁸⁰ The Court has determined that a violation of Article 7(2) of the Convention may occur, as here, in a non-criminal case where a deprivation of liberty is associated with their migratory status.⁸¹ Article 7(3) of the Convention further prohibits detention that, while conducted through legal means, can be considered arbitrary.⁸² Arbitrary detention is incompatible with the respect for the fundamental rights because, among other things, they are unreasonable, unforeseeable, or lacking in proportionality.⁸³ The factors in this case such as nature, duration, effects, and mode of implementation of the deprivation of liberty further supports a finding of deprivation of liberty and arbitrary detention.⁸⁴

The victims suffered from a deprivation of liberty in violation of Article 7 of the Convention. The deprivation of liberty took place for 14 months. Beginning on September 2013, all workers were required to live and sleep on the farm.⁸⁵ They lived in accommodations that were surrounded by a metal fence.⁸⁶ They were monitored with a 24-hour security system.⁸⁷ They had staff tasked with monitoring entry and exits of all persons.⁸⁸ The victims were provided with personal care supplies and food to deter anyone from leaving the farm. It was common for them to work from 6:00a.m. to 11:00p.m. as well as weekends, further preventing them from leaving

⁷⁹ *The American Convention on Human Rights* Article 7

⁸⁰ *Ramirez Escobar et al. v. Guatemala*. March 9, 2018. Series C No. 351. ¶329

⁸¹ *Id.*

⁸² *The American Convention on Human Rights*. Article 7

⁸³ *Gangaram Panday v. Suriname*. January 21, 1994. Series C No. 12. ¶47

⁸⁴ *Andrade Salmon v. Bolivia*. December 1, 2016. Series C No. 330. ¶147

⁸⁵ *Hypothetical* ¶39

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

the farm. After three weeks of working, A.A. did not even have enough money for a return trip to Lusaria, effectively forcing her to remain on the farm and continue working. Several victims requested payment or return of their identity documents which were both withheld until the work was completed. This constitutes a deprivation of liberty in violation of Article 7 of the Convention because the victims were unable to leave the farm of their own will.

The conditions of their work and living arrangements were imposed without their consent and without any legal justification. These conditions amount to a deprivation of liberty, as the victims were unable to leave or abandon the premises at will, which is a violation of their right to personal liberty as defined by Article 7 of the Convention.

Furthermore, the deprivation of liberty suffered by the victims was arbitrary in violation of Article 7(3) of the Convention. The deprivation of liberty was arbitrary as the conditions imposed on them were unreasonable, unforeseeable, and disproportionate to any legitimate aim. The aim for their deprivation was to conduct the political goals of Impulso 4 Veces Development Plan. While this goal addresses environmental concerns within the country, the deprivation of liberty is a violation of Article 7(3) of the Convention because it was unnecessary, unforeseeable, and disproportionate to the benefits obtained.

The victims were subjected to excessive work hours, inadequate living conditions, and constant surveillance, which were not necessary or proportionate to any stated objective, and all of which could have been easily remedied through an increased workforce and adequate housing for the required workforce. Aravanja was aware that the working conditions were worse than that which was required in their own country and could have contractually mandated Lusaria to uphold adequate work standards. There was no legitimate state objective served by transporting women in buses with tinted window, confiscating and withholding their identity documents, denying pay

until the work was complete, or monitoring their activities with 24-hour surveillance. These deprivations of liberty were not foreseeable as the victims were exploited through coercive tactics and were subject to working conditions far worse than that which is described in their employment contract.

After the Aerisflora transplanting did not go as planned, the women were forced, against their will, to remain at the farm for an additional week. The failure of the transplant was through no fault of their own because the soil was different from that in Lusaria.⁸⁹ Additionally, the Aerisfloras project resulted in an ultimate failure. Most plants had died within a few years, and flooding continues to this day resulting in little to no benefit gained by the deprivation of liberty. The arbitrary nature of their deprivation of liberty is further evidenced by the lack of any legal recourse or ability to challenge their confinement.

Aravania, by failing to protect the victims from human trafficking and forced labor, has additionally failed to guarantee the right to personal liberty enshrined in Article 7(1) of the Convention. The victims were unable to leave of their own free will. While private actors conducted these actions, Aravania acquiesced to these violations by failing to further investigate the working conditions of the farm or make unannounced visits as provided for in the contract.

4. The Republic of Aravania violated Article 5 (Right to Humane Treatment), and the Convention of Belém do Para in conjunction with Article 1(1) and Article 2 of the ACHR

Once the victims had been subjected to human trafficking and forced labor violations, and were deprived of their personal liberty, they were in a vulnerable position and susceptible to violence in violation of Article 5 of the Convention. Article 5(1) of the Convention establishes a

⁸⁹ *Hypothetical ¶47*

right to personal integrity and protects against unjustified interference with a person's physical, mental, and moral integrity.⁹⁰ Further, Article 5(2) of the Convention protects every person from cruel, inhuman, or degrading treatment including "torture" which can be understood as any method intended to either obliterate the personality of the victim or diminish her physical or mental capacities, even if they did not cause physical pain or mental anguish.⁹¹ Another form of torture protected by Article 5 is "ill-treatment" which is characterized as (1) intentional, (2) causes severe physical or mental suffering, and (3) is committed with an objective or purpose.⁹² Additionally, torture encompasses both threats or fear of threats.⁹³

The objective factors of the mistreatment such as duration, method, physical and psychological effects, as well as subjective factor such as the victims' age, race, gender, and any other personal circumstances both support a finding of mistreatment against the victims.⁹⁴ In this case, the victims are high-school educated, single mothers with difficult financial circumstances making them vulnerable to exploitation. The fact that these victims are all women, the violations were specifically directed against women, and that women were a greater target for the violations are significant because these facts trigger protections under the Convention of Belém do Para (hereinafter "Belém").⁹⁵

The mistreatment suffered by these women fall under the definition of violence against women as well as discrimination and are therefore violations under Belém. Belém explicitly defines violence against women as "any act or conduct, based on gender, which causes...physical,

⁹⁰ *The American Convention on Human Rights*. Article 5.

⁹¹ *Gomez Paquiyauri Brothers v. Peru*. (November 22, 2005). Series C No. 110. ¶105

⁹² *Bueno Alves v. Argentina*, (September 18, 2003). ¶79

⁹³ *Tibi v. Ecuador*. (September 7, 2004). Series C No. 114, ¶149.

⁹⁴ *Bueno Alves v. Argentina*, (September 18, 2003). ¶83

⁹⁵ *Rios et al. v. Venezuela*. (September 2, 2019). Series C No. 111. ¶279

sexual, or psychological harm or suffering to women, whether in the public or private domain...including violence that occurs in the community, is perpetrated by anyone, and condoned by the State or its agents regardless of where it occurs”.⁹⁶ In addition to specifically addressing violence against women, Belém further includes the right not to be discriminated against and to be valued and educated free from stereotypical patterns of social and cultural behavior and practices that are based on concepts of inferiority or subordination.⁹⁷

In conjunction with Belém, the Court has found a violation of Article 5 of the ACHR in several sexual violence against women cases.⁹⁸ This category of prohibited acts includes sexual violence or acts of a sexual nature, without consent, which may include acts that do not imply penetration or even any physical contact whatsoever.⁹⁹ In the *Rosendo Cantu v. Mexico* and *Fernandez Ortega v. Mexico* cases, the Court found that rape may constitute torture even if it is just one act that took place outside state facilities.¹⁰⁰ In addition to sexual violence, Article 5(1) of the Convention has been used to address suffering resulting from stigmatization and related dignity harms.¹⁰¹

The victims were subjected to unjustified interference with their personal integrity, which is prohibited under Article 5(1) of the Convention and Belém. The women were subjected to cruel and degrading treatment involving stigmatization harms resulting from continuous perpetuation of chauvinistic behaviors. The kitchen at the farm was understaffed, but only the women on the farm

⁹⁶ *Convention of Belém do Para* Article 1, 2

⁹⁷ *Id.* Article 6

⁹⁸ See *Women Victims of Sexual Torture in Antenco v. Mexico*. November 28, 2018. Series C No. 371 ¶180

⁹⁹ *Miguel Castro Castro Prison v. Peru*. November 25, 2006. Series C No. 160. ¶306.

¹⁰⁰ *Rosendo Cantu et al. v. Mexico*. August 31, 2010. Series C No. 216. ¶180; *Fernandez Ortega et al. v. Mexico*. August 30, 2010. Series C No. 215 ¶124

¹⁰¹ *Miguel Castro Castro Prison v. Peru*. November 25, 2006. Series C No. 160. ¶306, 357.

were required to help prepare lunches.¹⁰² The women were responsible for cleaning up.¹⁰³ At the end of the workday, the women were then required to organize dinner for all the workers and clean the facilities.¹⁰⁴ On the weekends, the women were required to clean the residences and wash the men's clothing while the men were allowed to leave the farm.¹⁰⁵ This degrading treatment constitutes an unjustified interference with the victims' mental integrity in violation of Article 5(1) of the Convention, and are a violation of Belém's right not to be discriminated against and the right to be free from stereotypical patterns of social and cultural behavior and practices that are based on concepts of inferiority.

Hugo Maldini further subjected A.A. to cruel, degrading, and discriminatory treatment when she asked to be paid. He told her she should be "grateful for the opportunities he gave her", said she would just go back to being "the same desperate, single woman" she was before, and her daughter would be condemned to the same fate.¹⁰⁶ He called her foolish and told her that if she left, her mother would be left without the medical care she needed.¹⁰⁷ Not only is this cruel and degrading, but this conduct violates Belém's right not to be discriminated against and the right to be valued free from social behavior that are based on concepts of inferiority.

The excessive work hours and inadequate living conditions resulted in cruel and inhuman treatment involving physical and psychological harm inflicted on the victims. The women needed more time to prepare the food; so, not only did they have to skip their only break of the day, but they had to extend their work hours into the evenings.¹⁰⁸ A.A. started work each day at 6:00a.m.

¹⁰² *Hypothetical ¶41*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id. ¶47*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

and did not arrive home at night until 11:00p.m with no respite even on the weekends as they were busy cleaning the facilities and doing laundry for the men.¹⁰⁹ Forcing women to work to the point of physical and mental exhaustion each day without breaks or rest constitutes an unjustified interference with the victims' physical and mental integrity in violation of Article 5(1) of the Convention and Belém which prohibits physical and psychological harm suffered by women.

One woman on the farm had been a victim of sexual violence which constitutes a violation of Article 5 of the ACHR and Belém on its own. Another woman had been severely repressed after complaining about the working conditions.¹¹⁰ These actions fall within the definition of violence against women because they cause physical, sexual, and psychological harm and suffering to women. They intentionally caused suffering to the women and were committed with purpose whether it be control, submission, or sexual gratification. A.A. feared not only for her own safety, but for the safety of her daughter and mother whom she had to leave behind when she was transported to work on the farm in Aravania.¹¹¹

The victims were subject to cruel, inhuman, and degrading treatment that violates Article 5(2) of the ACHR. Forcing the women to work under harsh conditions, with extended hours, and no breaks, under a constant fear of physical violence, falls under the definition of torture under Article 5(2) of the Convention because it was a method used to diminish the physical and mental capacities of the women as a means to exact control over them and extract as much labor as possible without care or concern for their physical or mental well-being.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* ¶43

¹¹¹ *Id.*

Aravania's failure to investigate and the indifference by state agents constitutes a violation of both Article 5 of the Convention as well as Article 7 of Belém. Aravania violated Belém because the recruitment and subsequent treatment of A.A. and the other women can be characterized as a form of violence against women, directed at women, with women as the primary target, given the coercive and exploitative nature of their employment.

A. The Republic of Aravania violated Article 5 of the ACHR in relation to the victims' next of kin.

The violation of Article 5 of the Convention extends to the victims' next of kin, as the conditions and treatment experienced by A.A. and the other women have direct and adverse effects on their families.¹¹² The forced labor and exploitation of A.A. and the other women have significant repercussions on their families, who rely on them for support and care. The separation and inability to provide adequately for their families due to the exploitative conditions exacerbate the harm suffered by the victims and their next of kin. A.A. did not return home most nights until 11:00p.m.¹¹³ A.A. was away from her family for an extended period and her contract was further extended by an additional week. Despite these long work hours, A.A. was not making enough money to adequately support her family. The living conditions of her family were also inadequate as they shared a one-room cabin with only one bathroom, and they shared that cabin with several other families.

Aravania's failure to protect its citizens from human trafficking forced labor, deprivation of liberty, discrimination, and exploitation, and its inadequate response to the reported abuses,

¹¹² *Valle Jaramillo et al. v. Colombia*. Merits, Reparations, and Costs. November 27, 2008. Series C No. 192. ¶ 119.

¹¹³ *Hypothetical* ¶41

violate the rights of the victims' families to humane treatment, as they suffered the consequences of Aravania's inaction.

5. The Republic of Aravania violated Article 26 (Progressive Development) in conjunction with Articles 1(1) and Article 2 of the ACHR.

Aravania violated Article 26 by failing to supervise the working conditions in Lusaria and Aravania. Additionally, Aravania's failure to protect the rights enshrined in Article 26 prior to the exploitation in this case created the vulnerabilities and circumstances from which the women were able to be exploited through human trafficking in the first place. Article 26 of the Convention obligates Aravania to adopt measures to progressively achieve the full realization of economic, social, and cultural rights.¹¹⁴ The Protocol of San Salvadore establishes several of these rights relevant to this case including satisfactory conditions of work, right to social security, right to health, right to education, and the right to the benefits of culture.¹¹⁵ Aravania has failed to protect each of these rights resulting in a violation of Article 26 of the ACHR.

Aravania violated Article 26 of the Convention by failing to provide for satisfactory working conditions. The right to satisfactory working conditions includes: dignified and decent living conditions, fair and equal wages, safety and hygiene at work, and a reasonable limitation of working hours that includes rest, leisure, and shorter work days in dangerous or unhealthy work conditions.¹¹⁶ In the *Lagos del Campo v. Peru*, the Court affirmed the enforceability of labor rights

¹¹⁴ *The American Convention on Human Rights*. Article 26

¹¹⁵ The Protocol of San Salvadore

¹¹⁶ *The Protocol of San Salvador* Article 7

under Article 26 of the Convention, emphasizing State's obligation to protect workers from arbitrary and unfair treatment.¹¹⁷

In the *Workers of the Fireworks Factory in Santo Antonio de Jesus and their Families v. Brazil*, a fireworks factory explosion killed 64 people.¹¹⁸ The Court held that Brazil violated Article 26 of the Convention because it failed to regulate and supervise the factory's unsafe working conditions.¹¹⁹ Similarly, Aravania, by entering into the Agreement with Lusaria, had a duty to supervise the working conditions at the farm and ensure that the rights of victims involved in the Aerisflora transplantation project were protected.

The working conditions at Finca El Dorado and during the Aerisflora transplantation in Aravania were exploitative and degrading in violation of Article 26 of the ACHR. Prior to entering the Agreement with Lusaria, Aravania was aware that the working conditions in Lusaria were not as favorable as those in Aravania and signed the Agreement anyway. Aravania violated Article 26 of the Convention's right to satisfactory working conditions by signing an Agreement providing Lusaria with discretion to follow its own, subpar labor laws and anti-discriminatory policies instead of obligating Lusaria to treat Aravanian workers and citizens with the same standards provided for within their own country.

The petitioners were further subjected to inadequate living conditions in violation of Article 26 of the Convention's right to adequate housing. The victims were obliged to live in a one-room building with two other families where they were all required to share one bathroom.¹²⁰

¹¹⁷ *Lagos del Campo v. Peru*. August 31, 2017. Series C No. 340 ¶150

¹¹⁸ *Workers of the Fireworks Factory in Santo Antonio de Jesus and their Families v. Brazil*. July 15, 2020. C Series No. 407 ¶1

¹¹⁹ *Id.* ¶118

¹²⁰ *Hypothetical* ¶40

The lack of privacy and dignity in these living conditions constitutes inadequacies in the housing provided in violation of Article 26.

The victims were not provided a reasonable limitation of working hours because they worked from 6:00a.m. until 11:00p.m. with no breaks. They were provided no rest or leisure in the evenings or on weekends, and they received no paid holidays. The victims in this case were further entitled to shortened workdays as they were required to work in unhealthy working conditions requiring prolonged exposure to scorching heat, rain, and chemicals.

Aravania violated the right to safety and hygiene at work by failing to address the safety concerns related to allergic contact dermatitis and skin cancer caused by the exposure to scorching heat coupled with the chemicals used in the transplantation. Further, the victims had to perform repetitive actions that resulted in symptoms of tingling, numbness, and pain in their wrists, and they experienced back problems from bending over for extended periods of time.¹²¹

Aravania further failed to effectively monitor and enforce the labor rights provisions of the cooperation agreement to ensure compliance with international labor and anti-discriminatory standards. Although the agreement included provisions for unannounced inspections and compliance with labor laws, there is no evidence that Aravania took meaningful steps to ensure any of these provisions were upheld. The lack of enforcement allowed for the continuation of exploitative practices, violating the petitioners' rights under Article 26 of the Convention.

Aravania violated the right to equal wages by failing to address the wage disparity between men and women in the labor market for the same work. The victims, primarily women, faced

¹²¹ *Id.* ¶15

discrimination and were subjected to gender-specific exploitation, such as being required to perform additional unpaid labor, including cooking and cleaning.

The further failure of Aravanja to address the wage disparity prior to the human trafficking violations suffered by the victims, put women in a vulnerable position capable of being coerced and exploited by the perpetrators in this case. Because of the social stigmatization of single mothers in the communities and lack of protection from Aravanja, A.A. was not able to find work locally. The lack of workplace inclusion policies has pushed women to accept strenuous jobs, often overseas as is the case for the victims. Official data shows that women have higher unpaid care burdens than men, women head of households have greater challenges in covering the costs of care, and this exacerbates the vulnerability of Aravanian women and only furthers victimization and the ability of private actors to take advantage of their economic disparity through human trafficking and forced labor as is the case with A.A. and the other victims. Article 26 of the Convention requires the elimination of employment discrimination and the promotion of gender equality.¹²² Aravanja's failure to address these discriminatory practices further constitutes a violation of Article 26 of the Convention.

Aravanja violated Article 26 of the ACHR by failing to protect the Right to Health. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental, and social well-being¹²³ This includes primary health care that is made available to all individuals and families in the community, and prevention and treatment of endemic, occupational and other diseases.¹²⁴ Aravanja violated the right to health by subjecting the women to poor working conditions that will have long-term impacts on their physical health. The victims

¹²² *The American Convention on Human Rights* Article 26

¹²³ *Protocol of San Salvadore*. Article 10

¹²⁴ *Id.*

had to perform repetitive actions that resulted in symptoms of tingling, numbness, and pain in their wrists.¹²⁵ They experienced back problems from bending over for long periods of time, and cases of allergic contact dermatitis had been identified, which, coupled with exposure to the sun and the chemicals needed to grow the plants, led to skin cancer.¹²⁶ The women were further required to work long hours with no breaks or rest days with total disregard for their physical and mental well-being and with almost complete deprivation of social activities. The prolonged exposure to threats, fear, lack of privacy, coercion, and degrading and discriminatory conduct on behalf of Hugo Maldini and the staff at each work location deprived the victims of their right to physical, mental, and social wellbeing.

Furthermore, the lack of primary health care that is accessible to all in addition to the lack of treatment for occupational ailments for A.A.'s mother is a contributing factor in the financial difficulties experienced by the victims. The victims' vulnerable position and later exploitation is a direct consequence of Aravania's failure to provide for the right to health as proscribed in the Protocol of San Salvadore.

Aravania violated Article 26 of the ACHR by violating the Right to Social Security. Everyone has the right to social security protecting her from the consequences of old age and disability which prevents her, physically or mentally, from securing the means for a dignified and decent existence.¹²⁷ Aravania failed to have in place a social security program. A.A.'s mother developed carpal tunnel syndrome and was no longer able to work.¹²⁸ Because Aravania does not have a social security program, not only could she not afford her medical bills, but it created an

¹²⁵ *Hypothetical ¶15*

¹²⁶ *Id.*

¹²⁷ *Protocol of San Salvadore*. Article 9

¹²⁸ *Hypothetical ¶32*

additional, unnecessary financial strain on A.A. and her family. Because of this financial strain, she was placed in a vulnerable, desperate position where Hugo Maldini could easily exploit her. A.A. and the other victims faced exploitation, human trafficking, and egregious human rights violations by a private actor as a direct consequence of Aravanja's failure to provide for the right to social security.

Aravanja violated Article 26 of the Convention by violating the Right to Education. Everyone has the right to education.¹²⁹ This means that primary education should be accessible to all without cost and higher education should be made equally accessible to all by every appropriate means and by the progressive introduction of free education.¹³⁰ Because Aravanja does not have a public school system, A.A. did not have access to either good high schools or higher education. The lack of educational opportunities and stigmatization she suffered prevented A.A. from furthering her career or obtaining gainful employment. Additionally, A.A. did not have access to a public school system for her daughter. The victims were placed in a vulnerable position because they were not able to obtain higher education coupled with financial stability. Hugo Maldini was able to coerce the victims into exploitative labor practice and human trafficking under the guise of a better life and education for their children as a direct consequence of Aravanja's failure to protect the right to education.

Aravanja violated Article 26 of the Convention by failing to protect the Right to the Benefits of Culture. The victims were deprived of taking part in the cultural and artistic life of the community. They worked long hours with no breaks, days off, or paid leave to enjoy the cultural and artistic life. They were unable to leave the farm of their own free will, confining them to a

¹²⁹ *Protocol of San Salvadore*. Article 13

¹³⁰ *Id.*

space devoid of cultural and artistic life. Because Aravania failed to progressively protect the social, economic, and cultural rights of its citizens, private individuals were able to commit egregious human rights violations, including human trafficking and forced labor, against the victims in this case.

6. The Republic of Aravania violated Article 8 (Right to a Fair Trial), Article 25 (Right to Juridical Protection) of the ACHR and Article 7 of the Convention of Belém do Para in conjunction with Articles 1(1) and Article 2 of the ACHR

By failing to protect vulnerable women and foster a culture of respect, accountability, and empowerment, Aravania violated Articles 8 and 25 of the Convention and Article 7 of Belém. The Commission provided direction on the relationship between Articles 8 and Article 25 of the Convention in *Velásquez Rodríguez v. Honduras*, stating that States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), and the remedies that must be substantiated in accordance with the rules of due process of law (Art. 8(1)).¹³¹ Pursuant to Article 8(1) of the Convention, “every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law...for the determination of his rights.”¹³² This due process provision is inextricably linked to Article 25 of the Convention, thus, an investigation conducted outside the scope of a “reasonable time”, such as the investigation in this case, is inevitably ineffective and a violation of Articles 8(1) and 25.

¹³¹ *Velásquez Rodríguez v. Honduras*. July 29, 1988. Series C No. 4. ¶62

¹³² *The American Convention on Human Rights*. Article 8.

The complexity of the case, procedural activity of the interested party, and the action of the judicial authorities supports the finding of unreasonable delay in violation of Article 8.¹³³ Additionally, the Court should consider the circumstances regarding the immunity granted to Hugo Maldini. In the *Barbosa de Souza et al. v. Brazil*, the Inter-American Court of Human Rights addressed the murder of Márcia Barbosa de Souza and the subsequent legal proceedings against the alleged perpetrator, a state deputy in Brazil.¹³⁴ The case involved issues of parliamentary immunity, which delayed the criminal prosecution of Mr. Pereira de Lima due to the legislative body's refusal to lift his immunity.¹³⁵ The Court examined the application of parliamentary immunity and its impact on the right of access to justice for the victim's family.¹³⁶

The Inter-American Court found that the application of parliamentary immunity was arbitrary and hindered the access to justice.¹³⁷ The Court emphasized that parliamentary immunity should not be used as a mechanism for impunity and must be applied in a manner that respects the rights of victims to seek justice.¹³⁸ The Court concluded that the refusal to lift immunity violated the rights to judicial guarantees, equality before the law, and judicial protection under the Convention.¹³⁹

Not only did Aravania violate Article 8 of the Convention because it refused to lift the immunity shielding Hugo Maldini from responsibility, but the court system in Velora was neither impartial nor independent. 8(1) of the Convention further guarantees the right to be heard by a competent, independent and impartial tribunal.¹⁴⁰ Independence primarily refers to the autonomy

¹³³ *Suarez Rosero v. Ecuador*. November 12, 1997. Series C No. 35

¹³⁴ *Barbosa de Souza et al. v. Brazil*. September 7, 2021. Series C No. 435. ¶1

¹³⁵ *Id.*

¹³⁶ *Id.* ¶ 2-3

¹³⁷ *Id.* ¶ 122

¹³⁸ *Id.* ¶ 123

¹³⁹ *Id.* ¶ 151

¹⁴⁰ *The American Convention on Human Rights*. Article 8

of the bodies in question in relation to other organs of State, in this case, the Executive Branch.¹⁴¹ Impartiality means that a decision maker must act fairly, being free from all prejudice.¹⁴² Both pillars, independence and impartiality, are enshrined in Article 8(1) of the Convention, and without their presence, Aravania is in breach of fundamental human rights to judicial protection.

Furthermore, Aravania violated Article 25 of the Convention because Article 25 of the Convention mandates that domestic recourse should be simple, prompt and effective.¹⁴³ For an effective remedy to exist under Article 25 of the Convention, it is not sufficient that it is provided for by law.¹⁴⁴ Instead, it must be truly effective in establishing whether there has been a violation of human rights and in providing redress.¹⁴⁵ Therefore, a remedy which proves illusory because of general conditions prevailing in the country, or even in the circumstances of the case, cannot be considered effective.¹⁴⁶ Under Article 25(2) of the Convention, Aravania is obligated to ensure that competent authorities enforce remedies when granted and to develop the possibilities of judicial recourse.¹⁴⁷

In cases of violence against women, as in this case, the general obligations established in Articles 8 and Article 25 of the Convention are complemented and reinforced by Belém. Article 7 of Belém specifically obligates Aravania to condemn all forms of violence against women and to adopt policies to prevent, punish, and eradicate such violence.¹⁴⁸ It further requires Aravania to act with due diligence to prevent, investigate, and impose penalties for violence against women

¹⁴¹ *Eur. Court H.R. Agrokompleks v. Ukraine*. October 6, 2011. Application No. 23465/03 ¶136-37

¹⁴² *Apitz Barbera (First Court of Administrative Disputes) et al. v. Venezuela*. August 5, 2008. Series C No. 182. ¶56

¹⁴³ *The American Convention on Human Rights*. Article 25

¹⁴⁴ *Lopez Alvarez v. Honduras*. February 1, 2006. Series C No. 141. ¶ 139

¹⁴⁵ *Id.*

¹⁴⁶ *Pacheco Tineo family v. Bolivia*. November 25, 2013. Series C No. 272. ¶191

¹⁴⁷ *The American Convention on Human Rights*. Article 25.

¹⁴⁸ *The Convention of Belém do Para*. Article 7

and to establish fair and effective legal procedures for women subjected to violence.¹⁴⁹ Because Aravania did not prevent nor investigate the violence experienced by the women in this case, Belém was violated. Further, Article 7 of Belém include ensuring that legal procedures are available and effective for women subjected to violence.¹⁵⁰

In *Cotton Field v. Mexico*, the Court found, in addition to violations of the ACHR, violations of Belém when three women on three different occasions were found deceased in a cotton field.¹⁵¹ The Court in that case found several investigative deficiencies which were a violation of Belém because adequate investigations prevent further disappearance abuse, or death.¹⁵² Therefore, when an act of violence is committed against a woman by a State or private actor, it is especially important that the authorities carry out the investigation with determination and effectiveness, taking into account society's duty to reject violence against women and the States obligations to eradicate it.

Aravania's failure to investigate the complaints they received prior to the victimization of the petitioners within a reasonable time is a violation of Articles 8(1) and Article 25 of the ACHR. When the victims began work in November 2012, the Office of the Prosecutor General in Aravania had already received complaints about both the working conditions as well as the misleading and coercive tactics employed by Hugo Maldini in his advertising. These allegations were not investigated. Had Aravania investigated this allegation within a reasonable time, it could have prevented the human rights violations inflicted on the victims in this case.

¹⁴⁹ *Id.*

¹⁵⁰ *The Convention of Belém do Para*. Article 7.

¹⁵¹ *Gonzalez et al. (Cotton Field) v. Mexico*. November 16, 2009. Series C No. 205. ¶389

¹⁵² *Id.* ¶454

A year later, in October 2013, the Office of the Prosecutor General's office received yet another complaint about the extreme living conditions, forced labor taking place at the farm, and the misleading messages from Hugo Maldini. The Prosecutor's Office at this time determined that no crimes have been committed in Aravania and that the coercive videos did not give rise to any unlawful act.¹⁵³ It is not until January 2014, over a year after Aravania is made aware of the allegations of human rights violations, that an investigation is started. Aravania's failure to investigate these allegations within a reasonable time encouraged prolonged infliction of human rights violations on the victims in this case.

Not only did Aravania violate Article 8 in failing to thoroughly investigate the allegations, but shielding Hugo Maldini from prosecution by refusing to lift his immunity further denies access to justice for the victims. The Bilateral Cooperation Agreement between Aravania and Lusaria provides certain immunities to individuals designated by Lusaria, including Hugo Maldini, under Article 50.¹⁵⁴ However, the invocation of such immunity must be balanced against the fundamental principles of international law, particularly those concerning human rights and the prevention of human trafficking.

The immunity granted to Hugo Maldini under the cooperation agreement should not be used to shield him from accountability for alleged human rights violations, as this would contravene the states' international obligations. A.A. reported conditions of forced labor and exploitation, which were corroborated by the Velora Police investigation. Despite these findings, the invocation of immunity by Lusaria prevented a thorough investigation and prosecution of Hugo Maldini in Aravania.

¹⁵³ *Hypothetical* ¶54

¹⁵⁴ *Id.* ¶25

Upholding and safeguarding the human rights enshrined in the Convention necessitates that immunity not be used to shield individuals from accountability for human trafficking and labor exploitation. Therefore, the claim of immunity for Hugo Maldini should be denied, allowing for a full investigation and prosecution of the alleged offenses. Continued protection of Hugo Maldini constitutes a violation of Article 8 as arbitrary, unreasonable delay, and a denial of access to justice for the victims.

Furthermore, the proceedings against Hugo Maldini lacked impartiality and independence in violation of Article 8(1) of the Convention. The allegations of violations of human rights were first heard by the Office of the Prosecutor's Office of The Republic of Aravania who outright dismissed the allegations. Not long after, an arrest warrant is issued, and Hugo Maldini is arrested through acts of the Velora Police Department and the Second Criminal Court Judge of Velora.¹⁵⁵ The Ministry of Foreign Affairs for each country, high ranking members of the Executive Branch, became involved in the case shortly thereafter refusing to lift Hugo Maldini's immunity and further putting pressure on the Second Criminal Court Judge. The Second Criminal Court Judge in Velora dismissed the case against Hugo Maldini on the grounds of diplomatic immunity without a thorough examination of the facts or the merits of the case. This decision was influenced by political considerations rather than legal principles, undermining the independence of the judiciary. The refusal to lift the immunity of Hugo Maldini and influence of the Executive Branch on judicial responsibilities effectively destroys impartiality and independence in violation of Article 8(1) of the ACHR.

¹⁵⁵ *Id.* ¶59

Aravania failed to provide effective remedies in violation of Article 25 of the Convention. The victims sought judicial recourse in Aravania after experiencing exploitative working conditions and human trafficking orchestrated by Hugo Maldini and facilitated by the cooperation agreement between Aravania and Lusaria. Despite A.A.'s detailed complaint to the Velora Police, the judicial system in Aravania failed to provide an effective remedy. The Second Criminal Court Judge dismissed the case, citing Hugo Maldini's diplomatic immunity under the cooperation agreement, without thoroughly investigating the allegations of human trafficking and forced labor.

The dismissal of the case by the Second Criminal Court Judge, without a substantive investigation into the allegations, constitutes a failure to provide an effective judicial remedy and effectively denied the victims access to justice. The court's reliance on diplomatic immunity as a basis for dismissal, without considering the gravity of the allegations, undermines the petitioners' right to access justice and obtain a remedy for the violations they suffered. This decision was affirmed by the Velora Court of Appeals, further compounding the denial of judicial protection.

Furthermore, Aravania did not investigate or explore additional leads in this case. There was no investigation or interrogation of Isabel Torres' role in the human rights violations. There was no investigation or interrogation of Joaquin Diaz' role in the human rights violations. There was no investigation or interrogation of any member of staff at either the Lusaria or Aravania worksites to determine culpability in human rights violations.

Aravania's failure to investigate the allegations of human trafficking and forced labor, coupled with the dismissal of the case based on diplomatic immunity, demonstrates a breach of this obligation. Aravania's actions, or lack thereof, have left the petitioners without an effective remedy, violating their right to judicial protection under Article 25 of the Convention.

The Inter-American Court has underscored that remedies must be comprehensive and capable of addressing the harm suffered by victims. Aravanja failed to provide adequate remedies to address the violations suffered by the petitioners. Despite the arbitration proceedings that resulted in a monetary award to A.A., this remedy was insufficient to address the broader violations of human rights and the lack of judicial protection.

Aravanja failed to conduct an investigation with determination and effectiveness into the allegations of violence against women in violation of Article 8 and 25 of the ACHR and Article 7 of Belém. Aravanja was already aware that the working conditions on the farms in Lusaria were below the standard working conditions in Aravanja.¹⁵⁶ Aravanja had received at least two prior complaints of the working conditions on the farm and despite their authority under the agreement to make unannounced visits to the farm, they chose not to exercise that right. Aravanja was aware of the coercive videos posted by Hugo Maldini and made no effort to have those videos removed from social media or to enact legislation protecting women from coercive advertising. They relied on the immunity of Hugo Maldini to dismiss the case outright instead of further investigating violations committed by individual employees at the farm. Aravanja did not act with due diligence to investigate either of the prior claims or the claims of A.A. Aravanja failed to punish any actors involved in this incident including guards, Isabel Torres, or Joaquin Diaz. Aravanja has not and did not enact any specific legislation to protect women from coercive tactics, cruel or degrading treatment, or discrimination. Aravanja failed to protect the women on this farm from stigmatization, and thus, this violation is imputed on the State. Aravanja's failure to investigate

¹⁵⁶ *Id.* ¶21

these human rights violations with determination and effectiveness constitutes a violation of Article 8 and 25 as well as Article 7 of Belém.

Aravania still does not have an adequate legal framework for protection, effective implementation, and prevention of either the risk factors or the violence itself. The Prosecutor's Office of The Republic of Aravania determined in 2013 that the coercive videos being used by Hugo Maldini to lure women into an abusive and oppressive environment did not constitute an unlawful action. Aravania has since taken no action to prevent the use of such videos in human trafficking in violations of Article 8 and 25 of the ACHR as well as Article 7 of Belém.

III. REQUEST FOR RELIEF

Considering the arguments explained above, the victims respectfully request this Honorable Inter-American Court of Human Rights to hold the Republic of Aravania accountable for these violations and declare that:

- (1) The Republic of Aravania violated all the rights and freedoms established in Articles 3, 5, 6, 7, 8, 25, and 26 of the Convention in relation to Articles 1(1) and Article 2 of the Convention to the detriment of A.A. and nine other women.
- (2) The Republic of Aravania violated all the rights and freedoms established in Article 7 of the Convention of Belém do Para to the detriment of A.A. and nine other women.
- (3) The Republic of Aravania violated all the rights and freedoms established in Article 5 of the Convention to the detriment of the victims' next of kin.

Additionally, the victims respectfully request this Honorable Court to order that:

- (1) The Republic of Aravania covers all costs of victims' proceedings on domestic and international levels;

- (2) The Republic of Aravania waive Hugo Maldini's immunity and conduct a proper, impartial investigation into the allegations made by the victims.