

A.A. AND NINE OTHER WOMEN

PETITIONERS

v.

REPUBLIC OF ARAVANIA

RESPONDENT

MEMORIAL FOR THE STATE

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STATEMENT OF FACTS

I. THE REPUBLIC OF ARAVANIA

The Republic of Aravania (“Aravania”) is a sovereign state located along the Pacific Coast of South America.¹ It is bordered to the south by the Democratic State of Lusaria and to the west by the Pacific Ocean.² It has twelve departments in addition to its capital, Velora.³ Along Aravania’s southern border with Lusaria lies Campo de Santana.⁴ The Aravanian economy is primarily based on its fishing and livestock industries.⁵

Aravania’s geography and weather have made it a country that has been vulnerable to significant environmental and economic challenges over the past fifty years. In particular, Aravania has been subject to competing extremes of climate disasters; namely flooding and droughts.⁶ While the droughts alone are severe enough, lasting over 160 days and endangering essential elements of the Aravania economy such as crops, livestock, and water supply, the floods are arguably even more damaging.⁷ Aravania regularly experiences catastrophic flooding due to rain up to 455% above average in May and June.⁸ These catastrophic floods have resulted not only in major losses across all of Aravania’s economic sectors, but have also displaced thousands of people within the Aravanian populace.⁹ Aravania has also faced socioeconomic struggles, with

¹ Hypothetical, para. 1

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Hypothetical, para. 4

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

roughly seventeen percent of the population falling below the poverty line;¹⁰ in part due to a lack of public education and social security in the country.¹¹

The President of Aravania, Carlos Molina, was elected in 2011.¹² Since assuming office, he has implemented “Impulso 4 Veces” Development Plan, which seeks to transform Aravania over the course of four years by modernizing infrastructure and incentivizing foreign investment, as well as addressing the persistent flooding catastrophes by implementing sponge cities in strategic urban locations.¹³

Aravania’s constitution includes protections for life, honor, liberty, security, work, property, fair wages, standard of living, and human rights.¹⁴ Aravania’s criminal code provides protections against human trafficking and forced labor.¹⁵ Aravania is also a member state of the Organization of American States (“OAS”), has ratified the American Convention on Human Rights (“ACHR”), and is a member of a number of other international organizations.¹⁶

II. THE DEMOCRATIC STATE OF LUSARIA

The Democratic State of Lusaria (“Lusaria”) is a sovereign state located along the Pacific Coast of South America.¹⁷ It is bordered to the north by Aravania and to the south and west by the Pacific Ocean.¹⁸

¹⁰ Hypothetical, para. 3

¹¹ *Id.*

¹² Hypothetical, para. 6

¹³ Hypothetical, para. 7

¹⁴ Hypothetical, para. 8

¹⁵ Hypothetical, para. 9

¹⁶ Hypothetical, para. 10

¹⁷ Hypothetical, para. 11

¹⁸ *Id.*

A Lusarian researcher named James Mann discovered a plant species native to Lusaria with pollutant filtering properties.¹⁹ Mann and his team worked for several years maximizing the use of the plant, which they named *Aerisflora*, for purification, while a team of engineers worked concurrently to maximize *Aerisflora*'s use to act as a more sustainable and efficient large-scale model.²⁰ This work paid off, resulting in *Aerisflora* becoming the most effective plant to use for sponge cities.²¹ These developments led to *Aerisflora* farming becoming a staple of the Lusarian economy.²²

While *Aerisflora* had an initial positive effect on the Lusarian economy, problems began to arise both economically and from a working conditions standpoint.²³ Economically, this manifested in the form of farm labor supply outnumbering the number of available jobs, causing a sharp downturn in wages and an uptick in how many hours laborers needed to work for a livable income.²⁴ This development disproportionately affected women, as *Aerisflora* farms began hiring foreign women in favor of Lusarian women.²⁵ From a labor conditions standpoint, Lusarian workers complained of negative health effects of working with *Aerisflora*, such as tingling, numbness, wrist pain, back problems, allergic contact dermatitis, and most significantly, skin cancer.²⁶

¹⁹ Hypothetical, para. 13

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Hypothetical, para. 14

²⁴ *Id.*

²⁵ *Id.*

²⁶ Hypothetical, para. 15

Lusaria's laws possess labor protections and their criminal code protects against abuse of authority and human trafficking.²⁷ Lusaria is a member of the OAS and ACHR.²⁸

III. ARAVANIAN-LUSARIAN RELATIONS

In May of 2012, Aravania was hit by one of the worst floods in its history, leading to mass property destruction and the displacement of over 150,000 people.²⁹ In June of 2012, the Aravanian government sent a delegation to Lusaria to learn more about the use of *Aerisflora* for Aravanian sponge cities, including visiting Lusarian public company, EcoUrban, and the *Aerisflora* farms it had signed, including Finca El Dorado.³⁰ The delegation reported, while Aravania's workplace conditions were superior, Lusaria's met both domestic and international standards.³¹

Aravania and Lusaria entered into a Bilateral Cooperation Agreement for the Transplantation of *Aerisflora* ("the Agreement").³² The agreement included Lusaria's provision of rainwater harvesting and purification systems to Aravania as part of the development of the first Aravanian sponge cities.³³ This included the growing and transportation of *Aerisflora* to Aravania.³⁴ EcoUrban was selected as the independent contractor for these activities.³⁵ EcoUrban, in turn selected El Dorado as the first Lusaria farm for this project. The project had an execution time of three years and provided for monthly status reports on the activities involved in the project.³⁶

²⁷ Hypothetical, para. 18

²⁸ Hypothetical, para. 19

²⁹ Hypothetical, para. 20

³⁰ Hypothetical, para. 21

³¹ *Id.*

³² Hypothetical, para. 24

³³ *Id.*

³⁴ *Id.*

³⁵ Hypothetical, para. 26

³⁶ Hypothetical, para. 25

The Agreement contained special provisions to establish labor standards. The Agreement also provided for Aravania to grant two individuals to be selected by Lusaria “the privileges, exemptions, and immunities granted to the administrative and technical staff of a diplomatic mission.”³⁷ It also included an arbitration clause for dispute resolution.³⁸

EcoUrban hired Hugo Maldini to recruit workers.³⁹ Maldini received many inquiries from impoverished Aravanian women, particularly those with dependents, via social media advertisements on the platform *ClikTik*, where he posted videos that showed a better life for *Aerisflora* laborers.⁴⁰ Maldini was appointed as Lusaria’s Special Attache for Public & Commercial Relations for *Aerisflora* and was designated as one of their diplomats under the Agreement.⁴¹

IV. A.A. & THE EVENTS AT EL DORADO

A.A. is an Aravanian national and native of Campo de Santana. She lived there with her mother, M.A., and daughter, F.A..⁴² A.A. was working as a maid and came across one of Maldini’s advertisements.⁴³ She reached out inquiring about a job and was introduced to Isabel Torres, who oversaw her hiring process.⁴⁴ A.A. accepted the job offer, which included a detailed list of job descriptions and employee benefits, including housing, travel, education, health, and social security for both A.A. and her dependents.⁴⁵

³⁷ *Id.*

³⁸ *Id.*

³⁹ Hypothetical, para. 26

⁴⁰ Hypothetical, para. 29

⁴¹ Hypothetical, para. 30

⁴² Hypothetical, para. 31-32

⁴³ Hypothetical, para. 34

⁴⁴ Hypothetical, para. 35

⁴⁵ *Id.*

On November 24, 2012, A.A. and her dependents, along with sixty Aravanian women and their dependents, traveled to Lusaria to work on El Dorado.⁴⁶ A.A. and her family lived in Lusaria for a little over a year while she worked on the farm.⁴⁷ For a time in 2013, they were required to live on the farm while the *Aerisflora* were prepared for transport to Aravania.⁴⁸

V. THE PETITIONERS' TRIP TO ARAVANIA

In January of 2014, A.A. and nine other women from El Dorado travelled from Lusaria to Primelia, Veloria in Aravania to transplant the *Aerisflora*.⁴⁹ The women were housed in larger quarters than in Lusaria.⁵⁰ The *Aerisflora* transplant was largely a failure, as many plants died due to different soil conditions.⁵¹ After being told by Maldini they would have to stay in Aravania for an additional week, A.A. decided to leave Primelia.⁵²

VI. INVESTIGATIONS & PROCEEDINGS IN ARAVANIA

After leaving Primelia, A.A. went to the Velora Police to file a complaint about the *Aerisflora* farming, detailing alleged poor working conditions and unsubstantiated rumors of violence she had heard of.⁵³ A.A. spoke of nine other women who travelled with her, although she did not know any of their names or surnames.⁵⁴ She also reported her dependents were still in Lusaria and she feared for their safety.⁵⁵ Police searched Maldini's social media accounts and located the campus

⁴⁶ Hypothetical, para. 36

⁴⁷ Hypothetical, para. 39

⁴⁸ *Id.*

⁴⁹ Hypothetical, para. 45.

⁵⁰ Hypothetical, para. 46

⁵¹ Hypothetical, para. 47

⁵² Hypothetical, para. 48

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

in Primelia, where they found Maldini alone, and promptly arrested him pursuant to a warrant issued by the Second Criminal Court.⁵⁶

Maldini invoked his diplomatic immunity under the Agreement.⁵⁷ Aravanaia requested Lusaria waive Maldini's immunity so he could be investigated, prosecuted, and punished if necessary; Lusaria refused.⁵⁸ The court subsequently dismissed the case without prejudice.⁵⁹ With the help of the Trafficking Victims Support & Reintegration Clinic ("TVSRC"), A.A. appealed the decision, but the Velora Court of Appeals affirmed.⁶⁰

In February of 2014, the Federal Prosecutor's Office of Lusaria opened an investigation against Maldini for alleged abuse of authority and human trafficking.⁶¹ Maldini was found guilty of abuse of authority, was sentenced to nine months in prison and barred from holding public office for five years, but did not find sufficient evidence to convict him of the crime of human trafficking.⁶²

In March of 2014, Aravanaia initiated proceedings against Lusaria for violating Article 23 of the Agreement, which required Lusaria maintain a certain acceptable level of labor standards.⁶³ The Special Arbitration Panel ruled unanimously in favor of Aravanaia and ordered Lusaria to pay \$250,000 to Aravanaia.⁶⁴ Aravanaia determined A.A. deserved \$5,000 as a result of Lusaria's failure to maintain appropriate labor standards.⁶⁵

⁵⁶ Hypothetical, para. 49

⁵⁷ Hypothetical, para. 50

⁵⁸ *Id.*

⁵⁹ Hypothetical, para. 51

⁶⁰ *Id.*

⁶¹ Hypothetical, para. 53

⁶² *Id.*

⁶³ Hypothetical, para. 55

⁶⁴ *Id.*

⁶⁵ *Id.*

It is important to note most of the *Aerisfloras* planted in Aravania have died and the flooding has continued.⁶⁶

VII. PROCEDURAL HISTORY

On October 1, 2014, the petitioners submitted a petition to the Inter-American Commission on Human Rights (“Commission”). Aravania filed a response with preliminary exceptions.⁶⁷ A decade later, on February 12, 2024, the Commission found Aravania was responsible for the violation of the rights established in Articles 3, 5, 6, 7, 8, 25, and 26 of the American Convention of Human Rights (“Convention/ACHR”), in relation to Articles 1.1 and 2 thereof, and Article 7 of the Convention of Belém do Pará (“CBDP”), to the detriment of A.A. and nine other women.⁶⁸ After Aravania denied state liability, the Commission transmitted the case before the Inter-American Court of Human Rights (the “Court”).⁶⁹

⁶⁶ *Id.*

⁶⁷ Hypothetical, para. 57

⁶⁸ Hypothetical, para. 58

⁶⁹ Hypothetical, para. 59

LEGAL ANALYSIS

ADMISSIBILITY GROUNDS

I. THIS COURT LACKS JURISDICTION TO HEAR THIS CASE. ARAVANIA DID NOT EXERCISE ITS JURISDICTION OVER THE VICTIMS.

Article 1(1) of the American Convention provides, in part: “[t]he States Parties ... undertake to respect the rights and freedoms ... to all persons subject to their jurisdiction.” Consequently, the exercise of jurisdiction is a necessary precondition for a state to incur responsibility for any conduct that may be attributed to it.⁷⁰ As a result, for this Court to hear the merits of this case, there must be evidence the State exercised jurisdiction over the petitioners. So far, this Court has applied only two tests to determine whether jurisdiction has vested: territorial and authority-control.⁷¹ Here, none of these are satisfied and therefore this Court lacks competence to hear this case.

A. This Court Does Not Have Territorial Jurisdiction

State’s sovereignty inherently includes the exercise of jurisdiction over its territory. Consequently, State parties are obligated to respect and protect the human rights of all individuals within its territory.⁷² Thus, this Court can hear claims for human rights violations which occur within the territory of a state.

Here, there is no territorial jurisdiction because A.A.’s allegations are based on what happened in Lusaria. When the petitioner reported her experiences to the Velora Police, she specifically referred to the working conditions and incidents of violence she knew about, all of which took place in Lusaria. Furthermore, the residential structures where she slept, the allegedly

⁷⁰ See *Ilaşcu*, para. 311; *Al-Skeini*, para. 130, and *Chiragov*, para. 168

⁷¹ *Franklin Guillermo Aisalla Molina*, paras. 90-99

⁷² *Jaloud*, para. 139

long shifts she had to work, the allegedly different treatment she received compared to her male coworkers, and the moment her identity documents were taken away all occurred in Lusaria.

In addition, A.A.'s hiring process was conducted by Maldini and Torres, who communicated with her via email and social media. Yet, none of this conduct happened in Aravania, because Maldini and Torres posted the videos, replied back and sent the hiring documentation to the petitioner while in Lusaria.

Accordingly, Aravania did not exercise jurisdiction over petitioners because what they alleged they endured happened in Lusaria, and it is clear Aravania has no sovereignty over Lusarian territory. Therefore, this Court lacks competence to hear this case.

B. This Court Does Not Have Authority-Control Jurisdiction

There are some situations in which the extraterritorial conduct of a State entails the exercise of its jurisdiction.⁷³ This Court has found authority-control jurisdiction in the following scenarios: when petitioner is present in the territory of a State but is subject to the control of another State, through the actions of that State's agents abroad,⁷⁴ also in cases relating to military interventions, as well as in military facilities outside a State's territory.⁷⁵

Here, there was no exercise of extraterritorial jurisdiction by Aravania. There is not a single fact that supports the contention that Aravania exercised control or authority over A.A. and the nine other women while in Lusaria. Aravania did not participate in the direction of the operations at Finca El Dorado. The person in charge of the operations at Finca El Dorado was Maldini. He was neither hired nor directed by Aravania. Instead, he was hired by the owners of the premises in Lusaria. Maldini had a couple more positions and yet none of them were under Aravania's

⁷³ *Danny Honorio Bastidas Meneses*, para. 21

⁷⁴ *Franklin Guillermo Aisalla Molina*, paras. 90-99; *Armando Alejandro Jr.*, para. 23

⁷⁵ *Djamel Ameziane*, para. 35

authority or control. For instance, he held a position in the administration of Lusarian president and he was appointed as Lusaria's Special Attaché for Public and Commercial Relations for *Aerisflora*. Hence, it cannot be argued Maldini was acting on behalf or under the authority of Aravania. Clearly, for petitioners to succeed in bringing their claim, they needed to bring it against Lusaria, not Aravania.

Moreover, this Court, in many cases such as *Djamel Ameziane* and *Armando Alejandro*, has emphasized extraterritorial jurisdiction involves situations of military actions or actions by State security forces that indicate control or authority in the execution of the extraterritorial conduct.⁷⁶ Here, unlike *Djamel Ameziane* and *Armando Alejandro*, there was no moment when Aravania's forces or military were present in Lusaria. The control or authority this Court has held is sufficient to establish extraterritorial jurisdiction is not present in this case.

In addition, this Court has emphasized extraterritorial jurisdiction is exceptional and, as such, should be interpreted restrictively.⁷⁷ Similar jurisprudence is followed by the ECHR.⁷⁸ In *Banković*, it reasoned holding a State accountable for any infringement of individuals' rights, regardless of their location, would render the requirement that individuals be "within the jurisdiction" of States parties "superfluous and devoid of purpose."⁷⁹ Here, by applying extraterritorial jurisdiction restrictively - as this Court has only found such jurisdiction in cases involving military interventions, it cannot be applied to other scenarios. Otherwise, as the ECtHR predicted, it would render the language of the Convention meaningless.

⁷⁶ Advisory Opinion on the Environment and Human Rights, para. 81; *Armando Alejandro Jr.*, paras. 23 to 25; *Djamel Ameziane*, para. 35

⁷⁷ *Id.*

⁷⁸ *Banković*, para. 75

⁷⁹ *Id.*

Furthermore, in *Victor Saldaño*, this Court held nationality is not sufficient to sustain a victim's legal claim when the violation happened outside the State's territory and there was a lack of authority or control over the victim and the individuals who committed the violation.⁸⁰ Here, similar to *Victor Saldaño*, petitioners cannot sustain a claim against Aravania simply because they are Aravania nationals, especially when the conduct they allege violated their rights did not happen in Aravania, nor was directed by any Aravania's agents.

Lastly, there is only one moment in which the petitioners were in Aravania's territory. Specifically, when they were taken back to Aravania in January 2014. Not even at that moment can petitioners argue Aravania exercised jurisdiction over them. The premises were coordinated exclusively by Lusarian staff and during their trip, it was Maldini who accompanied them. Moreover, the fear and control inherent in forced labor can only be achieved when they persist over a significant period. It cannot be reasonably alleged someone has been a victim of forced labor if they only worked for a week or two, as fear and control typically require time to become deeply ingrained. It can hardly be said that petitioners were victims of forced labor in Aravania when they spent less than two weeks in those premises. Indeed, the fact that A.A. *left* and not that she *escaped* the premises in Primelia to go to the police, proves she was not subjected to force or control. Thus, petitioners' allegation that they were victims of forced labor could only be substantiated if the focus is placed on what took place in Lusaria.

Accordingly, Aravania did not exercise jurisdiction over the petitioners, not only because most of the conduct happened outside Aravania's territory but also because it was solely directed by Lusaria agents. Therefore, this Court lacks competence to hear this case.

⁸⁰ *Saldaño*, paras. 15 to 20

II. THE CLAIMS INVOLVING THE NINE OTHER WOMEN ARE INADMISSIBLE. THE COMMISSION FAILED TO IDENTIFY THEM.

This Court has consistently interpreted Article 44 of the ACHR to require that for a petition to be admissible, there must be concrete victims who have been individualized and identified.⁸¹ Hence, pursuant Article 35(1) of the Rules of Procedure, a case submitted must contain the identification of the alleged victims. Accordingly, it is the Commission responsibility to identify precisely and at the proper procedural opportunity the alleged victims in a case before the Court.⁸²

In *Juvenile Reeducation Institute*, this Court asked the Commission to identify by name the alleged victims, and notified the Commission if this was not done, the case would continue to be processed, but only regarding the alleged victims identified in the application.⁸³ Similarly, in *Vereda La Esperanza*, this Court reiterated the Commission's failure to explain why the alleged victims could not be identified would allow the State's preliminary objection in relation to the unidentified victims to succeed.⁸⁴ Here, the Commission failed to identify the "nine other women" they allege as victims. Similar to *Juvenile Reeducation Institute* and *Vereda La Esperanza*, the lack of efforts by the Commission to identify the nine other women and next of kin supports the inadmissibility of the claims for those alleged victims.⁸⁵

Furthermore, in exceptional circumstances contemplated in Article 35(2) of the Rules of Procedure, when it has not been possible to identify one or more of the alleged victims, the Court shall admit the case, and identify the alleged victims during the merits stage.⁸⁶ In applying Article 35(2), this Court has considered the many difficulties in identifying or contacting all the alleged

⁸¹ *Chang Bravo*, para. 38

⁸² *Ituango*, para. 98; *Favela Nova*, para. 36

⁸³ *Juvenile Reeducation Institute*, para. 110

⁸⁴ *Vereda La Esperanza*, para. 34

⁸⁵ *Juvenile Reeducation Institute*, para 110; and *Vereda La Esperanza*, para. 34

⁸⁶ *Rio Negro*, para. 48; and *Favela Nova*, para. 36

victims.⁸⁷ Among them are in situations pertaining to the burning of the bodies of the alleged victims,⁸⁸ the absence of records related to the local inhabitants,⁸⁹ the passage of time,⁹⁰ or cases in which entire families have disappeared to the point that no one is left who can speak for them.⁹¹ None of these difficulties are present in this case, thus Article 35(2) does not apply.

For instance, in *Ituango Massacres*, this Court applied Article 35(2) for the identification of the alleged victims.⁹² First and foremost, *Ituango* involved massacres; the number of victims was between 40 and 50. Second, many of the victim's families had moved, disappeared, or passed away, making the victims' identification even more difficult because there was no one who could speak for them.⁹³ Third, the *Ituango* court also considered that there were no identity documents or records that could support the victim's identification at the time the petition was filed.⁹⁴ Here, unlike *Ituango Massacres*, this case does not involve massacres or a large number of victims. The identification of the petitioners concerns only nine individuals. In addition, there were many records from which the Commission could have obtained the names of these women. Specifically, in the hiring process, Torres had gathered the name of these women for the purpose of filling out the special social security benefits forms and the documentation required for their entry into Lusaria. Also, reports related to employees working on the *Aerisflora* project, as stipulated under Article 23.2(c) of the Agreement, were also available. Most importantly, the police itself had the immigration records for the days the nine other women crossed the border. Since A.A. and the nine other women crossed the border together, it was just a matter of locating A.A.'s name and finding

⁸⁷ *Ituango*, para 92

⁸⁸ *El Mozote*, para. 50

⁸⁹ *Rio Negro*, para. 48; *Favela Nova*, para. 37

⁹⁰ *Rio Negro*, para. 51; *Favela Nova*, para. 37

⁹¹ *Rio Negr*, para. 48; *Favela Nova*, para. 37

⁹² *Ituango Massacres*, para. 92

⁹³ *Id.*, para. 221

⁹⁴ *Id.*

the nine other women's names. In fact, three of these women's first names were known. Maria, Sofia and Emma, this made the location of their names in the immigration records easier. Consequently, given that the case at hand lacks the complexities presented in *Ituango*, identifying the nine other women was materially possible. Had the Commission made the small effort to take all these records into account,⁹⁵ it would have complied with the identification requirement pursuant to Article 35(1). However, they failed to do so, thereby making these claims inadmissible.

Lastly, in *Favela Nova*, this Court upheld the State's preliminary objection due to the absence of difficulties that could prevent the identification of the victims.⁹⁶ This Court reasoned "the collective [nature of the] violation, and the passage of time [could not] be considered sufficient to apply the exception established in Article 35(2)."⁹⁷ Here, the circumstances are even less compelling than those in *Favela Nova Brasilia*. The alleged violations are not collective, relatively short time has passed since their occurrence, and there were many records available with the petitioner's names. Therefore, this Court should follow its jurisprudence in *Favela Nova Brasilia* and grant Aravania's preliminary objection.

Accordingly, the Commission failed to identify the petitioners when no difficulties were present to do so and thus, it was materially possible. Therefore, this Court should declare the inadmissibility of the nine other women and next of kin claims.

III. THE SUBSIDIARITY PRINCIPLE PRECLUDES THIS COURT FROM HEARING THIS CASE.

This Court has stated many times that the Inter-American System of Human Rights has a "local or national tier consisting of each State's obligation to guarantee the rights and freedoms

⁹⁵ *Favela Nova*, para. 40

⁹⁶ *Id.*

⁹⁷ *Id.*, para. 39

recognized in the Convention and punish the violations committed.”⁹⁸ Accordingly, when a question has been definitively settled under domestic law, the matter need not be brought before this Court for approval or confirmation.⁹⁹

Moreover, the principle of subsidiarity, expressed in the American Convention as “reinforcing or complementing the protection provided by the domestic law of the American States,”¹⁰⁰ is grounded on the premise that the State is the principal guarantor of human rights. Consequently, if a violation occurs, the State must resolve the issue in the domestic system and, if applicable, redress the victim before resorting to international forums, such as the Inter-American System of Human Rights.¹⁰¹ The upshot of the subsidiary nature of this Court is that the system of protection established by the Convention is not a substitute for domestic jurisdiction. Rather, it complements domestic jurisdiction only when the State fails to investigate and redress the harm.¹⁰²

A. The Case is Moot Because an Investigation Was Conducted and Maldini Was Punished.

In *Tarazona Arrieta*, this Court, recognizing the principle of subsidiarity, decided not to rule on the State’s international responsibility because under its internal legal system, it had effectively investigated the violations underlying the case before the Court.¹⁰³ Here, similar to *Tarazona Arrieta*, A.A.’s alleged harm was addressed. The Velora Police acted immediately when A.A. made the report. They checked Maldini’s social media accounts and visited Primelia to inspect the premises. In accordance with internal law and with due diligence, the Velora Police obtained a warrant issued by the Second Criminal Court Judge of Velora and arrested Maldini.

⁹⁸ *Tarazona Arrieta*, para. 136

⁹⁹ *Las Palmeras*, para. 33

¹⁰⁰ ACHR, Preamble

¹⁰¹ *Acevedo Jaramillo*, para. 66; *Santo Domingo*, para. 142

¹⁰² *Tarazona Arrieta*, para. 137

¹⁰³ *Id.*, para. 140

Even when Maldini invoked his immunity, Aravania took the initiative and reasonable steps, given the circumstances, to waive Maldini's immunity. Immediately the day after, the Ministry of Foreign Affairs of Aravania, contacted the Ministry of Foreign Affairs of Lusaria, formally requesting Maldini's immunity be waived in order for him to be investigated, prosecuted and, if appropriate, punished for the acts complained of by A.A. However, Lusaria denied the petition stressing State immunity is customary international law¹⁰⁴ and because the conduct happened in its territory, Lusaria was the State competent to investigate the matter.

It is important to note Aravania found itself in a complex situation where the customary international law of State immunity directly conflicted with A.A.'s ongoing investigation. For Aravania to recognize an exception to State immunity would have led to an inevitable diplomatic clash during the ruling and enforcement process, in addition to the potential lawsuit Aravania could face from Lusaria for violating State immunity. Similar to what the ICJ concluded in *Germany v. Italy*, it is not possible to justify a breach of State immunity in cases of serious human rights violations.¹⁰⁵ Even less for labor law matters, like the one presented in this case.

As a result, Aravania pursued all available legal options, and ultimately, Lusaria took over the investigation and held Maldini accountable. An investigation was opened against Maldini for the crimes of abuse of authority and human trafficking under the Criminal Code of Lusaria, sentencing him to nine months in prison and barring him from holding public office for five years.

Accordingly, the conduct for which the petitioner brings this claim has already been addressed internally, and based on the complementary nature of this Court, when a matter has been resolved, there is no room for review.

¹⁰⁴ Vienna Convention on Diplomatic Relations; ICJ, *Germany v. Italy*

¹⁰⁵ ICJ, *Germany v. Italy*

B. A.A. Received Compensation

Not only did Aravanja act with due diligence when A.A. made the report to the police by pursuing all available options for the investigation and punishment of Maldini, but it also provided compensation to A.A. Specifically, Aravanja provided US \$5,000 to A.A.

Furthermore, the review of this compensation amount, falls outside the scope recognized by this Court. In *Spoltore*, a worker sought recognition of health problems as an occupational sickness and requested compensation.¹⁰⁶ The *Spoltore* court clarified it was not its competence to analyze whether the petitioner was entitled to the compensation he requested.¹⁰⁷ Similar to *Spoltore*, this Court lacks competence to review the quantum of the compensation provided to A.A. Additionally, following this Court's jurisprudence an effective remedy is not about money, but rather about the investigation, and if appropriate, the punishment of the perpetrators.¹⁰⁸ Here, an effective remedy was provided because Maldini's conduct was effectively investigated and punished with due diligence and within a reasonable time after the petitioner's report, regardless of the quantum of the compensation provided to A.A.

Accordingly, A.A. received an adequate remedy because once she sought help, Aravanja acted promptly, Maldini's conduct was investigated and punished, and A.A. was also provided with US \$5,000. Thus, because the matter was already addressed by Aravanja, by recognizing its complementary nature, this Court should abstain from declaring State liability.¹⁰⁹

Finally, in *Amrhein*, this Court recalled the preliminary objection based on the principle of subsidiarity is a defense for the State challenging the admissibility of a case.¹¹⁰ Consequently, this

¹⁰⁶ *Spoltore*, para. 77

¹⁰⁷ *Id.*

¹⁰⁸ *Cepeda Vargas*, para. 139

¹⁰⁹ *Tarazona Arrieta*, para. 137

¹¹⁰ *Amrhein*, para. 100

Court resolved the issue during the procedural stage.¹¹¹ Here, following this Court’s jurisprudence in *Amrhein at el*, the issue should be analyzed in the procedural stage of this case, and based on the subsidiarity nature of the Inter-American system, this Court should order the inadmissibility of the case.

ARGUMENTS ON THE MERITS

Under Article 1.1 of the ACHR, a State’s foremost obligation is “to respect human rights[, which] implies the... obligation not to violate, either by action or omission, the rights recognized in the ACHR and in other relevant instruments.”¹¹² The Court has recognized the State’s obligations go further, however. States mustn’t “merely abstain from violating rights, but must adopt positive measures to be determined based on the specific needs of protection of the subject of law.”¹¹³ This obligation to take positive actions requires the implementation of a systematic approach in which the overall State governmental structure is one that ensures a “free and full exercise of human rights.”¹¹⁴ This obligation is subdivided into four duties: (1) to prevent; (2) to investigate; (3) to punish; and (4) to make reparations.¹¹⁵

I. ARAVANIA COMPLIED WITH ITS OBLIGATION TO PREVENT

The Court has defined the State’s obligation to prevent as a duty to adopt preventative measures for individuals when the State becomes apprised of a situation of real and imminent danger and possesses a reasonable possibility of preventing said danger.¹¹⁶ However, the Court also clarified a State cannot be held responsible for every human rights violation committed

¹¹¹ *Id.*

¹¹² *Velásquez Rodríguez*, para. 169

¹¹³ *Cotton Field*, para. 243; *Baldeón-García*, para. 81; *Sawhoyamaya*, para. 154; *Pueblo Bello*, para. 111

¹¹⁴ *Velásquez Rodríguez*, para. 173; *Cotton Field*, para. 236

¹¹⁵ Human Mobility Report

¹¹⁶ *Pueblo Bello*, para. 123; *Sawhoyamaya*, para. 155; *Kiliç*, paras. 62-63, *Osman*, paras. 115-116

between private individuals within its jurisdiction.¹¹⁷ Indeed, the Court recognizes “failure to comply with [the obligation to prevent] is not proved merely because the right has been violated.”¹¹⁸

A. Aravania Prevented the Inhumane Treatment, Restriction, and Forced Labor of the Petitioners

Aravania complied with its obligation under Articles 5, 6 and 7 in conjunction with Article 1.1 of the ACHR¹¹⁹ to prevent the inhumane treatment, restriction, and enslavement of the Petitioners. Firstly, Aravania criminalizes forced labor,¹²⁰ which is a proactive step to prevent. Secondly, Aravania’s legal mechanisms jumped into action immediately upon hearing A.A.’s allegations. Police swiftly conducted an investigation,¹²¹ arrested Maldini,¹²² the Aravanian courts prosecuted his case and heard an appeal swiftly,¹²³ the government stepped in to try to circumvent the immunity issue,¹²⁴ and initiated dispute resolution proceedings against Lusaria specifically for violations of the forced labor provision under the Agreement.¹²⁵ In contrast to *Ituango*, in which the Court found “the State ‘has neither developed any public policy to deal with the causes of [the violations], nor [...] has it taken measures to avoid them’.”¹²⁶ Here, Aravania not only took proactive action to address the underlying causes of inhumane treatment, restriction of movement, and forced labor, but took swift action to quell it once they were made aware of A.A.’s complaint.

¹¹⁷ *Cotton Field*, para. 280

¹¹⁸ *Id.* para. 252; *Perozo*, para. 149; *Anzualdo Castro*, para. 63

¹¹⁹ ACHR, Arts. 1.1, 6-7

¹²⁰ Hypothetical, para. 9

¹²¹ Hypothetical, para. 49

¹²² *Id.*

¹²³ Hypothetical, para. 51

¹²⁴ Hypothetical, para. 50

¹²⁵ Hypothetical, para. 25

¹²⁶ *Ituango* para. 202(f)

B. Aravanja Prevented Violence Against Women

Aravanja complied with its obligation under Article 7 of the CBDP to prevent violence against women. Aravanja has human trafficking protections enshrined in its criminal code¹²⁷ and is a member of multiple treaties that protect human rights and womens' rights specifically, which hold constitutional status.¹²⁸ Aravanja also included specific protections for women in the Agreement.¹²⁹ Additionally, Aravanja swiftly investigated and attempted to prosecute Maldini upon A.A.'s report.¹³⁰ In contrast to *Maria da Penha*, in which the Commission found the state failed to uphold its duty to prevent violence against women because "the violence suffered by [the victim] is part of a general pattern of negligence and lack of effective action by the State in prosecuting and convicting aggressors,"¹³¹ and saw "no evidence of willingness by the State... to take effective action to sanction such acts."¹³² Here, Aravanja upheld its duty to prevent by taking multiple proactive and reactive measures that show a clear indication of its willingness to sanction any violence against women.

II. ARAVANIA COMPLIED WITH ITS OBLIGATION TO INVESTIGATE & PUNISH

The Court has also held "in order to comply with the obligation of guarantee, the States must not merely prevent, but also investigate and punish violations of the human rights recognized in [the ACHR]."¹³³ The Court has explained the duty to investigate and punish includes (1) conducting a serious investigation as opposed to one conducted as a formality with a preordained conclusion;¹³⁴ (2) conducting an investigation and doling out punishment regardless of a potential

¹²⁷ Hypothetical, para. 9

¹²⁸ Hypothetical, para 10

¹²⁹ Hypothetical, para. 25

¹³⁰ Hypothetical, para. 49

¹³¹ *Maria Da Penha*, para. 56

¹³² *Id.*

¹³³ *Barrios Family*, para. 174; *Garibaldi*, para. 112

¹³⁴ *Velásquez Rodríguez*, para. 177; *Torres Millacura*, para. 112

lack of attribution to the State due to the conduct being carried out by third parties;¹³⁵ (3) cooperating with the state of transit or origin in cases of cross-border trafficking;¹³⁶ and (4) conducting the investigation and doling out the punishment with due diligence.¹³⁷ The Court has understood in cases of violations of the rights to life, personal integrity, personal liberty and the prohibition of slavery, servitude, and trafficking in persons the obligation to investigate and punish stems from Article 1.1 of the ACHR, which accompanies the obligation to uphold the substantive right included in each of their respective articles.¹³⁸

A. Aravanja Acted with Due Diligence

Article 8 of the ACHR guarantees each person a right to a fair trial “by a competent, independent, and impartial tribunal.”¹³⁹ In *Hacienda Verde*, the Court explained “since protection against slavery and conditions similar to slavery is an international obligation *erga omnes*... when States are aware of an act that constitutes slavery, servitude or trafficking, in the terms of Article 6 of the American Convention, they should open *ex officio* the pertinent investigation in order to establish the corresponding individual responsibilities.”¹⁴⁰

Aravanja complied with their responsibility under Article 8 to conduct due diligence. Every step of the way, Aravanja displayed meticulous due diligence and was undeterred by obstacles. They sent representatives ahead to scope out Lusaria and its working conditions and found Lusarian labor standards to be sufficiently in line with the ACHR.¹⁴¹ Additionally, Aravanja included the furnishing of regular reports on workplace conditions to be sent monthly from

¹³⁵ *Cotton Field*, para. 291

¹³⁶ *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, para. 390

¹³⁷ *Id.* at para. 247

¹³⁸ *Pueblo Bello*, para. 142; *Heliodoro*, para. 115; *Perozo*, para. 298

¹³⁹ ACHR, Art. 8

¹⁴⁰ *Hacienda Verde*, para. 209

¹⁴¹ Hypothetical, para. 21

Lusaria.¹⁴² This is in compliance with a state's obligation to "carry out appropriate risk assessments in relation to the safety and health of workers."¹⁴³ A police investigation was immediately opened after the complaint by A.A.¹⁴⁴ Police investigated social media platforms to identify the actors and pattern of recruitment.¹⁴⁵ Police immediately conducted a search of the farm in Primelia.¹⁴⁶ Police requested the domestic court issue a warrant for the arrest of Maldini and Aravanian police subsequently detained him.¹⁴⁷ Aravana requested Lusaria waive Maldini's diplomatic immunity.¹⁴⁸ The Aravanian courts held proceedings regarding Maldini's involvement despite the dismissal due to Maldini's diplomatic immunity.¹⁴⁹ An appeal was even entertained after the dismissal of the case in Aravanian courts.¹⁵⁰ Further, Aravana monitored Lusaria's exercise of jurisdiction over the matter.¹⁵¹ Finally, Aravana invoked the arbitration as a consequence of the findings of the Lusarian courts.¹⁵² Conversely, the court found Brazil failed to conduct due diligence in *Hacienda Verde* due to "the integrity of the... workers [being in] danger, the consequent urgency as a result of their situation of working in conditions similar to slavery."¹⁵³

B. Aravana Provided a Hearing Within a Reasonable Time

Additionally, Article 8 requires a person be guaranteed a hearing "within a reasonable time."¹⁵⁴ While the Court lays out a framework to analyze whether a decision has been handed down within a reasonable time, the domestic decisions of the Aravanian Courts were handed down

¹⁴² Hypothetical, para. 25

¹⁴³ ILO, Safety & Health in Agriculture Convention, art. 7(a)

¹⁴⁴ Hypothetical, para. 49

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Hypothetical, para. 50

¹⁴⁹ Hypothetical, para. 51

¹⁵⁰ *Id.*

¹⁵¹ Hypothetical, para. 53

¹⁵² Hypothetical, para. 55

¹⁵³ *Hacienda Verde*, para. 368

¹⁵⁴ ACHR, art. 8

within two weeks of A.A.'s complaint at the trial level and within three months of the complaint at the appellate level.¹⁵⁵ Conversely, the proceedings that led to the Court's finding of Brazil in violation of the reasonable time clause of Article 8 in *Hacienda Verde* "lasted approximately 11 years."¹⁵⁶ Clearly Aravania's judicial system worked with sufficient alacrity to meet the reasonable time requirement of Article 8 of the ACHR.

C. Aravania Fulfilled its Obligation to Make Reparations

Under Article 25, states "must guarantee the means to execute the respective decisions and final judgments of these competent authorities, so they provide effective protection for the rights that have been declared or recognized."¹⁵⁷ Aravania provided A.A. with actual recourse. She had the ability to bring her complaint to the police and have Maldini brought before the Second Criminal Court.¹⁵⁸ The Aravanian judicial system made efforts to prosecute Maldini but were prevented from doing so due to his diplomatic immunity.¹⁵⁹ Since Aravania is a member of the VCDR, Maldini was not subject to criminal or civil proceedings within Aravanian jurisdiction.¹⁶⁰ The Aravanian government went as far as to request that Lusaria revoke Maldini's diplomatic immunity so they could prosecute him for his alleged crimes.¹⁶¹ Despite the lower court's dismissal, A.A. was provided with the ability to appeal that decision, which was also heard swiftly.¹⁶² Articles 8 and 25 of the ACHR do not require a state's domestic courts find in favor of every petitioner, merely that the states allow access to judicial remedies.¹⁶³

¹⁵⁵ Hypothetical, paras. 49-51

¹⁵⁶ *Hacienda Verde*, para. 371

¹⁵⁷ ACHR, art. 25

¹⁵⁸ Hypothetical, para. 49

¹⁵⁹ *Id.*

¹⁶⁰ Vienna Convention on Diplomatic Relations, arts. 29, 31

¹⁶¹ Hypothetical, para. 50

¹⁶² Hypothetical, para. 51

¹⁶³ ACHR, arts. 8 and 25

D. Aravania Was Unable to Prosecute Maldini Due to Diplomatic Immunity

Maldini's immunity was established under the Agreement.¹⁶⁴ The scope of Maldini's employment is governed under the VCDR, of which Aravania is a founding member.¹⁶⁵ All of his alleged conduct occurred within the scope of his employment under the Agreement and can be considered professional or commercial activity within his official functions, meaning on behalf of the state that is covered by immunity. Specifically, the scope of Maldini's state employment under the VCDR includes "negotiating with the government of the receiving state."¹⁶⁶ His recruitment of Aravanian workers was done to commence the work under the Agreement.¹⁶⁷ His management of El Dorado, the farm in Primelia and the labor conditions at each was done to facilitate the job under the Agreement.¹⁶⁸ His transportation of the Petitioners to Aravania was done to fulfill the delivery of the *Aerisflora* under the Agreement.¹⁶⁹ This is opposed to conduct purely for personal profit, which Courts have found to not be covered by immunity, such as in the U.K. Supreme Court case of *Basfar v. Wong*.¹⁷⁰

E. Aravania's Reparations Were Adequate

Finally, in cases where the victim cannot be guaranteed the enjoyment of the rights or freedoms already violated, the State is responsible to repair the consequences regarding the breach of the rights and to compensate the victim, under Arts. 8 and 25 in conjunction with Art. 1(1) of the Convention.¹⁷¹ In this case, Aravania used part of the reparations awarded to them in their

¹⁶⁴ Hypothetical, para. 25

¹⁶⁵ Vienna Convention on Diplomatic Relations, art. 3

¹⁶⁶ *Id.* art. 3(1)(c)

¹⁶⁷ Hypothetical, para. 25

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Basfar*

¹⁷¹ *Velásquez Rodríguez*, para. 189

arbitration against Lusaria to pay A.A. \$5,000. This is in compliance with Aravania's obligation to peacefully resolve disputes.¹⁷²

III. ARAVANIA COMPLIED WITH ITS OBLIGATION TO ADOPT DOMESTIC LEGAL PROVISIONS

The Court has determined pursuant to Article 2 of the ACHR, States are under an obligation to adopt domestic legal provisions that give effect to the rights and freedoms guaranteed by the ACHR.¹⁷³ The Court has defined: (1) the duty to eliminate any domestic laws that currently violate these rights and implement laws that enshrine them;¹⁷⁴ and (2) to provide effective and accessible domestic judicial remedies for alleged violations of the rights contained in the ACHR.¹⁷⁵

Further, Article 25 of the ACHR guarantees each person's right to simple, prompt, and effective recourse.¹⁷⁶ The Court has held states must "establish by law effective remedies that protect everyone subject to their jurisdiction from acts that violate their fundamental rights, or that determine their rights and obligations, and ensure due implementation of such remedies by the competent authorities."¹⁷⁷ Aravania has taken extensive measures to provide recourse for victims of both labor violations and human trafficking by incorporating judicial protections and remedies for these offenses in their domestic law.

Aravania has created a structural framework at a governmental level which ensures effective criminal and civil recourse for victims of forced labor and human trafficking in compliance with their obligation under Article 25 of the ACHR. They have adopted various laws and articles within the Aravanian Constitution and have signed and ratified multiple human rights

¹⁷² UN Charter, art. 33

¹⁷³ *El Mozote*, para. 296; *Castillo Petruzzi*, para. 207; *Forneron*, para. 131

¹⁷⁴ *Id.*

¹⁷⁵ *Serrano Sáenz*, para. 78

¹⁷⁶ ACHR, art. 25

¹⁷⁷ *Id.*

treaties which provide recourse for victims of forced labor and human trafficking.¹⁷⁸ It is important to note these human rights treaties have constitutional status in Aravania.¹⁷⁹

Aravania has adopted domestic legislation to protect against labor violations. The Aravanian Constitution protects “the right to life, honor, liberty, security, work, and property... [and] fair wages.”¹⁸⁰ It also requires “State authorities must respect and ensure human rights in all their actions, including economic, social, cultural, and environmental rights.”¹⁸¹ Aravania is also a member of the ILO.¹⁸² Aravania has also criminalized forced labor.¹⁸³ If this is not enough, Aravania specifically included Article 23 in the Agreement to provide additional protections for laborers and the workplace.¹⁸⁴ Aravania followed through on their commitment to providing recourse for labor disputes when they initiated dispute resolution proceedings against Lusaria for breach of Article 23 of the Agreement.¹⁸⁵ Aravania even decided *sua sponte* to give a portion of their reparations to A.A., despite the Special Arbitration Panel not requiring them to do so.¹⁸⁶

Aravania has also adopted domestic legislation to protect against human trafficking. Aravania has criminalized it in Article 145 of their criminal code.¹⁸⁷ They are also a member of a number of international organizations specifically aimed at the prevention of human rights abuses, including human trafficking.¹⁸⁸ Professors Claudia Pinzón and Diego Martin, experts in international law, even stated Aravania “has a comprehensive policy for the prevention and

¹⁷⁸ Hypothetical, paras. 8-10

¹⁷⁹ Clarification, para. 38

¹⁸⁰ Hypothetical, para. 8

¹⁸¹ *Id.*

¹⁸² Hypothetical, para. 10

¹⁸³ Hypothetical, para. 9

¹⁸⁴ Hypothetical, para. 25

¹⁸⁵ Hypothetical, para 55

¹⁸⁶ *Id.*

¹⁸⁷ Hypothetical, para. 9

¹⁸⁸ Hypothetical, para. 10

punishment of human trafficking and an international obligation to punish such acts.”¹⁸⁹ While *Hacienda Verde* found the existence of protections in domestic law was insufficient if the state did not evaluate the merits of the case, Aravania’s hands were tied due to Maldini’s immunity.¹⁹⁰

Aravania has codified labor and human rights protections into their domestic law via their criminal code, treaties that have constitutional status, and the text of the Aravanian Constitution itself. In contrast to cases like *Almonacid Arellano*, in which the state was found in violation of its obligation to adopt domestic legislation because not only did the state’s domestic law not provide protections, it provided amnesty to offenders.¹⁹¹

IV. ARAVANIA COMPLIED WITH ITS OBLIGATION OF NON-DISCRIMINATION.

The obligation of the State to ensure legal equality is enshrined in Articles 1.1 and 24 of the ACHR. They require “all persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law...”¹⁹² A specific obligation of non-discrimination against women is imposed on States in Article 7 of the CBDP. Article 7 of the CBDP requires states to condemn violence against women and implement policies to prevent and punish violence against women.¹⁹³ However, the Court “has established ‘that not all human right violation committed against a woman implies necessarily a violation of the provisions in the Convention of Belém do Pará.’”¹⁹⁴ The Court has required proof the conduct was systematic, violent, the conduct was solely targeted at women, and the reason why the conduct was targeted specifically at women for their gender.¹⁹⁵

¹⁸⁹ Hypothetical, para. 52

¹⁹⁰ *Hacienda Verde*, para. 392

¹⁹¹ *Almonacid Arellano*, para. 145

¹⁹² ACHR, arts. 1.1 and 24

¹⁹³ Convention of Belém do Pará, art. 7

¹⁹⁴ *Cotton Field*, para. 227

¹⁹⁵ *Perozo*, para. 295

A. Aravanja Did Not Discriminate Based on Gender

First, the conduct which the Petitioners complain of does not consist of violence. The primary complaints touch upon labor issues and problems with working conditions, more importantly taking place in Lusaria. The only mention of any violence in the Petitioners' account are two unsubstantiated rumors: one of violence against a female laborer by Joaquin Diaz and the other of sexual assault of one of the female workers.¹⁹⁶ While these rumors are serious in nature, there has been no proof put forward to substantiate them, and as such they cannot be taken as true at this time. Besides, the victims have not come forward to require assistance by the State, and even if these cases are of special character due to the vulnerability of the victims, the obligation to investigate by the State was met as once AA visited the Police, Aravanja's law enforcement went to the farm, and found nobody but Maldini. Further, even taking these rumors as true, they represent two isolated instances of violence towards women, not systematic violence against women. This is in contrast to *Cotton Field*, in which the "femicides in Ciudad Juárez... [followed a] systematic pattern... involving sexual abuse..."¹⁹⁷ of solely women.

Second, the recruitment of Aravanian workers was not only of women. The advertisements for the program were aimed at attracting Aravanians in search of employment and a better life.¹⁹⁸ A number of men were hired as well.¹⁹⁹ In *Cotton Fields*, the murders were only of women, there was no diversity of harm.²⁰⁰ Since the Court in *Cotton Fields* required systematic conduct directed solely at women based on their gender to find a violation of the CBDP, and this case involves

¹⁹⁶ Hypothetical, para. 43

¹⁹⁷ *Cotton Field*, para. 83(q)

¹⁹⁸ Hypothetical, para. 29

¹⁹⁹ Hypothetical, para. 37.

²⁰⁰ *Cotton Field*, para. 83(q)

conduct that, even if deemed systematic, was directed at both genders based on their desire for new employment. Aravania complied with their obligation under the CBDP.

B. Aravania Did Not Discriminate Based on Economic Status

Aravania complied with its obligation of non-discrimination and did not discriminate based on economic status. Aravania recognized a need for economic stimulus, particularly in the Campo de Santana area, where people often lacked reliable work.²⁰¹ Aravania entered into the Agreement, which guaranteed jobs for Aravanian citizens.²⁰² Additionally, Campo de Santana was the most sensible location to source workers from as it lies on the Aravanian-Lusarian border.²⁰³ This is in contrast to *the Fireworks Factory* in which workers were hired based on their economic status for exploitative reasons.²⁰⁴ Here, Aravania's conduct only sought to improve the lives of workers and their selection of a location to source workers was based on proximity.

VI. ARAVANIA COMPLIED WITH ITS OBLIGATION OF PROGRESSIVE DEVELOPMENT

Article 26 of the ACHR protects the right to “just and favorable conditions that ensure safety, health and hygiene of the worker”.²⁰⁵ The state has a duty to incorporate the right to a safe and hygienic workplace in their internal legislation,²⁰⁶ and particularly the obligation of “prevention of occupational accidents and diseases.”²⁰⁷

A. The Petitioners Worked in Adequate Conditions

The Petitioners' labor conditions were just, favorable, and ensured health and hygiene. Their forty-eight-hour work week is in compliance with ILO standards.²⁰⁸ The Petitioners' work

²⁰¹ Hypothetical, para. 3

²⁰² Hypothetical, para. 25

²⁰³ Hypothetical, para. 1

²⁰⁴ *Fireworks Factory*, para. 1

²⁰⁵ *Miskito Divers*, para. 68

²⁰⁶ *Id.* at para. 69

²⁰⁷ *Id.* at para. 74

²⁰⁸ ILO, Hours of Work Convention, Preamble

in the kitchen after hours was not mandated by the state or their employers, it was a product of social pressure. “A.A. learned from the experience of other workers that people who did not help in the kitchen were scolded by the others.”²⁰⁹ Work in sun or rain is standard in agricultural. Petitioners only lived on the farms for a few weeks, and only during transplant.²¹⁰ Additionally, their quarters provided a range of 4.6-5 square meters of living space per person.²¹¹ The International Property Maintenance Code requires a minimum of 4.6 square meters of living space per person.²¹² In contrast, in *Hacienda Verde*, the victims worked long hours, over a few weeks, under the threat of armed guards, with inadequate living conditions.²¹³

B. Aravania’s Domestic Legislation Includes Labor Protections

Aravania’s domestic law ensures proper working conditions and prevents labor violations.²¹⁴ Aravania made sure to provide even more stringent labor protections for the laborers under the Agreement.²¹⁵ While labor conditions were not the best, they were not in violation of occupational standards.²¹⁶ Importantly, there were no workplace accidents or occupational hazards. In *Miskito Divers*, the Court noted “the impact of the events..., which seriously affected the lives and personal integrity of the divers who suffered diseases and disabilities as a result.

²⁰⁹ Hypothetical, para. 37

²¹⁰ Hypothetical, paras. 38-39

²¹¹ Hypothetical, paras. 40-46

²¹² International Property Maintenance Code, §404.4.1

²¹³ *Hacienda Verde*, para. 140.

²¹⁴ Legal Analysis, Section III *supra*

²¹⁵ Hypothetical, para. 25

²¹⁶ ILO, Safety and Health in Agriculture Recommendation

VI. ARAVANIA DID NOT VIOLATE THE PETITIONERS' SUBSTANTIVE RIGHTS

A. Aravania Did Not Violate the Petitioners' or Their Next of Kin's Right to Humane Treatment

Article 5 of the ACHR seeks to uphold the right to humane treatment.²¹⁷ This includes the respect of a person's "physical, mental, and moral integrity."²¹⁸ The ACHR prohibits torture or cruel and inhumane punishment and demands "all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."²¹⁹ The Court has found acts of physical or psychological torture²²⁰ constitute violations of Article 5. Here, the Petitioners' living conditions were improved and they were not physically or psychologically abused.

1. Aravania Did Not Physically or Psychologically Abuse the Petitioners

The Petitioners can report no *substantiated* instances of any violence or other form of physical abuse occurring in the program, nor in Aravania, let alone any physical abuse they personally suffered. Psychologically, Maldini and others pointed out that the payment process under the Agreement had not been completed and A.A. was better off continuing to work.²²¹ However, there were no intimidating statements made and no substantive threats made to the Petitioners about their personal safety or that of their next of kin. In fact, M.A. told her "'it was crazy to leave El Dorado' because she had found a place where her work was useful...; she did not pay for housing, F.A. was going to school, and M.A. was receiving medical treatment."²²² Conversely, the court in *Hacienda Verde* found occurrences of both physical and psychological abuses.²²³ Physically, the Court observed the victims were subject to beatings and threats from

²¹⁷ ACHR, art. 5

²¹⁸ *Id.* at art. 5(1)

²¹⁹ *Id.* at art. 5(2)

²²⁰ *Velásquez Rodríguez*, para. 187

²²¹ *Hypothetical*, para. 47

²²² *Hypothetical*, para. 43

²²³ *Hacienda Verde*, para. 293

supervisors and armed guards.²²⁴ Psychologically, the Court observed systematic intimidation and coercion to deter the victims from leaving in the form of threats of violence against both the victims and the victims' villages and next of kin.²²⁵

2. Aravanja Did Not Cause Uncertainty or Prolonged Suffering to the Petitioners' Next-of-Kin

The Court has also recognized an extension of the protections of Article 5 of the ACHR to a victim's next of kin.²²⁶ The Court has recognized the mental and moral anguish close family members may go through when certain harms befall a person. Specifically, the Court has found an extension of Article 5 to a victim's next of kin in very narrow instances in which next of kin suffer mental and moral anguish as a result of knowing of or actually witnessing their family member suffer.²²⁷ The Court has found this element to be satisfied in instances where there is a strong physical and temporal proximity to the suffering of their family members.²²⁸ Further, the Court has found documented mental health struggles related to a family member's suffering to be persuasive.²²⁹ Aravanja did not violate Article 5 of the ACHR to the detriment of the Petitioners' next of kin. In this case, the Petitioners' next of kin were either fully unaware of any suffering befalling their family members or lacked a strong physical and temporal proximity to any of their family members' alleged suffering, and have shown no documented psychological or moral suffering.²³⁰

²²⁴ *Id.* para. 114

²²⁵ *Id.* para. 293

²²⁶ *Blake*, para. 116

²²⁷ *Ituango*, para. 258

²²⁸ *Id.*

²²⁹ *Blake*, para. 113

²³⁰ *Juvenile Reeducation Institute*, para 110; and *Vereda La Esperanza*, para. 34

A.A.'s mother and daughter travelled with her to Aravania, so they would not be uncertain about her status.²³¹ The other Petitioners' next of kin would have no knowledge of any happenings within Aravania because they continue to live in Lusaria as far as we can tell. If the nine women have returned to Lusaria then they would have already been reunited with their next of kin, removing any uncertainty as to their whereabouts. This is unlike *Ituango*, in which the victims' next of kin "witness[ed] the execution of their next of kin by heavily-armed men, hear[d] the cries for help while their family members were subjected to cruel and inhuman treatment, and [experienced] fear resulting from the extreme violence with which they were executed."²³² Thus, there is no predicate for resulting mental or moral anguish on the part of the Petitioners' next of kin.

Further, the Court has often looked to *documented* mental and moral anguish, such as in *Blake*, where the Court discussed how the Petitioner's next of kin "testified that ever since his brother's disappearance he has had a serious depression, from which he was still suffering, and had spent a great deal of money on psychiatric consultations and on medication."²³³ Here, no such allegations of any claim of mental or moral anguish by the Petitioners' next of kin exist, let alone documented treatment for a clinical condition. In fact, M.A. told A.A. "'it was crazy to leave El Dorado' because she had found a place where her work was useful...; she did not pay for housing, F.A. was going to school, and M.A. was receiving medical treatment."²³⁴ Clearly the next of kin enjoyed their time on the farms.

²³¹ Clarification, para. 1

²³² *Ituango*, para. 258

²³³ *Blake*, para. 113

²³⁴ Hypothetical, para. 43

B. Aravanja Did Not Subject the Petitioners to Forced Labor

Article 6 of the ACHR seeks to protect against slavery, involuntary servitude, and forced labor.²³⁵ In *Ituango*, the Court looked to the ILO Convention No. 29²³⁶ to interpret Article 6 and determine what constitutes forced labor.²³⁷ The Court specifically utilized Article 2(1), which states “the term ‘forced or compulsory labour’ shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”²³⁸

1. The Petitioners’ Labor Was Not Conducted Under the Menace of Penalty

The Court explained the menace of penalty is defined as “the real and actual presence of a threat, which can assume different forms and degrees, of which the most extreme are those that imply coercion, physical violence, isolation or confinement, or the threat to kill the victim or his next of kin.”²³⁹

Firstly, there was no menace of penalty accompanying the Petitioners’ work. They reached out to Maldini of their own accord and received time to contemplate whether or not they wanted to apply for their jobs.²⁴⁰ Further, these positions were for pay and came with substantial benefits, which included “one day of rest per week, [a wage of] US\$1.00 per square meter (m²) of Aerisflora; access to social security programs, which covered health insurance, day care, and education for her dependents; and paid travel to Lusaria for [them] and [their] dependents, as well as a special work permit.”²⁴¹ Their decision to work in the program was based on lucrative incentives, not threatening penalties.

²³⁵ ACHR, art. 6

²³⁶ ILO, Forced Labour Convention

²³⁷ *Ituango*, para. 157

²³⁸ ILO, Forced Labour Convention, art. 2(1)

²³⁹ *Ituango*, para. 161

²⁴⁰ Hypothetical, para. 34

²⁴¹ Hypothetical, para. 35

Additionally, the Petitioners always had the option of leaving their jobs, as evidenced by A.A. leaving the farm in Primelia.²⁴² This is in contrast to *Ituango*, in which the victims “were explicitly threatened with death if they tried to escape” which was coupled with the “context of extreme violence in which the [victims] were deprived of their liberty, ...contributing to the [victim’s] feelings of defenselessness and vulnerability.”²⁴³

Moreover, there was no coercion or implication of physical violence against the Petitioners. In this case there were no threats or implications of physical violence against the Petitioners. When A.A. requested to leave, Maldini and Torres discussed the economic ramifications of leaving, but never threatened her with violence. In *Hacienda Verde*, the victims were subject to threats from armed guards who prohibited them from leaving.²⁴⁴

Additionally, there was no isolation or confinement of the Petitioners. For the majority of their stay in Lusaria, the Petitioners lived in housing off of the farm.²⁴⁵ They came and went to work each day.²⁴⁶ The Petitioners did live on the farm for the two weeks leading up to the *Aerisflora* transplant, but there is no indication they were unable to leave. In fact, a few of the workers who were on the farm were able to leave the farm after requesting their documents back.²⁴⁷ Even though A.A. alleges when two women requested their documents, after complaining about the working conditions, were told the identity documents were presented to the labor authorities for certain permits to be processed, this does not rise to the level of confinement. This is unlike in *Hacienda Verde* in which the armed guards would not allow the victims to leave freely.²⁴⁸

²⁴² Hypothetical, para. 48

²⁴³ *Ituango*, para. 163

²⁴⁴ *Hacienda Verde*, para. 114

²⁴⁵ Hypothetical, para. 37

²⁴⁶ *Id.*

²⁴⁷ Hypothetical, para. 44

²⁴⁸ *Hacienda Verde*, para. 114

Further, any allegation of confinement is disproven by A.A.’s statement “the money she had received was not enough for her to pay for her own return trip”²⁴⁹, which means she was aware that she could leave the farm and the job. She only remained for economic reasons. This was expressed by A.A. to M.A. after three weeks of working on the farm.²⁵⁰

Finally, there was no threat to kill the Petitioners or their next of kin. This is unlike *Hacienda Verde*, in which the victims were under the threat of armed guards.²⁵¹

2. *The Petitioners’ Labor Was Not Involuntary*

The Court also explained unwillingness to perform the work or service is defined as “the absence of consent or free choice when the situation of forced labor begins or continues [, which] can occur for different reasons, such as illegal deprivation of liberty, deception or psychological coercion.”²⁵²

There was no involuntariness involved in the Petitioners’ work. At points, A.A. did voice her displeasure with her job to her superiors.²⁵³ She discussed her situation with them and they pointed out the outstanding benefits she was receiving as a reason for her to stay. A.A. was even told by M.A. “it was crazy to leave El Dorado” because “she had found a place where her work was useful” and “she didn’t pay for housing, F.A. was going to school, and M.A. was receiving medical treatment.”²⁵⁴ While Maldini told A.A. she would likely not be paid until the full implementation of the program²⁵⁵, this was not levied as a threat, rather it was factually accurate.

²⁴⁹ Hypothetical, para. 43

²⁵⁰ *Id.*

²⁵¹ *Hacienda Verde*, para. 114

²⁵² *Ituango*, para. 164.

²⁵³ Hypothetical, para. 47

²⁵⁴ Hypothetical, para. 43

²⁵⁵ Hypothetical, para. 47

A.A.'s employer, EcoUrban, would not be paid by Aravania until completion of the project, and thus would not receive the funds to disburse to its employees, including the Petitioners.²⁵⁶

Further, while Maldini told A.A. she should be grateful for her opportunity and leaving her job would land her back in the poor economic position she was in prior to working for EcoUrban²⁵⁷, these were not threats. While their wording and delivery may have been indifferent, they were matters of predictive opinion, and not the promise of anything Maldini or EcoUrban would do to A.A. in retaliation for her resigning.

Finally, the Petitioners' work was voluntary. When A.A. left the farm in Primelia, no one stopped her.²⁵⁸ She always had the option of leaving. In contrast to *Ituango*, in which the Court looked to "the absence of free choice concerning the [victims' labor]."²⁵⁹ In *Ituango*, the victims did not offer to conduct the labor and understood their sole reason for performing the labor was to save their lives.²⁶⁰ Here, the Petitioners took their jobs willingly, continued them willingly, and *always* had the option to leave.

3. *This Case Concerns a Labor Dispute Making this Court the Improper Forum*

The issues Petitioners have raised are labor disputes in nature, as opposed to human rights issues, and therefore this Court is the improper forum for their resolution. Complaints about wages, long hours, and working conditions are best decided domestically,²⁶¹ or, in this case, via arbitration.

²⁵⁶ Hypothetical, para. 25

²⁵⁷ Hypothetical, para. 47

²⁵⁸ Hypothetical, para. 48

²⁵⁹ *Ituango*, para. 164.

²⁶⁰ *Id.*

²⁶¹ U.N. Charter, Article 2(7); ILO Constitution, Art. 19(5)(d)

The Special Arbitration Panel agreed, as it determined Lusaria had breached Article 23 of the Agreement²⁶², which required the Parties to “establish and uphold... [a series of labor rights and working condition standards] in their domestic laws.”²⁶³ This requirement cannot be characterized as a restatement of the ACHR because Article 2 of the ACHR already requires member states modify their domestic law to reflect the state’s obligations and duties under the ACHR.²⁶⁴ Articles of the Agreement would seek to impose additional duties on the two parties to the agreement that go beyond what already is codified in each state’s domestic law.

C. Aravania Did Not Violate the Petitioners’ Right to Personal Liberty and Juridical Personality

Article 7 of the ACHR seeks to protect a person’s “right to personal liberty and security.”²⁶⁵ “No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.”²⁶⁶ Article 3 of the ACHR guarantees “every person has the right to recognition as a person before the law.”²⁶⁷ Generally, the Court finds violations of Article 7 in conjunction with Article 3 when a person’s freedom of movement has been restricted to the point where a person’s basic legal rights have been stripped and they become subjects of objectification.²⁶⁸ The Court has recognized this type of objectification in instances of forced disappearance and warrantless detention.²⁶⁹

²⁶² Hypothetical, para. 55

²⁶³ Hypothetical, para. 25

²⁶⁴ ACHR, art. 2

²⁶⁵ ACHR, art. 7

²⁶⁶ *Id.*

²⁶⁷ ACHR, art. 3

²⁶⁸ *Ituango*, para. 152

²⁶⁹ *Hacienda Verde*, para. 302

The Petitioners were not stripped of their legal rights or objectified. Firstly, they were not forcibly disappeared. Forced disappearance includes “(a) deprivation of liberty against the will of the person concerned; (b) involvement of government officials, at least indirectly by acquiescence; [and] (c) refusal to disclose the fate and whereabouts of the person concerned.”²⁷⁰ The Petitioners did not have their liberty deprived against their will, they accepted a job that required their travel to Lusaria and then back to Aravania.²⁷¹ What is more, A.A. herself left the compound in Primelia of her own accord.²⁷² Additionally, while the Agreement was made between the Aravanian and Lusarian government,²⁷³ the management and facilitation of the program was conducted by EcoUrban, a private *Lusarian* company,²⁷⁴ and as such could, at most, be seen as an act of acquiescence on the part of the Lusarian government. This is in contrast to *Hacienda Verde*, in which the victims were forcibly taken far from home and armed guards prevented them from leaving under the threat of violence.²⁷⁵

Second, Petitioners were not warrantlessly detained. They were not kept on the farm in Lusaria, they had homes off-site.²⁷⁶ Further, they were free to leave the farms at will, which is evidenced by A.A. doing so while working in Primelia.²⁷⁷ There were no threats made to force the Petitioners to stay in the program. This is unlike *Ituango*, in which the victims “were deprived of their liberty for 17 days when they were detained by the paramilitary group that controlled the

²⁷⁰ UNHRC, Best Practices on Enforced Disappearances

²⁷¹ Hypothetical, para. 25

²⁷² Hypothetical, para. 48

²⁷³ Hypothetical, para. 25

²⁷⁴ Hypothetical, para. 21

²⁷⁵ *Hacienda Verde*, para. 302

²⁷⁶ Hypothetical, para. 37

²⁷⁷ *Id.*

district,” and their detentions “were carried out without an arrest warrant signed by a competent judge or the existence of flagrant necessity.”²⁷⁸

Moreover, even if the Petitioners’ working conditions were sufficient to meet the definition of detention, the Aravanian government did not execute this detention, rather Hugo Maldini, a *Lusarian* citizen, EcoUrban, a *Lusarian* company, and *Lusaria* assumed total control over the farms, compounds, and the laborers within.²⁷⁹

²⁷⁸ *Ituango*, para. 153

²⁷⁹ Hypothetical, paras. 21 and 26-27

REQUEST FOR RELIEF

Considering the arguments explained above, the Republic of Aravania respectfully requests this Honorable Inter-American Court of Human Rights to conclude and declare:

(1) Aravania respected all the rights and freedoms established in Articles 3, 5, 6, 7, 25, 26 and Article 7 of the Convention of Belém do Pará; or in the alternative;

(2) that if any of the rights enumerated above were violated, they were subsequently satisfactorily ensured, remedied, and compensated in accordance with Article 63(1) of the ACHR.