
A.A. and Nine other Women

Victims

v.

Republic of Aravania

State

MEMORIAL FOR VICTIMS

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Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings (2005), **Page 25**

Human Rights Committee, CCPR General Comment No. 27: Article 12 (1999), **Page 32**

OAS, Actas y Documentos of the Inter-American Specialized Conference on Human Rights (1966), **Page 15**

Permanent Court of International Justice, *Factory At Chorzów, Germany v. Poland*, **Page 23**

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Human Rights of Migrants, Refugees Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System ("Human Mobility Report") (2015), **Pages 33, 34**

Inter-American Principles on The Human Rights of All Migrants, Refugees, Stateless Persons And Victims Of Human Trafficking (2019) ("IA Principles on Trafficking"), **Page 34**

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STATEMENT OF FACTS

I. THE DEVELOPING STATE OF ARAVANIA

The Republic of Aravania (“Aravania”) is an underdeveloped nation.¹ Aravania’s Constitution safeguards the right to life, honor, liberty, security, work, property, and fair wages for a “decent standard of living.”² Aravania criminalizes human trafficking³ and forced labor.⁴

Despite the aforementioned safeguards, 17% of the population is plagued by poverty and Aravania lacks a public education and social security system.⁵ Women are among the most vulnerable populations, particularly women in rural areas, due to pay inequity and difficulty accessing education.⁶

Campo de Santana (“Campo”), an Aravanian province, is located on the southern border of Aravania and the State of Lusaria (“Lusaria”).⁷ Official data shows that Campo is a predominantly rural area characterized by frequent border crossings and is populated by mostly uneducated women who face child rearing burdens and gender discrimination in the workplace.⁸ Women in this region are forced to perform more taxing work for longer hours for less pay.⁹ As a result, this population flees abroad to find better and more sustainable employment.¹⁰

Aravania also suffers from the impacts of climate change such as flooding, which displaced thousands of people and impacted the Aravanian economy.¹¹ Finally, in 2011, public outrage

¹ Hypothetical, para. 3

² Hypothetical, para. 8

³ Human Trafficking, as defined in Aravania, is consistent with international customary law and the Inter-American Court of Human Rights. Hypothetical, para. 9

⁴ Article 237. Forced labor Whoever subjects a person to perform work or render a service under the threat of any penalty and for which such person does not offer him or herself voluntarily. Hypothetical, para. 9

⁵ Hypothetical, para. 3

⁶ *Id.*

⁷ Hypothetical, para. 1

⁸ Hypothetical, para. 3

⁹ *Id.*

¹⁰ *Id.*

¹¹ Hypothetical, para. 4

led to the election of a populist president, Carlos Molina (“Molina”).¹² Under Molina’s quasi-authoritarian regime, he instituted the “Impulso 4 Veces” Development Plan (the “Plan”).¹³ This Plan was passed with the alleged goal of modernizing Aravania’s infrastructure by increasing foreign investment.¹⁴ Additionally, the Plan created “sponge cities” across urban centers, which allegedly absorbed heavy rainfall.¹⁵

II. THE CORRUPT STATE OF LUSARIA

Lusaria is Aravania’s southern neighbor. Notwithstanding higher levels of social security, healthcare, and education,¹⁶ Lusarian citizens are known to work longer hours.¹⁷ In contrast to Aravania’s domestic trafficking laws, Lusaria criminalizes sex trafficking to the exclusion of labor trafficking. Lusaria also criminalizes abuse of authority in the course of public activities.¹⁸ Lusaria, has a longstanding history of corruption, especially in the climate change sector.¹⁹

Aerisflora, a native plant species, filters pollutants in bodies of water through bioremediation and was planted across designated “sponge cities” in Lusaria.²⁰ Quickly the *Aerisflora* the nation’s main export.²¹

Eventually *Aerisflora* was nationalized and with it came corruption from the Lusarian government.²² In 2013, Global Rights Observatory’s exposé on “green money” reported that Hugo

¹² *Id.*; Hypothetical, para. 6

¹³ Hypothetical, para. 6

¹⁴ Hypothetical, para. 7

¹⁵ *Id.*

¹⁶ Hypothetical, para. 18

¹⁷ Lusarian employment contracts can be based on “(a) per unit of time (per month, fortnight, week, day, or hour); or (b) per unit of work (per piece or piecework). Hypothetical, para. 18

¹⁸ Hypothetical, para. 19

¹⁹ Hypothetical, para. 17

²⁰ Hypothetical, para. 13

²¹ Hypothetical, para. 16

²² Hypothetical, para. 16, 17

Maldini (“Maldini”), a Lusarian public figure and government official, saw a 185% wealth increase from the *Aerisflora* industry.²³

Due to public complaints regarding low wages and long hours, farmers began to target foreign women to cultivate *Aerisflora*.²⁴ For over 15 years, Lusarian farms sought out Maldini to recruit foreign female laborers.²⁵ During this time, circulated reports illustrated the occupational health risks to *Aerisflora* workers.²⁶ These risks included repetitive motion injuries, back pain from prolonged bending, and skin cancer resulting from sun exposure in conjunction with *Aerisflora* chemicals.²⁷

III. COOPERATION AGREEMENT BETWEEN ARAVANIA AND LUSARIA

Following the aftermath of the May 2012 floods, Aravania negotiated and ultimately entered into a Bilateral Cooperation Agreement for the Transplantation of *Aerisflora* (the “Agreement”) with Lusaria to produce *Aerisflora* to be planted in Aravania.²⁸ These negotiations lasted only one month before Aravania hastily entered into the Agreement. During this short period, Aravanian representatives noted that Lusarian working conditions did not meet Aravanian labor standards.²⁹ Aravania briefly considered an alternative state supplier which had the backing of James Mann, renowned father of *Aerisflora*.³⁰ Nevertheless, Aravania selected Lusaria as its supplier for efficiency and financial reasons.³¹

The Agreement provided for EcoUrban Solutions (“EcoUrban”), a Lusarian public company, to recruit workers to transplant *Aerisflora* in Aravania after being produced and

²³ Hypothetical, para. 17

²⁴ Hypothetical, para. 14

²⁵ Hypothetical, para. 27

²⁶ Hypothetical, para. 15

²⁷ *Id.*

²⁸ Hypothetical, para. 20, 21

²⁹ Hypothetical, para. 21

³⁰ Hypothetical, para. 13, 22

³¹ Hypothetical, para. 22

harvested in Lusaria.³² As part of the Agreement, Aravania received monthly status reports from Lusaria on working conditions and had the option to conduct unannounced visits to work sites.³³ Additionally, the Agreement outlined Aravania's and Lusaria's obligation to comply with their respective labor laws by taking actions such as utilizing inspectors, supervising working conditions, creating response systems to complaints, and keeping records of workers on the project.³⁴ In exchange, Aravania agreed to a diplomatic immunity provision for Maldini and noted any resulting disputes regarding the Agreement would be settled privately by a Special Arbitration Panel.³⁵ Aravania would be notified when the *Aerisflora* was ready for transplant and workers would be entering Aravania to do so.³⁶

IV. TRAFFICKING OF A.A. AND THE NINE OTHER WOMEN

A. Recruitment

Upon execution of the Agreement, EcoUrban selected Finca El Dorado ("El Dorado") as the first farm to produce and transplant *Aerisflora*.³⁷ Needing laborers, Maldini (otherwise known as "face of *Aerisflora*") became an attractive choice.³⁸ El Dorado contracted Maldini to hire foreign women for *Aerisflora* production.³⁹ Maldini studied Aravanian women's needs and began to recruit Aravanian women to work at El Dorado.⁴⁰ His studies showed Aravanian mothers with newborns were particularly susceptible.⁴¹ As a result, he started using social media campaigns to target these women.⁴² From July to August 2012, Maldini posted videos and content on social media utilizing

³² Hypothetical, para. 25

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Hypothetical, para. 26

³⁸ Hypothetical, para. 26, 27

³⁹ Hypothetical, para. 27

⁴⁰ Hypothetical, para. 28

⁴¹ *Id.*

⁴² Hypothetical, para. 29

hashtags such as #DedicatedMothers and #SuccessfulWomen to attract these laborers.⁴³ Maldini posted compelling testimonials from women allegedly working at the farms and touted access to child daycare, health care, and education.⁴⁴

A.A. and the nine other women (collectively, the “Victims”) were among those targeted by Maldini. A.A., an uneducated female, is a young single mother from rural Campo.⁴⁵ A.A. is the mother of F.A., whose father disappeared.⁴⁶ A.A.'s mother, M.A., is disabled and unable to support herself.⁴⁷ Faced with the Aravanian stigma of single motherhood, A.A. struggled to find work.⁴⁸

In August 2012, A.A. searched for work opportunities.⁴⁹ She increasingly noticed Maldini’s viral *Aerisflora* propaganda videos hosted on his social media account.⁵⁰ In a desperate state, A.A. reached out to Maldini.⁵¹ Maldini advised that interest in this position was high and urged her to contact Isabel Torres (“Torres”) who identified herself as the hiring director at El Dorado.⁵² Shortly after, an employment offer outlining the following conditions was sent to A.A.: a 48-hour work week with one day of rest, work regardless of weather, and \$1.00 in wages per square meter.⁵³ The benefits included access to social security, health insurance, day care, travel to Lusaria with a special work permit, and most importantly, care for dependents.⁵⁴ Not surprisingly, A.A. accepted and joined the group of 60 similarly situated women.⁵⁵

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Hypothetical, para. 31

⁴⁶ *Id.*

⁴⁷ Hypothetical, para. 32

⁴⁸ Hypothetical, para. 33

⁴⁹ *Id.*

⁵⁰ Hypothetical, para. 34

⁵¹ *Id.*

⁵² *Id.*; Hypothetical, para. 35

⁵³ Hypothetical, para. 35

⁵⁴ *Id.*

⁵⁵ *Id.*; Hypothetical, para. 36

In October 2012, the Office of the Prosecutor General of Aravania received an emergency hotline complaint that women at Campo were targeted on social media and taken as victims of forced labor in Lusaria.⁵⁶

B. Working Conditions at El Dorado

In November 2012, A.A. and the nine other women were transported in a tinted-window bus to Lusaria where they were stripped of their identity documents.⁵⁷ At the outset, the laborers were permitted to live nearby El Dorado, and not on the premises themselves.⁵⁸ The female laborers reported for work at 7:00 AM and a short lunch break wherein they had to cook and clean for fear of being scolded.⁵⁹ The female laborers were exposed to the scorching heat, pouring rain, and planting chemicals.⁶⁰

In September 2013, all laborers were required to sleep in makeshift bunkhouses on site due to the increased demands of the planting season.⁶¹ Three families shared one bathroom with no divided bedrooms.⁶² The property was surrounded by a high fence and 24-hour video surveillance, with staff monitoring all entries and exits.⁶³ Working hours were elongated with the work day starting earlier and often ending at 11:00 pm because of the extra duties that only female workers had to perform.⁶⁴ The female laborers were also required to work weekends to clean the residences, including the staff residences, and the men's clothes.⁶⁵ Reports circulated that a female laborer was assaulted, another female was the victim of sexual violence, and another was "severely

⁵⁶ Hypothetical, para. 54

⁵⁷ Hypothetical, para. 36

⁵⁸ Hypothetical, para. 37

⁵⁹ *Id.*

⁶⁰ Hypothetical, para. 38

⁶¹ Hypothetical, para. 39

⁶² Hypothetical, para. 40

⁶³ Hypothetical, para. 39

⁶⁴ Hypothetical, para. 42

⁶⁵ *Id.*

repressed” when she spoke out about the poor working conditions.⁶⁶ Some women asked Torres to return their identity documents but Torres denied their request.⁶⁷

In October 2013, Aravana’s Prosecutor’s Office interviewed a female laborer from El Dorado who explained that her wages were being withheld, how she was enticed by Maldini’s false promises, and subjected to poor working conditions.⁶⁸ The Prosecutor’s Office did not pursue the matter.⁶⁹

C. The Victims’ Trip to Aravana

Months later, in January of 2014, 10 women including A.A., were forced to travel to Aravana to transplant the *Aerisflora*.⁷⁰ Once again transported in buses with tinted windows, the Victims reached the Aravanian site, which had similar monitoring and control mechanisms in place.⁷¹ The Victims shared a singular small residence with one bedroom.⁷²

During the transplanting, things didn’t go as planned.⁷³ An upset Maldini informed the Victims they would have to remain in Aravana for an extra week to meet the goal under the Agreement.⁷⁴ In response, A.A. attempted to quit and demanded payment for the work she performed.⁷⁵ Maldini denied A.A.’s request and stated they would not receive payment unless they returned to Lusaria.⁷⁶

⁶⁶ Hypothetical, para. 43, 45

⁶⁷ Hypothetical, para. 44

⁶⁸ Hypothetical, para. 54

⁶⁹ *Id.*

⁷⁰ Hypothetical, para. 45, 46

⁷¹ Hypothetical, para. 46

⁷² *Id.*

⁷³ Hypothetical, para. 47

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*; Clarification 10

D. A.A. Escape and Maldini's Criminal Prosecution

On January 14, 2014, A.A. escaped the farm.⁷⁷ She immediately reported to Aravania police the events that had transpired, which included Maldini's recruitment tactics, the working conditions, and the incidents of violence.⁷⁸ Aravania police reviewed Maldini's social media accounts and went to the site where they saw remnants of the crime, but the women disappeared.⁷⁹ Maldini was later arrested and appeared before the Second Criminal Court wherein he asserted his immunity under the Agreement, which was confirmed and not waived by Lusaria.⁸⁰ The case was later dismissed on January 31st due to immunity.⁸¹ A.A. appealed the criminal court decision but the appeal was denied.⁸² Concurrently, Lusaria opened an investigation into Maldini.⁸³ On March 19, 2015, Maldini was convicted for abuse of authority and acquitted for human trafficking in Lusaria.⁸⁴

Parallel to the Lusarian criminal investigation, Aravania commenced arbitration proceedings against Lusaria per the Agreement.⁸⁵ The Arbitral panel found that Lusaria had violated the working protections of the Agreement and awarded \$250,000 to Aravania.⁸⁶ From this amount, Aravania determined A.A. should receive \$5,000.⁸⁷ Aravania admitted during the arbitration that it decided not exercise its right to conduct site visits.⁸⁸

⁷⁷ Hypothetical, para. 48

⁷⁸ *Id.*

⁷⁹ Hypothetical, para. 49

⁸⁰ *Id.*

⁸¹ Hypothetical, para. 51

⁸² *Id.*

⁸³ Hypothetical, para. 53

⁸⁴ *Id.*

⁸⁵ Hypothetical, para. 55

⁸⁶ *Id.*

⁸⁷ Hypothetical, para. 56

⁸⁸ Clarification, para. 22

E. Inter-American Human Rights System

On October 1, 2014, the Victims submitted a petition to the Inter-American Commission on Human Rights (“Commission”). Aravania filed a response with preliminary exceptions.⁸⁹ 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 (“Belém do Pará”), to the detriment of A.A. and nine other women.⁹⁰ After Aravania denied state liability, the Commission transmitted the case before the Inter-American Court of Human Rights.⁹¹

⁸⁹ Hypothetical, para. 57

⁹⁰ Hypothetical, para. 58

⁹¹ Hypothetical, para. 59

LEGAL ANALYSIS

ADMISSIBILITY GROUNDS

I. THIS COURT HAS JURISDICTION

A. Aravania is Subject to This Court's Jurisdiction.

Article 1(1) of the ACHR provides, in part: “[t]he States Parties ... undertake to respect the rights and freedoms ... to all persons subject to their jurisdiction.” Importantly, when the ACHR was adopted, references to “territory” were consciously omitted. Instead, the word “jurisdiction” was included so the range of protection was widened for the rights and freedoms recognized within.⁹² In *Saldaño*, this Court, recognizing that jurisdiction is not only established by territory, stated that “a state party to the American Convention may be responsible under certain circumstances for the acts and omissions of its agents which produce effects or are undertaken outside that state’s own territory.”⁹³ This means that the exercise of jurisdiction is a necessary precondition for a state to incur responsibility for any conduct that may be attributed to it.⁹⁴

Since then this Court has developed 3 prominent tests used to determine the vesting of jurisdiction: *territorial, authority-control, and effects-based*.⁹⁵ Aravania’s conduct satisfies all three.

1. This Court has Territorial Jurisdiction

“The American Convention sets forth its jurisdictional scope under the “General Obligations” inherent in the treaty, in Article 1(1):

⁹² OAS, Actas y Documentos of the Inter-American Specialized Conference on Human Rights (1966), para. 72

⁹³ *Aisalla Molina*, para. 91; *Saldaño*, paras. 15-20; *Alejandro*, paras. 23 to 25, *Coard*, para. 37.

⁹⁴ See *Ilaşcu*, para. 311; *Al-Skeini*, para. 130; *Chiragov*, para. 168.

⁹⁵ *I.V.*, para. 21; *Aisalla Molina*, para. 91; AO OC-23/17, para. 81.

The State's Parties to the Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons *subject to their jurisdiction* the free and full exercise of those rights and freedoms, without any discrimination. . .”⁹⁶

The most obvious form of jurisdiction and the starting point for the Convention is territorial jurisdiction.⁹⁷ In *I.V. v. Bolivia*, this Court affirmed its jurisdiction *ratione loci* because the act that gave rise to the alleged international responsibility took place in Bolivia's territory.⁹⁸ Here, similar to *I.V.*, the Victims were recruited within Aravanian territory. Even when later transported to Lusaria, they were forcibly returned months later to Aravania to work under inhumane conditions. Therefore, this Court has territorial jurisdiction over Aravania.

2. *This Court has Authority-Control Jurisdiction*

“[I]ndividual rights are inherent simply by virtue of a person's humanity, each American State is obliged to uphold the protected rights of any person subject to its jurisdiction.”⁹⁹ Jurisdiction may result from “conduct with an extraterritorial locus where the person concerned is present in the territory of one state, but subject to the control of another state . . .”¹⁰⁰ Even where the victim is not within the geographic area of the State, a State may be responsible for the violation of rights when the victim is under the authority or control of the State.¹⁰¹ This has been reaffirmed in cases involving violence against women, similar to the present case, a State's obligation “appl[ies] extraterritorially to persons within their effective control...”¹⁰²

Here, Aravania's authority over this operation is evident. Under the Agreement, Aravania not only financed the project, but it also retained supervisory power over both the execution of the

⁹⁶ ACHR, Article 1.

⁹⁷ *Jaloud*, para. 139

⁹⁸ *I.V.*, para. 21

⁹⁹ *Coard*, para. 37

¹⁰⁰ *Id.*

¹⁰¹ *Aisalla Molina*, para. 91

¹⁰² CEDAW, para. 8

operation and the conditions under which the labor was carried out. The Agreement stated: “Lusaria agrees to send monthly status reports to [Aravania] on the activities of [the] Agreement *and the working conditions under which they are carried out.*” (emphasis added). Lusaria complied with sending the periodic reports. Thus, Aravania exercised ongoing supervision throughout the entire project.

In *Alejandro*, the Commission found that Cuba exercised authority over the victims despite the victims being located outside of Cuban territory.¹⁰³ Although Cuban forces did not control the airplanes being shot down, meaning they were not directing or piloting them, they still exercised authority by impacting their route through force.¹⁰⁴ Similarly, Aravania, even though not constantly physically present in El Dorado, still exercised authority over the Victims by actively overseeing their treatment, working conditions, and the manner in which the project was evolving. Therefore, this Court has authority-control jurisdiction over Aravania.¹⁰⁵

3. *This Court has Effects-Based Jurisdiction*

A third emerging concept within international law is the effects-based jurisdiction.¹⁰⁶ Effects-Based jurisdiction only requires a State’s conduct to result in a foreseeable consequence against the victims, whether it intended to through its conduct or not.¹⁰⁷ It has been recognized by the European Court of Human Rights (EtCHR),¹⁰⁸ and referenced by the Commission in the case of *Armando Alejandro*.¹⁰⁹ The effects-based jurisdiction doctrine prescribes that human rights obligations of a State extend to all those whose enjoyment of human rights is affected by the conduct of that State, irrespective of where the relevant individuals are located, if the violations

¹⁰³ *Alejandro*, para. 25

¹⁰⁴ *Id.*

¹⁰⁵ *See also El-Masri*, para. 24

¹⁰⁶ *Adreou*, paras. 10-11

¹⁰⁷ Cerone, pp.127

¹⁰⁸ *Adreou*, paras. 10-11; *Ilaşcu*, para. 317

¹⁰⁹ Cerone, pp. 131

are foreseeable.¹¹⁰ In violence against women cases, CEDAW has likewise recognized the effect-based doctrine, “States parties are responsible for all their actions affecting human rights, regardless of whether the affected persons are in their territory.”¹¹¹

Here, Aravania created and enabled the conditions that allowed the Victims to be recruited by Maldini and Lusaria. Specifically, by entering into the Agreement with Lusaria, Aravania contributed to the expansion of the *Aerisflora* production market and the increased demand for workers. Additionally, Aravania's lack of workplace inclusion policies for vulnerable women in Campo left them with limited employment opportunities, making them more likely to accept job offers abroad - a vulnerability Maldini exploited by deliberately targeting them. As a result, Aravania's conduct affected the enjoyment of human rights by the Victims.

Moreover, Aravania was put on notice of what was transpiring in Campo and El Dorado when the Office of the Prosecutor General of Aravania received two formal complaints detailing the exploitation occurring under the Agreement, both during the period of recruitment of the Victims and while the Victims were subject to the trafficking conditions. Aravania did not investigate and still determined no crime was committed. Since these complaints specifically highlighted the trafficking activities taking place in Lusaria, it was foreseeable that the failure to intervene would inevitably enable the further trafficking of the Victims. As a result, Aravania's inaction enabled and perpetuated the Victims' exploitation, affecting their enjoyment of human rights beyond its borders. Therefore, this Court has Effects-Based jurisdiction.¹¹²

For the foregoing reasons, Aravania's conduct falls squarely within this Court's jurisdiction, as it satisfies the territorial, authority-control, and effects-based jurisdiction tests.

¹¹⁰ *Alejandro*, para. 23

¹¹¹ CEDAW, para. 8

¹¹² Cerone, pp. 127

II. THIS COURT IS COMPETENT

This Court has consistently interpreted Article 44 of the American Convention to require that for a petition to be admissible, there must be concrete victims who have been individualized and identified.¹¹³ However, Article 35(2) of the Rules of Procedure of the Court (“Rules”), recognizes an exception to this rule.¹¹⁴ This exception applies when it is not possible to name every victim because of the character of the human rights violations, or the nature of the surrounding circumstances.¹¹⁵

Here, there are numerous victims despite there only being ten named in the petition. A.A. reported that at least 59 other women were in Lusaria as victims of forced labor. Also, given the large scale of the *Aerisflora* operation, it is highly likely that the actual number is even greater. For guidance the Court should look to *Hacienda Verde*, a case where numerous workers were subjected to forced labor and slavery-like conditions on a farm.¹¹⁶ The *Hacienda Verde* Court reasoned that the specific characteristics of human trafficking provided reasonable grounds to apply the flexible standard under Article 35(2).¹¹⁷ In doing so, it recognized the difficulty of contacting the presumed victims due to their exclusion and vulnerability.¹¹⁸

Similar to *Hacienda Verde*, the Victims here were in a highly vulnerable position and secluded. As a result, attempting to identify them while they are still potentially under the traffickers’ control places them in an even more precarious situation. First, trying to identify them places their lives at risk. The last known information about the Victims is that they were completely dependent on the traffickers, without documentation, without money, and kept in conditions of

¹¹³ *Chang Bravo*, para. 38.

¹¹⁴ *Favela*, para. 36.

¹¹⁵ See e.g., *Ituango*, para. 92; *Rio Negro*, para. 48.

¹¹⁶ *Hacienda Verde*, para. 112

¹¹⁷ *Id.*, para. 49

¹¹⁸ *Id.*, para. 48

poverty. If the traffickers suspect that the Victims want to be part of this petition, the traffickers may respond with violence. Either by punishing the Victims to silence them or by relocating them to even more secretive conditions, making future rescue efforts even more difficult. Second, as far as is known, the Victims are far from their family members. The latest information indicates that their family members remain in Lusaria, under the total control of the traffickers. Thus, identifying the Victims could also expose their families to retaliation, as traffickers often use threats against loved ones to maintain control. Just like A.A. feared what might happen to her family when she filed a report with the Velora Police, so too would the nine other women fear for the safety of their families were they to come forward – it is important to note, they were not merely specters.¹¹⁹

Additionally, the disappearance of the nine other women and the next of kin has made their identification difficult because it is impossible to contact them. When the Velora Police went to Primelia, they found the residence with unmade beds and women’s clothing, as if the women had fled in a hurry. It is clear that their whereabouts are currently unknown. On top of that, the ineffective investigation by Aravania not only affected the complete identification of the nine other women and the next of kin but also the possibility to gather information about their whereabouts.¹²⁰ Therefore, the difficulties mentioned above, already recognized by this Court in *Hacienda Verde*, *Ituango*, and *Rio Negro* warrant the flexible standard application in the present case.

Based on the foregoing, this Court should apply the exception under Article 35(2) in regard to the nine other women and next of kin, apply the flexible standard in this case, and permit their identification to be carried out during the merits stage.

¹¹⁹ *Peace Community*, para. 63.

¹²⁰ *Hacienda Verde*, para. 48.

III. THE PRINCIPLE OF SUBSIDIARITY DOES NOT APPLY.

When addressing a state's preliminary objection based on the principle of subsidiarity, the State has to prove that the remedies provided to the victim were adequate and thus they effectively repaired the alleged violations.¹²¹ The principle of subsidiarity provides that the Court can and should intervene only where the domestic authorities fail in ensuring respect for the rights enshrined in the Convention.¹²² Here, Aravania's purported reparation to A.A. failed to ensure the respect of her rights.

This Court has reiterated that an adequate remedy, must fully repair the harm suffered by the victim, following the principle of *restitutio in integrum*.¹²³ That is, the remedy should restore the victim, as much as possible, to the condition they were in before the human rights violation occurred.¹²⁴ Accordingly, to determine whether the victim has been adequately and integrally repaired, this Court considers several types of reparations: (1) effective investigation, (2) compensation, (3) rehabilitation, (4) satisfaction, and (5) guarantees of non-repetition.¹²⁵

Here, it is undisputed that Aravania did not provide, or even offer, reparation types 3-5 as mentioned above. In fact, the only shallow attempt at reparations made by Aravania came in the form of an ineffective "investigation" and minimal monetary compensation to A.A. (i.e., \$5,000) following a private arbitration she was not a party to that did not consider Aravania's responsibility for human rights violations.

¹²¹ *Amrhein*, para. 100.

¹²² Interlaken Follow-Up: Principle of Subsidiarity, para. 2

¹²³ *Velásquez Rodríguez*, para. 26.

¹²⁴ Pasqualucci

¹²⁵ *Cepeda Vargas*, para. 139.

A. Aravana's Ineffective Investigation

An effective investigation clarifies the structures that allowed for the human rights violations, the reasons for them, the causes, the beneficiaries and the consequences, besides discover, prosecute and, if applicable, punish the direct perpetrators.¹²⁶ Here, Aravana did not conduct an effective investigation. It failed to investigate the complaints in 2012 and 2013, discontinued investigations due to Malidini's proclaimed immunity,¹²⁷ and neglected to inquire into the roles of other perpetrators. Resultantly, Aravana not only failed to clarify the structures that enabled these violations, the reasons behind them, and the beneficiaries, but also, failed to investigate, prosecute and punish Maldini and the other perpetrators.¹²⁸

B. \$5,000 is Insufficient Reparations nor Compensation

This Court in *Santo Domingo* emphasized that the integral reparation of the victims presumes the adoption of much more extensive measures than mere pecuniary compensation.¹²⁹ In cases of violations of the rights to life and personal integrity, the Commission has reiterated that the appropriate remedy to redress the violation is the investigation and criminal proceedings.¹³⁰

In *Hacienda Verde* victims were awarded between \$30,000 and \$40,000 for the suffering and anguish caused by the forced labor endured.¹³¹ Here, similar to *Hacienda Verde*, A.A. was a victim of forced labor. It is clear that the purported compensation provided by Aravana - US\$5,000, only 2% of the arbitral award, falls drastically short of what victims of forced labor had received in the past under this Court's jurisprudence.

¹²⁶ *Id.*

¹²⁷ Human Trafficking Commentary, Guideline 10, para. 7

¹²⁸ *Cepeda Vargas*, para. 118

¹²⁹ *Santo Domingo*, para. 29

¹³⁰ *Id.*, para. 31

¹³¹ *Hacienda Verde*, para. 487

Here, even if the \$5,000 were considered enough or proportional compensation, following this Court’s jurisprudence in *Santo Domingo*, pecuniary compensation alone does not constitute an integral reparation. The role of compensation is to fill any gaps so as to ensure full reparation for damage suffered.¹³² As such, to fully and integrally remedy A.A.’s violations, Aravanja needed to investigate, prosecute, provide measures of satisfaction, guarantees of non-repetition, and rehabilitation to restore A.A. to the position she was in before the violations occurred. Aravanja failed to do so.

Lastly, in *Vasquez Durand*, this Court stated that the analysis of the principle of subsidiarity, should be conducted based on the specific circumstances of each case, considering the nature of alleged violation and the claims of the individual who initiated proceedings.¹³³ Thus, this analysis pertains to the merits of the case or, if applicable, to the reparations stage, surviving the procedural stages.

Accordingly, because Aravanja neither conducted an effective investigation nor provided any reparations beyond a mere \$5,000 to restore A.A. to her position before the violations, she was denied an adequate remedy. Therefore, this Court should reject Aravanja’s preliminary objection and, in exercising its subsidiary competence, find Aravanja liable and order the appropriate reparations.¹³⁴

ARGUMENTS ON THE MERITS

I. ARAVANIA VIOLATED ARTICLE 6

Article 6.1 of the prohibits all forms of slavery, including “the slave trade and traffic in women.”¹³⁵ This Court, relying on foundational human rights treatises, and the European Court

¹³²*Factory at Chorzów*, para. 47-48

¹³³ *Vasquez Durand*, para. 39.

¹³⁴ *Cepeda Vargas*, para. 246.

¹³⁵ ACHR, Article 6

of Human Rights (ECtHR),¹³⁶ extended the phrase “the slave trade and traffic in women” and protection against slavery to be interpreted as prohibiting the “trafficking in persons” (TIP).¹³⁷

A. The Elemental Test for TIP Is Satisfied.

The Court defines the “trafficking in persons” as the (i) recruitment, transportation, transfer, harboring or receipt of persons (action), (ii) resorting to threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person (means), (iii) for the purpose of exploitation (purpose).¹³⁸ Whether a situation involves the three required elements is a “factual question which must be examined in the light of all the relevant circumstances.”¹³⁹

1. The Victims Were Recruited by the Perpetrators

The Perpetrators *recruited* the Victims—thereby satisfying element 1—to work at El Dorado and the Aravanian farm.

Specifically, from July 16 to August 31, 2012, Maldini recruited Aravanian women through social media to work on Lusarian farms to produce *Aerisflora*. On August 17, 2012, A.A., after engaging heavily with Maldini’s posts, A.A. emailed Maldini expressing her interest and Torres subsequently contacted A.A. to facilitate the hiring process. A.A. then accepted the proposed employment contract and in November 2012 began working alongside the nine other victims. Because Maldini performed outreach to Aravanaia women and the Victims were subsequently employed by El Dorado, the Victims were recruited.¹⁴⁰

¹³⁶ ECHR, Article 4

¹³⁷ *Hacienda Verde*, para. 288 - 89

¹³⁸ *Id.* para. 290

¹³⁹ *V.C.L.*, para. 149

¹⁴⁰ *Id.*, para. 54.

2. *The Recruitment Was Done by Means of Fraud and Deception*

The second element of the TIP test is met because the Perpetrators relied on deceptive techniques of recruitment and fraudulently represented the terms of the alleged “labor” agreement terms.¹⁴¹

First, in regard to the deception, in 2012, El Dorado strategically hired Maldini, the public face of *Aerisflora*, to recruit workers pursuant to the Agreement between Aravania and Lusaria. Maldini not only had over a decade of experience recruiting foreign female workers for *Aerisflora* farms, but he also conducted research on Aravania, even going as far as implementing a reconnaissance mission to Aravania. Through his studies he identified Aravanian mothers as susceptible. From July to August 2012, Maldini displayed enticing images featuring happy women whose families were supported. With misleading hashtags and overall positive psychology, Maldini designed posts conveying safety and security. He posted testimonials from women touting healthcare and education benefits. With time, the Victims learned that the testimonials were not made by real *Aerisflora* farmers but instead produced by Torres who never worked on the farms.

Second, the Victims’ employment contracts specified they were to perform “the planting and cultivation of *Aerisflora*,” within a 48-hour work week and paid by square meter. Instead, the Victims performed additional required duties such as meal preparation and cleaning for all the laborers and residences, leading to prolonged workdays and work on weekends, with their movement restricted and surveilled, and faced payment uncertainty.

The conditions at the *Aerisflora* farms are similar to those described in *Hacienda Verde*, which included slavery-like labor conditions on a privately-owned estate in Brazil.¹⁴² In *Hacienda Verde*, workers were subjected to inhumane working conditions characterized by debt bondage,

¹⁴¹ Explanatory Report, para. 82

¹⁴² *Hacienda Verde*, para. 343

inadequate living quarters, and restricted freedom of movement.¹⁴³ In short, the bait and switch methodology to recruit employees followed by exploitation permeates both cases.

The foregoing conditions were far from experiences touted by Maldini in his social media posts and in violation of the employment contract provided to the Victims. Therefore, the Victims were recruited through fraud and deception.

3. *The Actions Taken Against the Victims Were for the Purpose of Exploitation*

The purpose element of the TIP test was met because the Victims were subject to forced labor.¹⁴⁴ Article 3 of the Palermo Protocol defines exploitation in the context of trafficking, which includes forced labor as a form of exploitation.¹⁴⁵ This Court stated forced labor¹⁴⁶ includes two basic elements: work or service exacted by (1) threat of penalty and (2) performed unwillingly.¹⁴⁷

i. The Victims worked under threat of penalty

“Threat of penalty” entails the use of varying degrees of coercive tactics to compel an individual to work¹⁴⁸ such as isolation or restriction of movement,¹⁴⁹ threats of physical, psychological, or sexual violence against a coworker; withholding wages, withholding valuable documents, such as identity documents; or removal of rights or privileges such as social benefits.¹⁵⁰

Here, all the above transpired. First, the Victims lived in isolation at El Dorado and the Aravanian farm while being surveilled by security. Second, the Victims learned of the violence against, the repression, and the sexual assault of various female laborers by staff. Third, Torres

¹⁴³ *Id.*, para. 221

¹⁴⁴ Palermo Protocol, Article 3

¹⁴⁵ *Id.*

¹⁴⁶ ILO Forced Labour Convention, Article 2(1)

¹⁴⁷ *Iuango*, para. 160; *Hacienda Verde*, para. 292

¹⁴⁸ *Iuango*, para. 161

¹⁴⁹ *Hacienda Verde*, para. 293

¹⁵⁰ ILO Tool No. 2, pp. 1-2

took the Victims' identity documents upon their arrival to Lusaria and refused to return them to other workers who requested their documents.¹⁵¹

Lastly, they faced the threat of removal of their privileges. In *Van Der Mussele*, the ECtHR found the victim's, a prospective lawyer, risk of having not being admitted to practice because of his refusal to represent a client was sufficient to constitute "threat of penalty."¹⁵² Here, similarly, the Victims were at risk of losing the health care and child care benefits afforded to their families and under that threat, one explicitly reiterated by Maldini to A.A. and acknowledged by M.A., the Victims continued to work.

ii. The Victims performed the work unwillingly

Free consent to perform the work must exist throughout an employment relationship. Original consent to work is vitiated "where an employer abuses his power or takes advantage of the vulnerability of his workers in order to exploit them"¹⁵³ or offers false promises to induce the worker to consent to the work.¹⁵⁴ Physical confinement in the work location, non-payment of wages, and retention of identity documents exemplify may also result in involuntary labor.¹⁵⁵

Here, the Victims were not working voluntarily. First, similar to the non-citizen Bangladeshi victims in *Chowdury*, the Perpetrators deceived the Victims' into accepting employment with false promises, as discussed in Section II. A(1)(ii). Next, the Perpetrators exploited the Victims' legal status in Lusaria that was pursuant to a work permit secured and withheld by the Perpetrators¹⁵⁶ Therefore, the Victims either had to remain employed or would face immigration consequences if they resigned. Second, at certain junctures the Victims would

¹⁵¹ See ILO, The Cost of Coercion, para. 24

¹⁵² *Van Der Mussele*, para. 35

¹⁵³ *Chowdury*, para. 96

¹⁵⁴ ILO, Tool No. 2, pp. 2

¹⁵⁵ *Id.*

¹⁵⁶ *Chowdury*, para. 97

go through prolonged periods without being paid, despite being originally promised payment, similar to the victims in *Chowdury*.¹⁵⁷ Lastly, the Victims were forced to live on the farms in Lusaria and Aravana further demonstrating their lack of voluntary consent.

For all reasons stated above, the Perpetrators subjected the Victims the TIP test is satisfied.

II. ARAVANIA VIOLATED ARTICLE 5, ARTICLE 7, AND ARTICLE 3

When subjected to TIP, this Court explained that “several rights are violated *individually*, depending on the specific factual circumstances of each case.”¹⁵⁸ The additional rights violations are recognized to be “subsumed under Article 6.”¹⁵⁹ The conditions of trafficking experienced by the Victims violated their rights under Article 6 and, as a result, their rights under Article 5, 7, and 3 of the ACHR.

A. The Victims Experienced Inhumane Working Conditions, Violating Article 5.

Article 5 of the ACHR establishes the right to freedom from “cruel, inhuman, or degrading punishment or treatment.”¹⁶⁰ For agricultural work, the ILO recommends “(i) short breaks during working hours; (ii) sufficient breaks for meals . . .; and (iii) at least one full calendar day of rest per working week.”¹⁶¹ Degrading working conditions also exist when workers work in extreme heat, for long hours, under the threats from guards, and with inadequate living provisions.¹⁶²

Here, similar to *Hacienda Verde*, the Victims were subjected to degrading working conditions as they worked hours well beyond their employment contract, faced chemical and extreme weather exposure, and had a well-founded credible fear of their employers based on the violence experienced by other workers.

¹⁵⁷ *Id.*, para. 98

¹⁵⁸ *Hacienda Verde*, para. 306

¹⁵⁹ *Id.*

¹⁶⁰ ACHR Article 5

¹⁶¹ ILO, Policy guidelines for the promotion of decent work in the agri-food sector, Guideline 4.2.2

¹⁶² *Hacienda Verde*, para. 140

First, while the weekly work hours agreed to in the employment contract met ILO standards,¹⁶³ the actual work schedule of the Victims far surpassed that, particularly when the transplantation period came closer. A.A. reported that the Victims had work through the only break of the day to cook and clean up after the workers at El Dorado. As a result, the Victims worked 16-hour workdays with no breaks for rest or meals. On weekends, the Victims had to clean all the residences and wash the men's clothes. The Victims continued to work these excruciatingly long hours in Aravania to effectuate the transplantation process for an undefined period.

Second, the women lived in inadequate housing.¹⁶⁴ While ILO standards allow for shared housing when workers are unaccompanied,¹⁶⁵ the ILO states families in employer provided housing should have separate housing and a minimum degree of privacy for household members from each other.¹⁶⁶ At El Dorado, the Victims lived in sheet metal houses which were only 35m². Three families occupied each home. In the case of A.A., this entailed 8 people in a space with no rooms, one bathroom, and only 4m² per person. The conditions worsened for the Victims when they were forced to go to Aravania for transplantation as the 10 victims shared a single 50m² residence with only one bathroom and two bedrooms.

Lastly, the Victims worked in the scorching sun and pouring rain. Just as the Court noted the extreme heat contributed to inhumane conditions in *Hacienda Verde*, the Victims here similarly worked no matter the conditions. The Victims only had one break a day to access respite from the weather and were contractually obligated to work regardless of weather, no matter the effects to their health and safety.¹⁶⁷ Moreover, the sun exposure exacerbated the already harmful effects of

¹⁶³ ILO, Plantations Recommendation

¹⁶⁴ ILO, Policy guidelines for the promotion of decent work in the agri-food sector, Guideline 4.3

¹⁶⁵ ILO, Workers' Housing Recommendation, Suggestion para. 8

¹⁶⁶ *Id.*, Article 7

¹⁶⁷ ILO, Code of Practice on Ambient Factors in the Workplace, Recommendation 8.2.8

the Victims exposure to chemicals working with the *Aerisflora*. The Victims were exposed to the chemicals used in the preservation process for the plants to be transported. Reports from Lusarian workers demonstrated cases of cancer resulting from exposure to these chemicals when combined with the sun exposure. Yet, no protective control or health and safety measures, as recommended by the ILO,¹⁶⁸ such as substituting the chemical or providing personal protective equipment¹⁶⁹, were taken to ensure the health and safety of the Victims.

Therefore, the conditions at El Dorado and the Aravania farm constituted inhumane treatment thereby violating Article 5 of the ACHR.

B. The Victims' Next of Kin Suffered as a Result of Absence of Serious Investigations into the Trafficking Conditions, Violating Article 5

The next of kin of victims who suffered human rights violation may consequently become victims themselves.¹⁷⁰ The Court has, in more implicit wording, confirmed that every person, including the next of kin of the victims of grave violations of human rights, has the right to the truth.¹⁷¹ Therefore, the next of kin of the victims and society as a whole must be informed of everything that has happened in connection with said violations.¹⁷² Specifically, the Court considers “[t]he absence of investigations to try and discover the truth, to prosecute and, if applicable, to punish those responsible” may constitute a violation of the next of kin’s right to personal integrity under Article 5.¹⁷³ The lack of investigation to uncover the truth “exacerbates the feeling of helplessness, lack of protection and defenselessness of these families.”¹⁷⁴

¹⁶⁸ ILO Safety and Health in Agriculture Convention, Article 8; ILO, Safety and Health in Agriculture Recommendation, Article 2

¹⁶⁹ ILO, Ensuring safety and health at work in a changing climate, Ch. 6; ILO, Chemicals Recommendation, Article 13

¹⁷⁰ *Bámaca-Velásquez* para. 160

¹⁷¹ *Mack Chang*, para. 274

¹⁷² *Id*; *García*, para. 176

¹⁷³ *Cotton Field*, para. 421

¹⁷⁴ *Id*.

Here, the next of kin – M.A., F.A., and the families of the other Victims located at El Dorado – never obtained access to investigations or the truth surrounding the trafficking perpetrated against the Victims. This is because Aravanja conducted incomplete investigations into the conditions and reports made by female laborers and A.A. Once Aravanian authorities failed to find the other Victims at the Aravanian farm, they discontinued their search and failed to identify the remaining victims. The State had to assume the investigation as its own legal duty and not as a simple formality with no real effects.¹⁷⁵ In addition, after Maldini’s release the authorities neglected to pursue other lines of inquiry and questioning of other perpetrators. Aravanja had to demonstrate that it had made every effort within a reasonable time to identify and punish those responsible,¹⁷⁶ which it didn’t. Consequently, the next of kin’s violation is presumed considering the Victims’ established human rights violations.¹⁷⁷

Therefore, Aravanja violated Article 5 of the ACHR to the detriment of the Victims next of kin.

C. The Victims Were Deprived of Their Liberty, Violating Article 7.

“[L]iberty is always the rule and the limitation or restriction is always the exception.”¹⁷⁸ Article 7 of the ACHR ensures the right to personal liberty which cannot be infringed upon unless for reasons previously established by law.¹⁷⁹ An Article 7 violation occurs where a person is not allowed to leave or abandon the premises at will.¹⁸⁰

First, the retention of identity documents “can result in restrictions on workers’ freedom of movement and can be used as a means to bind them to a particular job or employer, forcing them

¹⁷⁵ *Honorat*, para. 106-07.

¹⁷⁶ *Id.*, para. 106-110

¹⁷⁷ *Fireworks Factory*, para. 255

¹⁷⁸ *Cotton Field*, para. 247; *Chaparro Álvarez*, para. 53

¹⁷⁹ ACHR Article 7

¹⁸⁰ *Ramirez Escobar*, para. 329; AO OC-21/14, para. 145.

to do work that they may not have consented to for fear of losing.”¹⁸¹ Here, the Victims’ liberty was curtailed when the Perpetrators retained the Victims’ identity documents and provided pretextual reasons to not return them. The retention of their identity documents and work permit by the Perpetrators restricted their ability to leave the premises at will.¹⁸²

Second, all workers, including the Victims, were forced to live on the farm where the Victims’ movements were surveilled and controlled.¹⁸³ Similar to *Hacienda Verde* where the workers lived and worked under surveillance of guards preventing them from leaving, the Victims were surveilled 24/7 by guards at both El Dorado and the Aravanian farm.

The deprivation by retention of their documents and surveillance occurred *without* a valid “arrest warrant or existence of flagrant necessity”¹⁸⁴ and, therefore, violated the Victims’ rights under Article 7.

D. The Trafficking Prohibited the Victims from Realizing Their Juridical Personality, Violating Article 3.

Article 3 of the ACHR provides that “[e]very person has the right to recognition as a person before the law.”¹⁸⁵ This Court, citing the ICTY case of *Prosecutor v. Kunarac*, explained that “as a result of the exercise of any or all of the powers attaching to the right of ownership there is some destruction of the juridical personality.”¹⁸⁶ Therefore, where a situation of slavery is verified, there has been a “substantial restriction of the juridical personality of the individual

¹⁸¹ UN Global Compact, pp. 1

¹⁸² Human Rights Committee, para. 9

¹⁸³ *Hacienda Verde*, para. 173

¹⁸⁴ *Ituango*, para. 153

¹⁸⁵ ACHR, Article 3

¹⁸⁶ *Hacienda Verde*, para. 259

concerned.”¹⁸⁷ This is because forms of slavery prohibit “enjoying the basic civil rights [which] implies the capacity to be the holder of rights (capacity and exercise) and obligations.”¹⁸⁸

Here, as discussed above in section I.A. on Article 6, the trafficking removed the Victims’ ability to enjoy their basic rights or be recognized as a person under the law because they were subjected to coercion, fraud, exploitation, inhumane treatment, and deprivation of liberty. As a result, their right to juridical personality under Article 3 of the ACHR was violated.

III. ARAVANIA IS INTERNATIONALLY RESPONSIBLE FOR VIOLATIONS OF ARTICLES 1, 2, 3, 5, 6, 7, and 26.

States must not only refrain from violating human rights under the ACHR but must also “adopt positive measures” to protect these rights.¹⁸⁹ A State has the obligation to “ensure the creation of the conditions required to guarantee that violations of th[e] inalienable right [to freedom from slavery] do not occur” and prevent third-parties from violating it.¹⁹⁰ Therefore, to comply with its obligation, the State must act with due diligence to protect human rights.¹⁹¹ A State’s duty to prevent situations of violence that threaten the exercise of human rights, the State must develop and implement two types of measures: 1) general measures and 2) specific measures.¹⁹²

A. Aravania Failed to Take General Measures to Prevent Trafficking.

States act as guarantors of human rights and have the legal obligation to prevent violations of an individuals’ human rights “from becoming inevitable.”¹⁹³ States have an obligation to “to prevent and combat trafficking of persons [and] to identify and dismantle transnational human

¹⁸⁷ *Id.*, para. 273

¹⁸⁸ *Anzualdo Castro*, para. 87

¹⁸⁹ *Pueblo Bello*, para. 111; *Wong Ho Wing*, para. 128; *Hacienda Verde*, para. 316

¹⁹⁰ *Hacienda Verde*, para. 317

¹⁹¹ *Id.*, para. 320, 363; Belém do Pará, Article 7(b)

¹⁹² Human Mobility in Mexico, para. 376

¹⁹³ Human Mobility Report, para. 157

trafficking networks.”¹⁹⁴ Furthermore, a State’s obligation under Belém do Pará Article 7¹⁹⁵ includes pursuing “by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to“(c) include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary.”¹⁹⁶

Here, Aravanja had at a minimum constructive knowledge of the high risk of trafficking based on the existence Counsel for the Victims, the Trafficking Victims Support and Reintegration Clinic (“Clinic”). This Clinic is a legally recognized, Aravanian civil society organization. Aravanian trafficking victims created the Clinic to assist other Aravanian trafficking survivors seek redress and justice. The existence and recognition of the clinic demonstrates Aravanja’s awareness of the prevalence of trafficking of its nationals in and around its jurisdiction.

When a State has generalized knowledge of discrimination and violence against a group, it must develop, implement, and supervise a comprehensive strategy “aimed at avoiding the risk factors and strengthening institutions” to provide an effective response.¹⁹⁷ This strategy must include all measures of a legal, political, administrative and cultural nature that are needed to protect human rights such as preventive policies and awareness campaigns.¹⁹⁸

First, because Aravanja had general knowledge of the prevalence of trafficking against its nationals, it had an obligation to remedy the conditions that made the Victims vulnerable to trafficking.¹⁹⁹ Here, Aravanja lacks a social safety net to support its inhabitants because it has no public education or social security system. Despite the alleged policy it has on human trafficking,

¹⁹⁴ IA Principles on Trafficking, Principle 20

¹⁹⁵ Belém do Pará, Article 2

¹⁹⁶ *Id.*, Article 7

¹⁹⁷ Human Mobility Report, para. 161

¹⁹⁸ *Rantsev*, para. 286.

¹⁹⁹ Human Trafficking Commentary, Principle 2

that policy failed to correct a key risk factor by failing to provide a social safety net. Not only does this relate to Aravanja's obligations of the aforementioned articles but also its duty under Article 26 of the ACHR. This Court recognized that economic, social, and cultural rights ("ESCR") within the Organization of American States Charter ("OAS Charter") are enforceable under Article 26. The Court established a right to social security within Article 26 in its interpretation of the OAS Charter.²⁰⁰ This right "seeks to protect the individual from future contingencies which, should they occur, could have harmful consequences for that person; therefore, measures should be adopted to protect him or her."²⁰¹ The social security system should be accessible and encompass certain principal branches including: health care, unemployment, and family and child support.²⁰² Here, Aravanja has no social security system in violation of its international obligation, including Article 26 of the ACHR.

Second, almost a quarter of Aravarians are impoverished, a majority of whom are rural women. Rural women face increased barriers to education and are unable to realize their constitutional rights to fair wages and decent living conditions. They are forced to seek employment abroad in exploitative conditions to provide for their children and dependents because of gender pay inequity and lack of workplace inclusion policies. A.A. is one of these women. A.A. was poorly educated with no economic prospects, and had to provide for her daughter and ailing mother. With no options in Aravanja to cover the costs of her mother's and daughter's care; as such, she was vulnerable to the deceptive recruiting tactics of the Perpetrators who promised financial and health security for A.A. and her family. The amalgamation of the socioeconomic

²⁰⁰ *Muelle Flores*, para. 183

²⁰¹ *Miskito Divers*, para. 90

²⁰² Committee on ESCR, GC No. 19

conditions, poverty, underdevelopment, and lack of equal opportunity, are well-recognized as factors that make women more vulnerable to trafficking.²⁰³

Aravania failed to address the risk factors despite its knowledge and obligation as a member to several international treaties and instruments and armed with official data, which confirmed the Victims vulnerability based on their membership in a particular social group. Aravania failed to institute prevention measures such as creating a social security system, adopting measures necessary to eradicate workplace discrimination and pay inequity against women, and strengthening mechanisms used by public offices for receiving and responding to the complaints of trafficking.²⁰⁴

B. Aravania Failed to Take Specific Measures To Prevent the Violations of the Victims' Human Rights.

A State's duty to prevent "is conditioned by its awareness of a situation of real and immediate risk for a specific individual or group of individuals and the reasonable possibilities of preventing or avoiding that risk."²⁰⁵ Where the requisite awareness of the State exists, it has an obligation "to take specific measures with respect to those persons" to prevent the violations from occurring.²⁰⁶

Here, Aravania had specific knowledge of the real and immediate risk of trafficking to the Victims. In *Hacienda Verde*, Brazil knew of the real and immediate danger of human rights violations from reports from other workers.²⁰⁷ Likewise, Aravania received a report in October 2012 on its emergency hotline alleging the recruitment tactics by Maldini and subsequent trafficking. One year later, it also interviewed a woman who worked at El Dorado who

²⁰³ Palermo Protocol, Article 9 (4)

²⁰⁴ *Captive Communities*, para. 221

²⁰⁵ *Pueblo Bello*, para. 123

²⁰⁶ *Rantsev*, para. 286

²⁰⁷ *Hacienda Verde*, para. 325

corroborated the hotline complaint. Just as the workers who escaped in *Hacienda Verde* reported to state authorities the conditions at the farm, other workers from El Dorado reported the trafficking scheme and conditions to Aravanian authorities.²⁰⁸ Unlike Russia in *Rantsev* that had only general knowledge of trafficking in its jurisdiction, Aravania had more than general knowledge of the prevalence of trafficking and grounds for reasonable suspicion of a real and immediate risk to the Victims based on the 2012 and 2013 complaints.²⁰⁹

Aravania had the obligation to adopt specific prevention measures with respect to the Victims but failed to do so. Here, Aravania received the reports in 2012 and 2013 about the trafficking scheme being carried out by the Perpetrators pursuant to the Agreement. Yet, Aravania failed to make further inquiries into the complaints and failed to use available measures under the Agreement to prevent the continuation of the trafficking. In *Rantsev*, Cypriot authorities failed to make further inquiries into the background facts when a potential trafficking victim came to their attention at a police station.²¹⁰ Likewise, Aravanian authorities made no further inquiries when it received the hotline report. While it requested a report after the 2013 complaint, it did not conduct a site visit to inspect the conditions firsthand despite knowing the farm employed Aravanian nationals. It relied on Lusaria's regurgitation of the employment contract terms and did not inquire further. Therefore, it failed to uphold its obligation to take protective measures when it was aware of the real and immediate risk of trafficking to the Victims.

IV. ARAVANIA VIOLATED THE RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION.

Under the protections granted by Articles 8 and 25 of the ACHR, States are obligated to provide effective judicial remedies to victims of human rights violation in accordance with due

²⁰⁸ *Id.*, para. 327

²⁰⁹ *Rantsev*, para. 305

²¹⁰ *Id.* paras. 297, 298

process of law.²¹¹ These obligations exist within the general framework of a State's obligation to ensure the free and full exercise of rights under 1(1) of the Convention.²¹² A State's obligations under Articles 8 and 25 of the ACHR "are supplemented and enhanced for those States that are a party to it by the obligations arising [from] Belém do Pará" and add a heightened standard of due diligence.²¹³

A. Aravania Failed to Conduct a Genuine, Complete, and Effective Investigation With Due Diligence, Violating Article 8 and 25.

Aravania's duty to investigate derives from Article 8 and 25 of the ACHR. The right to a fair trial within Article 8 of the ACHR implies that victims of human rights violations "ha[ve] a right to obtain clarification of the events that violated human rights and the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution."²¹⁴ The right to judicial protection in Article 25 "oblige[s] the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, inter alia, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered."²¹⁵

Where a State fails to investigate a violation and allows a third-party to act "with impunity to the detriment of the rights recognized by the Convention" it violates its obligations *erga omnes* contained in Articles 1(1) and 2 to act with due diligence.²¹⁶ The authorities must act on their motion when they learn of trafficking conditions and need not wait for a complaint.²¹⁷ Further, Belém do Pará Article 7 further establishes a State's duty to use "due diligence to . . . investigate

²¹¹ *Río Negro*, para. 191; *Contreras*, para. 127

²¹² *Castañeda-Gutman*, para. 34

²¹³ *Veliz Franco*, paras. 183-184.

²¹⁴ *Barrios Altos*, para. 48

²¹⁵ *Tamayo*, para. 169

²¹⁶ *Da Penha Fernandes*, para. 42, citing *Velásquez Rodríguez*, para. 176; *Cruz*, para. 175.

²¹⁷ *Pueblo Bello*, para. 143; *Mapiripán*, para. 219

and impose penalties for violence against women.”²¹⁸ A serious investigation must be genuine, complete, and effective.²¹⁹

1. Aravania Did Not Conduct a Genuine Investigation.

This Court has held that a State failed to conduct a genuine investigation when the investigation did not clarify the events leading up to the human rights violation and failed to produce any information to identify the individuals responsible.²²⁰ The Commission in *Paloma Angelica Ledezma v. Mexico* noted the investigation by Mexican officials failed to take proper steps to clarify the facts where authorities failed “to crosscheck information obtained in the various statements taken, or to compare them so as to carry out a serious investigation aimed at clarifying the facts.”²²¹

Here, similarly, Aravania failed to cross check the multiple complaints with the Lusarian reports to clarify the facts. Instead, it summarily rejected the 2012 and 2013 complaints and accepted Lusaria’s version of the facts with no inquiry of its own. While it mobilized police and subsequently after A.A.’s report and arrested Maldini, it failed to take further steps to clarify the facts. It did not request information from Luasaria of the identities of the individuals employed at El Dorado or the Aravanian farm, try to filter the border data, compare the complaints, or inquire into the role of others involved. Aravania failed to do anything more than check Maldini’s social media and visit the abandoned Aravanian farm.

2. Aravania Did Not Conduct a Complete Investigation.

A complete investigation “must be aimed at exploring all the possible lines of inquiry to identify the perpetrators of the crime with a view to their subsequent prosecution and

²¹⁸ Belém do Pará, Article 7

²¹⁹ *Pueblo Bello*, para. 150

²²⁰ *Id.*

²²¹ *Ledezma*, para. 86

punishment.”²²² The investigations must have a sufficiently broad scope and last long enough to conduct a complete investigation.²²³ Further, a State shall furnish an environment where the political or institutional conditions allow the victims to simply and promptly pursue the legally recognized remedy and for the remedy to fulfill its purpose.²²⁴

First, Aravania rushed the investigation. In *Akkoç*, authorities only investigated for 12 days, an insufficient amount of time to diligently and properly investigate. Here, Aravanian investigated for an even shorter period, potentially only 24 hours. While police promptly arrested Maldini, there is no indication the investigation continued after the criminal judge’s improper dismissal of the case on immunity grounds. Even if the investigation continued in some latent form until the arbitration, two months still remains wholly insufficient to ascertain and clarify all the facts of the circumstances of a transnational trafficking scheme and identify the Victims.

Second, Aravania failed to inquire into the other Perpetrators. Maldini was one of only many individuals involved in the trafficking and maintenance of the conditions against the Victims. The roles of others such as Torres, owners of El Dorado, and staff at EcoUrban were never investigated by Aravania.²²⁵

Third, Aravania hindered the Victims’ ability to a complete investigation and prompt recourse to punish those responsible for the trafficking because it improperly recognized immunity despite Maldini acting outside of the scope of his official acts.

The Vienna Convention allows for States to mutually consent to the provision of diplomatic immunity to individuals engaging in a diplomatic mission between States.²²⁶ However, Guideline

²²² Access to Justice for Women, para. 41

²²³ *Akkoç*, paras. 95-99; *Kiliç*, paras. 78-83.

²²⁴ Access To Justice as a Guarantee of ESCR, para. 251.

²²⁵ Clarification, para. 49

²²⁶ Vienna Convention, Article 2

10 of the U.N. Human Trafficking Commentary limits the scope of immunity by confirming that “privileges and immunities attached to the status of an employee of a diplomatic mission ... should not be invoked in order to shield that person from sanctions for trafficking or related offences.”²²⁷

As such, a waiver to prosecute is not needed where an exception to the immunity applies.²²⁸ Under Vienna Convention Article 31, a diplomatic agent’s immunity is subject to exception where “[a]n action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.” The U.N. Special Rapporteur on Trafficking noted that Vienna Convention Article 31 applies in the context of human trafficking.²²⁹ The scope of diplomatic immunity must be defined in the context of States’ positive obligations, including the prohibition of slavery and trafficking in persons.

In *Basfar*, the U.K. Supreme Court adopted the Special Rapporteur's Article 31 analysis to hold the victim’s treatment was for personal profit and outside the scope of diplomatic functions.²³⁰ There a Saudi diplomat in the UK subjected the victim, a migrant domestic worker, to human trafficking and, therefore, the conduct fell outside his official duties and he was not immune from legal action.²³¹ Here, the Agreement provided for the provision of diplomatic immunity to “two individuals to carry[] out the transplantation phase in [] Aravania.” However, Maldini’s deceptive recruitment of the Victims began before Lusaria immunity was vested. Recruitment is not within the scope of the activities covered under his immunity.²³² Moreover, recruitment was done for the personal profit of Maldini and others employed at El Dorado, as revealed by the Global Rights Observatory which detailed Maldini’s exponential wealth growth from the *Aerisflora* industry and

²²⁷ UN Human Trafficking Commentary, pp. 125

²²⁸ Vienna Convention, Article 31

²²⁹ *Siti Aisah*, UN Special Rapporteur on Trafficking, para. 1.7; *Basfar*, UN Special Rapporteur on Trafficking, para. 17

²³⁰ *Basfar*

²³¹ *Id.*, para. 107

²³² Vienna Convention, Article 31(1)(c)

his appointment to a government position. Therefore, the trafficking perpetrated by Maldini fell outside the scope of his diplomatic immunity and subjected him to prosecution. Here, the Aravanian Second Criminal Court Judge rubber stamped Lusaria's decision to deny a waiver of his immunity and did not conduct a thorough analysis of the scope of Maldini's immunity. The appellate court did more of the same during the three months of the pending appeal.

3. *Aravania Did Not Conduct an Effective Investigation.*

This Court acknowledged that “certain lines of inquiry, which fail to analyze the systematic patterns surrounding a specific type of violations of human rights, can render the investigations ineffective.”²³³ In *Cotton Field*, Mexican authorities opened separate investigations failing to take into the context of violence against women.²³⁴ Here, Aravania failed to approach the investigation through the context of violence against women. Instead, its lackluster investigation categorized the conduct as labor disputes and breaches of the Agreement.²³⁵

Therefore, Aravania failed to conduct a genuine, complete, and effective investigation into the trafficking of the Victims, violating its obligations under Articles 8 and 25.

B. Aravania Failed to Provide the Victims an Adequate Remedy, Violating Article 25.

Article 25 of the ACHR provides every person the right to simple, effective, and prompt recourse.²³⁶ The obligation turns on “whether the domestic proceedings ensured real access to justice, in keeping with the standards established in the American Convention.”²³⁷ Victim participation in the recourse and judicial proceedings to clarify the facts, sanction those responsible, and seek compensation is paramount.²³⁸ The Court explained that the State obligation

²³³ *Cotton Field*, para. 366; *Rochela*, paras. 156, 158, 164

²³⁴ *Cotton Field*, para. 368

²³⁵ Clarification, para. 10

²³⁶ ACHR, Article 25

²³⁷ *Ituango*, para. 339

²³⁸ *Id.*, para. 226

to make “adequate reparation ... requires measures of rehabilitation, satisfaction and guarantees of non-repetition.”²³⁹

Neither the Lusarian proceedings nor the arbitration provided adequate recourse to meet Aravania’s Article 25 obligation. First, the Lusaria proceedings were inadequate because Lusaria’s criminal code does not prohibit the full scope of human trafficking and the remedy could not be realized.²⁴⁰ Instead, the criminal code only defines human trafficking as sexual exploitation. This limited definition denied Victims’ access to any recourse because Lusaria’s remedy is illusory for instances of labor trafficking that do not involve sexual exploitation. Moreover, there is no indication that the Victims had an opportunity to participate in the judicial proceedings against Maldini.

Second, the arbitration is also inadequate, as discussed in Subsection III of the analysis of the admissibility grounds. The arbitration occurred in a State-to-State investment treaty context that solely analyzed whether a breach of the Agreement occurred. While the arbitral panel briefly mentioned labor rights are human rights that related to the States’ obligations under the Convention, the arbitration was not geared toward the reparation of a human right. Specifically, it did not analyze whether Aravania failed to meet its obligations to guarantee and protect the Victims human rights. As a result, no form of reparation as contemplated by the Court occurred.²⁴¹ Aravania made no guarantee of non-repetition, provision of rehabilitation services to the Victims, or satisfaction. As explained in Subsection III. B. of the admissibility grounds, the minimal compensation provided to A.A. alone is insufficient to constitute an adequate remedy. Moreover, the Victims had no ability to be heard in the proceedings.

²³⁹ *Id.*, para. 341

²⁴⁰ *López Soto*, para. 254

²⁴¹ *Ituango*, para. 341

Therefore, Aravanja violated its obligation under Article 25 because the Lusarian criminal proceeding and the Agreement arbitration are not adequate recourse or forms of reparation.

REQUEST FOR RELIEF

For the foregoing reasons, Petitioners respectfully request this Honorable Court to

- (1) DECLARE the present case admissible.
- (2) DECLARE the Republic of Aravanja violated its obligations under Articles Articles 3, 5, 6, 7, 8, 25, and 26 of the American Convention, in relation to Articles 1.1 and 2 thereof and to Article 7 of the Convention of Belém do Pará.
- (3) ORDER Aravanja to take all necessary measures to investigate, prosecute, and punish all the perpetrators.
- (4) ORDER publication of the judgment.
- (5) ORDER Aravanja to issue a public acknowledgment of international responsibility.
- (6) ORDER Aravanja reimburse the Counsel for the costs of bringing claim.
- (7) ORDER Aravanja adequately compensate the Victims and provide rehabilitative services.
- (8) ORDER Aravanja create and implement specific policies to address the societal gender inequities and to prevent transnational labor trafficking.

Respectively,

The Victims, A.A. and Nine other Women