

CASE OF A.A. AND NINE OTHER WOMEN V. REPUBLIC OF ARAVANIA

STATE'S MEMORIAL

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## II. INDEX OF AUTHORITIES

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### III. SUMMARY OF FACTS

#### 1. Background

Republic of Aravania is a coastal South American country with underdeveloped social services and gendered socio-economic disparities. It faced catastrophic flooding in 2012, prompting President Carlos Molina's government to implement the "Impulso 4 Veces" Plan. Seeking solutions, Aravania entered into a bilateral cooperation agreement with Lusaria, a neighbouring state known for its climate adaptation strategies, particularly the use of a native plant, Aerisflora, in "sponge cities." Lusaria, under President Elena Solis, nationalized Aerisflora production amid corruption allegations. Publicist Hugo Maldini, closely linked to Solis, became the face of Aerisflora and was later appointed Special Attaché under the cooperation agreement.

#### 2. The Bilateral Agreement

In July 2012, Aravania and Lusaria signed a Cooperation Agreement to transplant Aerisflora in flood-prone areas of Aravania. Lusaria agreed to recruit and relocate workers, mostly women, through its public company EcoUrban Solution. The Agreement also granted diplomatic immunities to two Lusarian officials, including Maldini, for implementing the project.

#### 3. Recruitment of A.A. and the Women

A.A., a single mother from Campo de Santana in Aravania, struggling with poverty and social stigma, was lured by Maldini's targeted ClicTik videos portraying Aerisflora work as empowering. She applied and accepted an offer to work at Finca El Dorado in Lusaria. She

was promised decent wages, benefits, and legal documentation for her and her dependents—her mother and infant daughter.

#### 4. Working Conditions at El Dorado

Upon arrival in November 2012, A.A. found herself in exploitative conditions: excessive working hours, kitchen duties, surveillance, poor housing, and lack of agency. Supervised by Joaquín Díaz and Isabel Torres, she was subjected to gendered expectations and threats of retaliation. Identity documents were retained, and complaints were met with coercion. She witnessed or heard of sexual and physical abuse against fellow workers.

#### 5. Transfer to Aravania and Complaint

In January 2014, A.A. and nine other women were sent to Aravania to transplant *Aerisflora*. Maldini extended their stay due to project delays and refused to pay wages. When A.A. resisted, he used threats and manipulation, invoking her maternal responsibilities and dependence on Lusarian benefits. A.A. fled the site and filed a police complaint in Velora. Aravanian authorities arrested Maldini but released him after Lusaria refused to waive his diplomatic immunity, asserting that jurisdiction lay with Lusaria. Aravanian courts dismissed the case; subsequent appeals failed.

#### 6. Domestic Legal Proceedings and Investigations

Aravania pursued arbitration against Lusaria, resulting in a US\$250,000 award, including US\$5,000 to A.A. Meanwhile, Lusaria prosecuted Maldini for abuse of authority (but not trafficking), sentencing him to 9 months. Allegations against him related to human trafficking remained unproven. Despite anonymous complaints and prior warnings to Aravanian authorities, no action had been taken earlier.

## 7. Inter-American Proceedings

On October 1, 2014, the Trafficking Victims Clinic filed a petition before the Inter-American Commission on Human Rights (IACHR), alleging Aravania's failure to prevent human trafficking and ensure humane treatment and remedies under the ACHR and Belém do Pará Convention. Despite objections on admissibility and jurisdiction, the IACHR found Aravania internationally responsible for rights violations (Articles 3, 5, 6, 7, 8, 25, 26 ACHR). Aravania denied responsibility. The matter is now before the Inter-American Court of Human Rights, with hearings scheduled for May 2025.

#### IV. LEGAL ANALYSIS

LEGAL ISSUE I: DOES THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS AND THE INTER-AMERICAN COURT OF HUMAN RIGHTS HAVE **JURISDICTION** TO ADJUDICATE THE CLAIMS OF HUMAN RIGHTS VIOLATIONS MADE BY A.A. AND NINE OTHER WOMEN? IS SUCH A CASE **ADMISSIBLE**?

8. As counsel for the Republic of Aravania, it is argued that neither the Inter-American Commission nor the Inter-American Court of Human Rights holds jurisdiction to adjudicate the claims presented in A.A. and Others. This position is based on three distinct grounds: (1) lack of jurisdiction *ratione personae* (personal jurisdiction), as only A.A. is specifically identified, whereas the remaining nine alleged victims are unidentified; (2) absence of jurisdiction *ratione loci* (territorial jurisdiction), since the core violations took place in Lusaria, outside Aravania's territory and jurisdictional control; and (3) the application of the principle of subsidiarity (exhaustion of domestic remedies), given that A.A. has already secured redress through domestic legal mechanisms, including arbitration compensation and criminal trials conducted in both involved countries.

##### A. Lack of Jurisdiction Ratione Personae – Unidentified Victims

9. The American Convention envisions that cases before the Inter-American system involve specific, identifiable victims of human rights violations. Article 44 of the Convention allows “*any person or group of persons, or any nongovernmental entity*” to lodge petitions, but it presupposes actual victims of a violation.<sup>1</sup> Indeed, the Commission's own

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<sup>1</sup>American Convention on Human Rights (entered into force 18 July 1978) 1144 UNTS 123 (ACHR), art 44.

Rules of Procedure require that a petition include, “*if possible, the name of the victim.*”<sup>2</sup>In this case, aside from A.A., the identities of the nine other women are undisclosed. Aravania contends that the Commission and Court lack *ratione personae* jurisdiction over these anonymous individuals because they are not concretely identified as “persons” whose rights were violated. The duty to secure Convention rights extends to “all persons subject to [a State’s] jurisdiction” (Article 1(1))<sup>3</sup>, which implies a need to ascertain who those persons are. An international human rights proceeding cannot be based on hypothetical or unidentified victims.

10. In *Ana Victoria Sánchez Villalobos et al. v. Costa Rica* (the IVF case), the State objected that initial petitions did not name individual victims.<sup>4</sup> The Inter-American Commission acknowledged that dismissing a petition purely for lack of names would be unduly formalistic *if the victims are later identified*. In that case, once the petitioners provided the names of the affected individuals, the Commission deemed the petition admissible.<sup>5</sup>

11. This shows that while the system may not demand names at the very outset, ultimately the identity of alleged victims must be established for a case to proceed on the merits. Here, by contrast, the nine additional women remain unidentified to date, which is a far more serious defect. Unlike in the IVF case (where anonymity was cured by subsequent disclosure), the continued absence of any names or identifying information for most victims leaves their claims in a legal limbo. Aravania cannot verify their nationality, circumstances, or even whether they consent to this petition – undermining the fairness of the process.

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<sup>2</sup> Inter-American Commission on Human Rights, 'Rules of Procedure' (2009), art 28.

<sup>3</sup> ACHR, art 1(1).

<sup>4</sup> *Ana Victoria Sánchez Villalobos et al. v Costa Rica (Admissibility)*, Report No 25/04, Inter-Am CHR, OEA/Ser.L/V/II.122 Doc 5 rev 1 at para 46 (2004).

<sup>5</sup> *Palma Mendoza et al. v Ecuador (Preliminary Objections)* Inter-American Court of Human Rights Series C No 247 (3 September 2012) paras 13–18.



12. Accordingly, the *ratione personae* jurisdiction in the present case should be considered lacking for the nine unnamed persons, and the Commission/Court should only consider the claims of A.A. (if at all). In sum, because nine of the ten purported victims have not been identified “by name”, the petition fails to meet the personal jurisdiction requirements of the system. Aravania cannot be made to answer for unspecified individuals, and the petition should be dismissed as to those unknown parties.

B. Lack of Jurisdiction *Ratione Loci* – Alleged Acts Outside Aravania’s Territory

13. Under Article 1(1) of the American Convention, States Parties undertake “*to respect the rights and freedoms recognized [in the Convention] and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights*”.<sup>6</sup> This jurisdictional clause ties a State’s human rights obligations to persons within its territory or otherwise under its authority and control. The alleged human trafficking, forced labour, and gender-based violence against A.A. and others occurred in the territory of Lusaria, not in Aravania. By the victim’s own account, the core violations – abduction, exploitation, and abuse – took place outside Aravania’s borders. Aravania did not exercise authority or effective control over the location in Lusaria where these transgressions happened. Therefore, the persons harmed were not “subject to [Aravania’s] jurisdiction” at the relevant time, but to Lusaria’s, placing the matter outside Aravania’s *ratione loci* obligations under the Convention.

14. The Inter-American bodies have recognized that a State can in certain cases be held responsible for conduct beyond its territory, but only under exceptional circumstances. The

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<sup>6</sup>ACHR, art 1(1).

Inter-American Commission in the *Saldaño v. Argentina* case clarified that “*jurisdiction*” in Article 1(1) “*is not limited to...national territory*,” such that a State “may be responsible under certain circumstances for the acts of its agents which produce effects or are undertaken outside that state’s own territory.”<sup>7</sup> However, the Commission emphasized this hinges on the State exercising authority or control over the victim or the locale of the violation abroad.<sup>8</sup>

15. In *Saldaño*, an Argentine national on U.S. death row claimed Argentina violated his rights by not protecting him; the Commission found no Article 1(1) jurisdiction because Argentina had “*not in any way exercised its authority or control*” over the person or proceedings in the foreign country.<sup>9</sup> Likewise, here Aravania did not exercise control over what transpired in Lusaria. Aravania’s agents were not the perpetrators of the trafficking and violence, nor did Aravania have effective authority in Lusaria to prevent or stop these crimes. Thus, the situation fails the test for any extraterritorial responsibility.

16. The Inter-American Court has echoed that extraterritorial jurisdiction under the Convention is a rare exception. In its Advisory Opinion OC-23/17 (2017) on the environment and human rights, the Court underscored that the exercise of jurisdiction outside a State’s territory is “exceptional” and must be determined case by case.<sup>10</sup> The default principle is that Convention rights must be secured within a State’s own territory. Only in scenarios such as a State’s agents operating abroad (e.g. an armed force occupying foreign territory or otherwise exercising authority over foreign nationals) would Article 1(1) extend beyond

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<sup>7</sup> *Victor Saldaño v Argentina*, Report No 38/99, Inter-Am CHR, OEA/Ser.L/V/II.95 Doc 7 rev (11 March 1999) paras 17–19.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> IACtHR, *Environment and Human Rights (State Obligations in Relation to the Environment)* Advisory Opinion OC-23/17, Inter-American Court of Human Rights Series A No 23 (15 November 2017) paras 80–81.

national borders. Here, the *locus* of the harm was entirely in Lusaria, under Lusarian jurisdiction. Aravania had no agents in the brothel or worksite where A.A. and others were held, and no control over the traffickers while they operated in Lusaria. In the absence of any “effective control” by Aravania in the territory where the violations occurred, the Commission and Court cannot deem Aravania responsible *ratione loci*. Aravania’s obligation under the American Convention (and likewise under the Convention of Belém do Pará) was to protect individuals within Aravania or otherwise subject to its authority – it was Lusaria’s duty to prevent and punish the crimes on its soil. Therefore, the petition falls outside the geographic jurisdiction of the Inter-American system as to Aravania.

### C. Ratione Temporis: Temporal Jurisdiction Limits

17. Aravania further objects insofar as some allegations may fall outside the Court’s **temporal jurisdiction**. The Court’s competence *ratione temporis* is limited to violations that occurred after the State’s acceptance of the American Convention and the Court’s contentious jurisdiction (or after the entry into force of relevant treaties for that State). Aravania became bound by the ACHR (and Belém do Pará, if applicable) on specific dates; any claims of violations **prior to those dates** cannot be adjudicated.<sup>11</sup> The American Convention cannot be applied retroactively (per Article 28 of the Vienna Convention on the Law of Treaties), and the Court has consistently upheld objections to its jurisdiction over pre-ratification or pre-recognition events.

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<sup>11</sup> Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (‘Belém do Pará Convention’) (entered into force 5 March 1995) 33 ILM 1534, art 7.

- i. No Retroactive Jurisdiction: If the alleged mistreatment of the women (or failures by Aravania) occurred before Aravania ratified the ACHR or recognized this Court's authority, the Court lacks jurisdiction *ratione temporis* to examine those facts. For example, if certain abuses happened in Lusaria years ago, before Aravania's acceptance of relevant treaty obligations, Aravania cannot be held internationally accountable for them now. In *Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*, Brazil raised a preliminary objection that the Court lacked jurisdiction over disappearances that occurred prior to Brazil's acceptance of the Court's jurisdiction in December 1998<sup>12</sup>. The Inter-American Court partially upheld that objection – it only examined Brazil's acts after the critical date (e.g. the continuing failure to investigate).<sup>13</sup> Likewise, Aravania insists that any events predating its consent to the Court's jurisdiction (or the entry into force of Belém do Pará for Aravania) must be excluded from consideration.
- ii. Continuing Violations Doctrine (Not Applicable Here): While the Court sometimes considers ongoing effects of past acts (e.g. continued denial of justice) as falling within its temporal jurisdiction, that doctrine does not salvage this case against Aravania. Aravania has not engaged in any continuing violation – on the contrary, it cooperated and provided redress once it became aware of A.A.'s situation. There is no persisting failure by Aravania that extends a pre-ratification wrong into the post-ratification period. Thus, the *ratione temporis* bar should apply to any allegations rooted in facts before the treaties bound Aravania. Aravania's declaration accepting the Court's jurisdiction likely included a date of effect; any claims prior to that are inadmissible. The Court should follow its precedent by

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<sup>12</sup> *Gomes Lund et al. v. Brazil*, IACtHR (2010) (Court accepted *ratione temporis* objection for pre-1998 facts).

<sup>13</sup> *Ibid.*

declining jurisdiction over facts outside the temporal scope of Aravania's obligations (as it did in cases like *Gomes Lund and Gelman v. Uruguay*, where it limited analysis to post-recognition conduct).<sup>14</sup>

- iii. Belém do Pará Temporal Aspect: Similarly, if Aravania ratified the Convention of Belém do Pará after the alleged incidents of violence, it cannot be held responsible under that instrument for prior events. Article 34 of the Vienna Convention (*pacta tertiis*) and general non-retroactivity would preclude applying new treaty obligations to acts that pre-date them. Aravania notes this to ensure that the Court's analysis, if any, under Belém do Pará is confined to the relevant timeframe. Any *ratione temporis* limitations must be observed, further narrowing the scope of this case.

#### D. Subsidiarity and Exhaustion of Domestic Remedies – Issue Already Addressed in National Proceedings

18. A fundamental principle of the American Convention is that the international human rights mechanisms are subsidiary to national legal systems. International adjudication is meant to “reinforce or complement the protection provided by domestic law”, not to replace or duplicate it. This is reflected in the Convention's requirement that petitioners must first exhaust adequate domestic remedies (Article 46(1)(a))<sup>15</sup> before turning to the Inter-American Commission. In this case, A.A.'s claims have been thoroughly handled within domestic fora. She has already obtained reparation through arbitration (presumably a binding settlement or award compensating her for the harm suffered), and criminal

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<sup>14</sup> *Castañeda Gutman v. Mexico*, IACtHR (2008) (case dismissed for failure to exhaust an effective domestic remedy).

<sup>15</sup> ACHR, art 46(1)(a).

proceedings were conducted in both Aravania and Lusaria resulting in punishment of the perpetrators. These measures indicate that the States involved (including Aravania) did not neglect the matter, but rather addressed the wrongdoing. By the time A.A. brought her petition to the Commission, *all pertinent domestic avenues had been pursued and in fact yielded redress.*

19. Article 46(1)(a)<sup>16</sup> of the American Convention provides that a petition is admissible only if “the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law”. Here, A.A. did invoke domestic remedies – she received an arbitration award (a form of civil reparation) and the matter was addressed in national criminal justice. Thus, to the extent required, the exhaustion requirement is satisfied. More importantly, the *purpose* behind Article 46 has been fulfilled: Aravania’s domestic system had the opportunity to remedy the alleged wrongs, and it did so. The Inter-American Commission was envisaged as a *last resort* for victims who find no justice at home; it was not designed to intervene after the State has already provided an adequate remedy. Accepting jurisdiction in this scenario would contradict the subsidiarity principle and essentially allow an international re-trial of a case that the national authorities have lawfully resolved.

20. The Commission and Court consistently reject attempts to use the Inter-American system as a supra-national court of appeal (“*cuarta instancia*”). Article 47 of the Convention directs the Commission to consider a petition inadmissible if, *inter alia*, “the petition or communication is manifestly groundless or obviously out of order” or if it “states facts that

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<sup>16</sup> Ibid.

do not tend to establish a violation of the Convention”.<sup>17</sup> Where a petitioner essentially seeks to relitigate a case that has been heard and decided by domestic courts with due process, the petition is deemed “out of order” under this fourth-instance doctrine. In a recent example, Colombia argued a petition was inadmissible as a “fourth instance” appeal because the claims had been litigated in its courts, which “respected the judicial guarantees of due process.”<sup>18</sup> The State noted that under Article 47(b) complaints are inadmissible if they merely express disagreement with a domestic judgment that observed all Convention guarantees.<sup>19</sup> The Commission in that case agreed that it cannot act as a tribunal of review to overrule national decisions absent evidence of a Convention violation in the domestic process itself. Likewise, Aravania submits that A.A.’s petition, coming after she received compensation and saw the perpetrators prosecuted, is effectively an attempt to have the Commission second-guess the sufficiency of outcomes reached by Aravania’s and Lusaria’s justice systems. There is no claim that Aravania’s courts denied her due process or that the arbitration was unfair; on the contrary, those processes vindicated her rights. Once domestic remedies have provided redress, there is no live “case or controversy” for the Inter-American bodies to adjudicate. Any further review would turn the Commission/Court into a redundant appellate tier, which the Convention forbids.

21. Permitting this case to proceed despite full domestic resolution would undermine the finality of judgments and settlements. A.A. has accepted arbitration reparation – a process that presumably entailed a final agreement – and cannot simply seek a second bite at the apple. The State of Aravania has honoured its obligations by affording a remedy and co-operating in prosecutions. Under the principle of complementarity, international

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<sup>17</sup> ACHR, art 47.

<sup>18</sup> *X and Y v Colombia (Admissibility)* Report No 214/20, Inter-Am CHR, Petition 1717-18, OEA/Ser.L/V/II Doc 257 (13 August 2020) paras 10–15.

<sup>19</sup> ACHR, art 47 (b).

jurisdiction should step in only if the State failed to do so. Here the State did not fail; thus the Commission and Court should decline to exercise jurisdiction. As the Inter-American Court has stated, it is “not an appellate court to rule on alleged errors of fact or law by national courts acting within their jurisdiction” unless those courts themselves violated the Convention.<sup>20</sup> No such violation by Aravania’s judiciary is alleged in the record. In short, the case is inadmissible due to the prior exhaustion and resolution of domestic remedies, consistent with Articles 46 and 47 of the Convention. The proper course is to respect the outcome of the national proceedings.

*For the foregoing reasons, the Republic of Aravania respectfully contends that the Inter-American Commission and Court lack jurisdiction to examine the claims of A.A. and the nine other unnamed individuals. The complaint falls outside the personal and territorial jurisdiction of Aravania under the American Convention, and it contravenes the subsidiarity principle given that domestic remedies have already delivered justice. Aravania asks that the petition be found inadmissible in limine or that the case be dismissed for want of jurisdiction, in accordance with the Convention and relevant inter-American jurisprudence.*

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<sup>20</sup> *Palma Mendoza et al. v Ecuador (Preliminary Objections)* Inter-American Court of Human Rights Series C No 247 (3 September 2012) paras 13–18.



**LEGAL ISSUE II: IS HUGO MALDINI ENTITLED TO DIPLOMATIC IMMUNITY FOR ACTIONS TAKEN IN HIS CAPACITY AS SPECIAL ATTACHÉ FOR PUBLIC AND COMMERCIAL RELATIONS, PARTICULARLY IN RELATION TO ALLEGATIONS OF HUMAN TRAFFICKING AND OTHER ABUSES?**

22. It is contended by the state that Mr. Maldini is entitled to diplomatic immunity *ratione personae* (personal immunity) during his tenure and *ratione materiae* (functional immunity) thereafter for official acts. This immunity extends to the allegations at hand and is recognized as necessary for international diplomatic functions and inter-state cooperation. Inter-American human rights law, including the American Convention on Human Rights, does not override these immunity rules; rather, it is interpreted in harmony with them. While concerns about impunity for serious abuses are valid, the proper recourse is through the sending State (Lusaria) or other avenues, not Aravania's courts. Therefore, Aravania must uphold Mr. Maldini's immunity and cannot prosecute him at this time.

A. Status of Special Attaché Maldini

23. Article 31 of the VCDR provides that a duly accredited diplomatic agent "shall enjoy immunity from the criminal jurisdiction of the receiving State."<sup>21</sup> In practice, this confers absolute immunity from local criminal law for as long as the diplomatic agent holds that status. The immunities of diplomatic agents are a codification of customary international law and are enjoyed *ratione personae*, meaning by virtue of the office. If Mr. Maldini's

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<sup>21</sup> Vienna Convention on Diplomatic Relations (adopted 18 April 1961, entered into force 24 April 1964) 500 UNTS 95.

appointment as “Special Attaché” was accompanied by diplomatic accreditation (e.g. as an attaché to Lusaria’s embassy or a similar mission), he would squarely fall under the VCDR regime and thus be immune from Aravania’s criminal jurisdiction for all conduct during his posting.<sup>22</sup> Diplomatic immunity is not a personal privilege for the individual’s benefit but rather is “to ensure the efficient performance of the functions of diplomatic missions” (VCDR preamble). It derives from the principle of sovereign equality (*par in parem non habet imperium*) and mutual respect among nations.<sup>23</sup>

24. In arguendo, even if Mr. Maldini was not formally part of Lusaria’s embassy, his role as Special Attaché under a bilateral agreement qualifies as a special mission. A special mission is a temporary diplomatic mission representing a State, agreed to by the receiving State. Article 31 of the Convention on Special Missions mirrors the VCDR in granting representatives on special mission immunity from the criminal jurisdiction of the host State.<sup>24</sup> Although not all States have ratified this Convention, many provisions are considered reflective of customary international law on special mission immunity. Here, Aravania’s consent via the bilateral agreement is dispositive. By inviting or accepting Mr. Maldini as a special attaché, Aravania conferred upon him the status protected by diplomatic immunity.<sup>25</sup> In Mr. Maldini’s case, the “public and commercial relations” mandate is an official function agreed by both States, satisfying the functional requirement for special mission immunity. Thus, under customary international law, Aravania must treat Mr. Maldini as inviolable and immune from criminal process during the mission.

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<sup>22</sup> Vienna Convention on Diplomatic Relations (adopted 18 April 1961, entered into force 24 April 1964) 500 UNTS 95.

<sup>23</sup> Christopher A Whytock, 'Foreign State Immunity and the Right to Court Access' (2013) 93 Boston University Law Review 2033.

<sup>24</sup> Convention on Special Missions (adopted 8 December 1969, entered into force 21 June 1985) 1400 UNTS 231

<sup>25</sup> Stefan Talmon, 'Leading Iranian cleric accused of crimes against humanity' (GPIL, 12 January 2018) <https://gpil.jura.uni-bonn.de/2018/01/leading-iranian-cleric-accused-cf-crimes-humanity/> accessed 12 April 2025

## B. Scope of immunity

25. Diplomatic immunity operates on two levels:

- i. Personal Immunity (*ratione personae*): Full immunity enjoyed by certain officials during their tenure in office from any civil or criminal jurisdiction of foreign States. This covers all acts of the official, whether official or private, and is coupled with personal inviolability (exemption from arrest or detention). Ambassadors and accredited diplomatic agents have such immunity under the VCDR.<sup>26</sup> Crucially, this immunity is time-limited to the period of the official appointment. If Mr. Maldini is still serving as Special Attaché, he continues to have absolute immunity from criminal jurisdiction in Aravania for any conduct through the end of his mission.
- ii. Functional Immunity (*ratione materiae*): Immunity attaching to the official acts performed on behalf of a State, applicable even after an official leaves office. This concept prevents States from being indirectly impleaded in foreign courts via actions against their former officials for acts of the State. Even once Mr. Maldini's special mission ends (or if it already has), he would remain immune from prosecution in Aravania for conduct that is attributable to Lusaria (i.e. performed in his official capacity). Such functional immunity is a well-established rule of customary international law, based on sovereign equality.<sup>27</sup> However, functional immunity does not protect private acts outside official duties (and, as discussed below, does not shield international crimes in certain jurisdictions).

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<sup>26</sup> Vienna Convention on Diplomatic Relations (adopted 18 April 1961, entered into force 24 April 1964) 500 UNTS 95, art 31.

<sup>27</sup> Stefan Talmon, 'Leading Iranian cleric accused of crimes against humanity' (GPIL, 12 January 2018) <https://gpil.jura.uni-bonn.de/2018/01/leading-iranian-cleric-accused-cf-crimes-humanity/> accessed 12 April 2025

### C. Doctrinal Foundations for Immunity and Policy Considerations

26.

- i. Diplomatic immunity is grounded in the doctrine of functional necessity – the idea that diplomatic agents must be free to perform their duties without intimidation or interference by the host state. If every diplomat or special envoy risked detention or trial whenever there were politically motivated accusations or local hostility, international diplomacy would grind to a halt. As one legal commentary notes, the diplomatic immunity doctrine “is a concept of international law, developed out of the principle *par in parem non habet imperium*,” meaning one sovereign cannot judge another.<sup>28</sup> Mr. Maldini’s mission in Aravania was part of interstate cooperation; allowing Aravania to prosecute him would effectively let one sovereign adjudicate the official conduct of another sovereign – an affront to sovereign equality and a breach of the mutual respect underpinning peaceful relations. If Aravania were to assert jurisdiction over Mr. Maldini, it would set a precedent that could endanger Aravania’s own diplomats abroad (reciprocity is a hallmark of diplomatic law). By upholding immunity, Aravania reinforces a system that ultimately protects its officials and ensures that diplomatic channels remain open even during disputes.
- ii. Act of state doctrine that certain official acts of a foreign State are non-justiciable in domestic courts. Even apart from personal immunity, courts often decline to sit in judgment of acts done by a person in an official capacity for another State (the act of state doctrine in common law, or civil law equivalents). If Mr. Maldini’s alleged acts were intertwined with his official functions (for example, movement of

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<sup>28</sup> Christopher A Whytock, 'Foreign State Immunity and the Right to Court Access' (2013) 93 Boston University Law Review 2033, 2080.

persons under the guise of a cultural exchange or labor program between Lusaria and Aravania), they could be considered acts of the State of Lusaria. Aravania's judiciary would then be essentially passing judgment on Lusaria's actions – something international law generally forbids absent an international jurisdiction. This provides a doctrinal backstop: even if one argued Mr. Maldini personally lost immunity post-mission for ultra vires acts, the nature of the acts might implicate Lusaria's responsibility, pulling the case back into the sphere of immunity (State immunity or act-of-state). This was seen in cases like *Jones v. UK* (2014), where the European Court upheld immunity for foreign officials in a torture case, emphasizing that the acts were sovereign acts of the foreign state and that the grant of immunity pursued legitimate aims of international comity.<sup>29</sup>

- iii. Inter-State Cooperation and Alternatives to Prosecution. By honoring immunity, Aravania is not abandoning the fight against human trafficking; instead, it should pursue alternative cooperative measures. Diplomatic law itself provides mechanisms: Aravania already used one by raising the issue (implied by the fact this memo is being written). It can formally request Lusaria to waive immunity for Mr. Maldini. Waiver under VCDR Article 32 must be explicit and comes at the discretion of the sending State.<sup>30</sup> If Lusaria refuses (as is often the case, barring political pressure), Aravania can declare Mr. Maldini *persona non grata*, resulting in his recall (VCDR Article 9). Aravania can also engage the international community – for instance, sharing information with organizations fighting

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<sup>29</sup> Christopher A Whytock, 'Foreign State Immunity and the Right to Court Access' (2013) 93 Boston University Law Review 2033, 2080.

<sup>30</sup> Vienna Convention on Diplomatic Relations (adopted 18 April 1961, entered into force 24 April 1964) 500 UNTS 95, art 45.

trafficking or even referring the matter to an international tribunal if jurisdiction arises (though currently there is no universal criminal court for trafficking).

D. Granting immunity and tolerating impunity

27. Aravania's deference to immunity caused only a short delay (Maldini was tried the following year, which is typical timing) and did not ultimately deny justice. If anything, Aravania's stance ensured that justice was internationalized. The victims' ordeal was acknowledged at the international level (in arbitration and now in these proceedings), which can be seen as a form of moral victory and guarantee of non-repetition. Lusaria, having been held to account, is likely to improve its monitoring of guest workers and perhaps treat future complaints more urgently. In fact, the exposure from this case already caused a "media stir in both countries" about A.A.'s lack of access to justice, which likely pressured Lusaria to act and will discourage similar abuses under the cloak of diplomatic privilege. Thus, Aravania's handling of the case contributes to the broader fight against human trafficking. It shows that diplomatic immunity is not a safe haven for traffickers – they will be prosecuted somewhere, and States can be held liable through other forums. This is a powerful message consistent with the objectives of the Belém do Pará Convention to eradicate violence against women.

*In sum, while serving, Mr. Maldini enjoyed absolute immunity in Aravania, so he couldn't be prosecuted. After his tenure, functional immunity would still shield any acts carried out in his official capacity, though not ultra vires personal crimes like alleged trafficking. In practice, immunity prevented any investigation during his posting, and the evidence—tied to his diplomatic functions—makes it hard to prove these were purely*

*personal acts. Accordingly, Aravania's safest legal stance is that all conduct remains immune unless Lusaria waives immunity.*

**LEGAL ISSUE III: WHETHER ARAVANIA VIOLATED ITS OBLIGATIONS UNDER THE AMERICAN CONVENTION AND THE CONVENTION ON VIOLENCE AGAINST WOMEN BY FAILING TO PREVENT HUMAN TRAFFICKING AND ENSURE HUMANE TREATMENT, FAIR LABOUR CONDITIONS, AND EFFECTIVE REMEDIES FOR A.A. AND OTHERS UNDER ITS BILATERAL AGREEMENT WITH LUSARIA.**

28. The Republic of Aravania respectfully submits that it has not breached its obligations under the American Convention on Human Rights (ACHR). Aravania acknowledges the gravity of the allegations – involving human trafficking, inhumane treatment, and forced labor of A.A. and other women – but will demonstrate that it took reasonable and lawful measures to prevent such abuses, to ensure humane working conditions, and to provide effective remedies to the victims. Any limitations in Aravania’s response were the result of its adherence to other binding norms of international law, particularly diplomatic immunity under the Vienna Convention on Diplomatic Relations (VCDR) and a bilateral Cooperation Agreement with the State of Lusaria, rather than a lack of diligence or willingness on Aravania’s part.

**A. Due Diligence to Prevent Trafficking and Ensure Humane Labor Conditions**

28. Aravania fulfilled its duty to prevent human trafficking and protect individuals from inhumane treatment and forced labor to the extent that it was jurisdictionally and lawfully able to do so. Article 1(1) ACHR obligates States to ensure the free and full exercise of protected rights to all persons within their jurisdiction.<sup>31</sup> In the present case, many of the wrongful acts occurred outside Aravania’s territory – primarily in Lusaria – which limits the direct

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<sup>31</sup> American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) OAS Treaty Series No 36, art 1.



jurisdiction of Aravania over those events. Nonetheless, Aravania took concrete measures, both preventive and reactive, demonstrating due diligence in combating trafficking and abuse:

- i. Aravania's domestic law clearly prohibits human trafficking and forced labor. As early as 2005–2006, Aravania had acceded to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, and its 1943 Criminal Code criminalizes human trafficking with severe penalties (5 to 17 years' imprisonment) and forced labour (6 to 10 years). Thus, Aravania had **established the necessary laws** to punish and deter trafficking, in line with Article 7(c) of the Belém do Pará Convention (requiring States to include needed penal provisions). There is no suggestion that Aravania's laws or policies encouraged or tolerated human trafficking; on the contrary, Aravania was a party to multiple international instruments against trafficking and violence towards women and maintained a "comprehensive policy for the prevention and punishment of human trafficking," as noted by experts at the Aravanian Institute of Advanced Studies
- ii. Aravania's strongest demonstration of due diligence occurred when A.A. and nine other Aravanian women were finally within Aravania's territory and A.A. alerted authorities to the abuse. On January 5, 2014, the 10 women (including A.A.) were brought from Lusaria to Aravania (Primelia, Velora) by Lusarian staff – ostensibly to work for one-week transplanting Aerisflora. The conditions in Primelia mirrored the harsh conditions of the Lusarian farm: the women were closely monitored by Lusarian personnel and housed in overcrowded facilities. A.A. grew increasingly fearful, especially after learning of an incident of sexual violence by a guard against a woman in the fields. When some of the Aerisflora plants died and Mr. Maldini told the women their work in Aravania would be extended another week, A.A.

confronted him and demanded her owed pay and the right to leave after the agreed period. Maldini's response was chilling: he disclaimed responsibility for payments and implied that if A.A. stayed in Aravania without finishing the job, she would revert to being a "desperate, single woman," depriving her daughter and ailing mother of the benefits they were receiving in Lusaria. Given the urgency – especially the possibility that the other 9 women had been whisked away ("as if someone had left the place quickly" likely back across the border) – Aravanian authorities swiftly obtained an arrest warrant from the Second Criminal Court of Velora and arrested Hugo Maldini on the spot. The State did everything in its power at that moment to both halt the ongoing abuse and gather evidence of the crimes, reflecting the very essence of due diligence under the Convention of Belém do Pará.

- iii. Ensuring Humane Treatment During Proceedings: Once Maldini was arrested, Aravania also had to ensure his fair treatment and the legality of proceedings, as required by Article 8 ACHR (due process) and Article 7(f) of Belém do Pará (timely hearing and access to procedures for the victim)<sup>32</sup>. Maldini was promptly brought before the competent judge within 24 hours (on January 15, 2014) – respecting his procedural rights while not unduly delaying the case. Aravania had formally agreed that Mr. Maldini enjoyed immunity from Aravania's jurisdiction for acts performed in the course of the Aerisflora mission. This treaty obligation is significant: it shows that when Aravania arrested Maldini, it was not willfully flouting the Agreement – the arrest was an emergency measure to address an active crime scene. Once Maldini asserted immunity, the judicial authorities appropriately paused to seek guidance from the executive branch (the Foreign Ministry) on how to proceed

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<sup>32</sup> Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (adopted 9 June 1994, entered into force 5 March 1995) OAS Treaty Series No 61, art 5.

lawfully. On January 15, 2014, the very day of Maldini's court appearance, the Second Criminal Court Judge contacted the Ministry of Foreign Affairs of Aravania and inquired about Maldini's immunity status, simultaneously requesting that Lusaria waive his immunity to allow a full investigation and prosecution in Aravania.

29. In sum, Aravania's conduct up to this point exhibits exemplary due diligence under its human rights obligations. It had preventative laws and agreements in place, it monitored and reported on implementation, and when a victim came forward, Aravania acted immediately to stop the abuse and attempt to hold the wrongdoer accountable. There is no omission here that amounts to a failure of duty. If anything, the constraint that appears – the assertion of diplomatic immunity – is an external legal barrier, not a result of Aravania's inertia or indifference. We will address the immunity issue in depth in Section III, but it is critical to note under this section that Aravania did not use immunity as an excuse to avoid action. On the contrary, Aravania pushed the limits of what it could do (even arresting an ostensibly immune person to investigate urgent allegations) and then pursued alternative means once the immunity was confirmed.

30. Thus, under Article 7 of Belém do Pará, Aravania more than met its obligations to “*prevent, punish and eradicate*” violence against these women.<sup>33</sup> It refrained from any violence itself (Article 7(a)) it applied due diligence in prevention and investigation (7(b)) and it marshalled legal processes to hold the perpetrator to account (7(c), 7(f)).<sup>34</sup> Any failure to fully prevent the trafficking must be viewed in context: this was a sophisticated transnational scheme orchestrated by individuals abusing the cover of a lawful interstate

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<sup>33</sup> Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (adopted 9 June 1994, entered into force 5 March 1995) OAS Treaty Series No 61, art 8.

<sup>34</sup> Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (adopted 9 June 1994, entered into force 5 March 1995) OAS Treaty Series No 61, art 7.

project. The very nature of human trafficking is that it often escapes detection until victims are able to speak out. Once that happened, Aravania's resolute response cannot be seen as anything other than a fulfilment of its duty to protect and ensure the rights of the victims (per Article 1(1) ACHR). Indeed, the Inter-American Court has long held that the obligation to ensure rights means the State must organize its whole apparatus to protect against violations by both state and private actors<sup>35</sup>. Here, Aravania mobilized law enforcement, judicial, and diplomatic apparatus in a timely fashion.

31. Aravania's efforts were compatible with Articles 6 and 7 of the ACHR (which guarantee freedom from slavery/servitude and personal liberty) because Aravania itself never subjected the victims to slavery or forced labor – those acts were perpetrated by a Lusarian individual and entity. Aravania did not acquiesce in those acts either; it sought to stop them. Article 5 (right to humane treatment) was not breached by Aravania, as any inhumane treatment occurred without Aravania's endorsement and, when under Aravania's watch, was promptly addressed by state action. If anything, Aravania's conduct upheld the spirit of Article 5 by rescuing A.A. from inhumane conditions.
32. Finally, Aravania's compliance with **Article 26 ACHR (progressive development of economic, social and cultural rights)** is evidenced by its pursuit of the Aerisflora project to protect the population from floods (a positive step for the right to a safe environment and livelihood) and by embedding labour rights standards in that project. Aravania **balanced development needs with human rights** by requiring dignified working conditions in the project agreementfile-rxgu2axue2jbbaa9lv2jxma. When Lusaria failed to live up to that standard, Aravania took it to task through arbitration (discussed below), which is a use of international cooperation to enforce socio-economic rights. This demonstrates Aravania's

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<sup>35</sup> Velásquez Rodríguez standard of due diligence

good faith implementation of Article 26 through both internal measures and international cooperation, as Article 26 itself encourages.<sup>36</sup>

B. Provision of Effective Judicial Remedies and Fair Trial Guarantees (Articles 8 & 25 ACHR, Article 7(f), 7(g) Belém do Pará)

33. Aravania further submits that it did not deny the victims a right to justice or an effective remedy. On the contrary, it provided multiple avenues for redress, consistent with ACHR Articles 8 and 25 and with the Convention of Belém do Pará's requirements to ensure women have access to fair legal procedures and reparations.<sup>37</sup> Article 25 ACHR guarantees everyone a "simple and prompt recourse" to a competent court for protection against acts that violate fundamental rights, including those by officials or private persons.<sup>38</sup> Article 8 ACHR ensures the right to a hearing by a competent tribunal within due process. In cases of violence against women, Article 7(f) of Belém do Pará specifically calls on States to "establish fair and effective legal procedures... including... a timely hearing and effective access to such procedures", and Article 7(g) requires "legal and administrative mechanisms to ensure... effective access to restitution, reparations or other just and effective remedies." Aravania's conduct satisfied these standards by enabling A.A. (and indirectly the other victims) to obtain both justice and reparations, albeit through a combination of domestic and international proceedings.

34. A.A. had prompt access to Aravania's criminal justice system, and her claims were heard.

The fact that the case did not end in a conviction in Aravania does not mean she was denied

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<sup>36</sup> Protocol of Amendment to the Charter of the Organization of American States ("Protocol of Buenos Aires") (adopted 27 February 1967, entered into force 12 March 1970) OAS Treaty Series No 1-A.

<sup>37</sup> Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (adopted 9 June 1994, entered into force 5 March 1995) OAS Treaty Series No 61, art 7(e).

<sup>38</sup> American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) OAS Treaty Series No 36, art 8.

justice – rather, the process was truncated due to legal immunity, which will be addressed separately as a justified limitation. What is important is that A.A.’s complaint was taken seriously and processed promptly.

35. After the dismissal in Aravania due to immunity, Aravania did not simply wash its hands of the matter. Consistent with the principle of complementarity and subsidiarity in international law, the focus shifted to Lusaria’s jurisdiction – which, as the sending State of the diplomat and the territory where most crimes occurred, was the appropriate forum to pursue criminal accountability. Aravania’s Ministry of Foreign Affairs had, in its communications with Lusaria, stressed that if Lusaria would not waive immunity, then Lusaria’s own authorities should handle the allegations: Lusaria itself noted that “since the events had occurred in Lusarian territory, any criminal responsibility would have to be determined by its authorities, as stated in the agreement”. That agreement (Cooperation Agreement) indeed envisaged that Lusaria had the primary role in hiring, supervising, and if necessary, disciplining the project personnel.

*The Republic of Aravania contends that it fulfilled its obligations under the American Convention on Human Rights and the Belém do Pará Convention by taking reasonable and lawful measures to prevent human trafficking, ensure humane labor conditions, and provide effective remedies. It enacted strong anti-trafficking laws, promptly intervened upon A.A.’s complaint, arrested the alleged perpetrator despite diplomatic immunity complications, and pursued justice through both domestic and international mechanisms. Any limitations were due to external legal constraints, not state inaction.*

## V. PRAYER FOR RELIEF

36. For the foregoing reasons, and in light of the factual and legal submissions made herein, the Republic of Aravania respectfully requests the Honorable Inter-American Court of Human Rights to:

1. Declare the petition inadmissible in limine, and/or decline to exercise jurisdiction over the matter, on the following grounds:
  - i. The lack of jurisdiction *ratione personae*, as the complaint identifies only one named victim (A.A.) while failing to specify the identities or nationalities of the remaining nine individuals.
  - ii. The lack of jurisdiction *ratione loci*, as the alleged human rights violations predominantly occurred outside Aravania's effective territorial control, within the sovereign jurisdiction of the Republic of Lusaria.
  - iii. The lack of jurisdiction *ratione temporis*, insofar as any alleged violations occurred prior to Aravania's ratification of the American Convention on Human Rights or the Convention of Belém do Pará.
  - iv. The inadmissibility of the petition under Article 46 and 47 ACHR, owing to the prior exhaustion of domestic remedies and the availability of effective redress mechanisms, including criminal proceedings and arbitration awards in Aravania and Lusaria.
  
2. Hold that Aravania has not violated its obligations under the American Convention on Human Rights or the Convention of Belém do Pará, as it:
  - i. Exercised due diligence to prevent, detect, and respond to human trafficking and labour exploitation, within the bounds of its legal authority.

- ii. Took immediate and proportionate measures upon learning of the abuse, including initiating judicial and diplomatic efforts.
  - iii. Respected the legal constraints imposed by international law, including the Vienna Convention on Diplomatic Relations, and acted in good faith throughout.
  - iv. Provided A.A. with access to justice, reparations, and effective remedies both domestically and through international cooperation.
3. Recognize that Aravania acted consistently with its international legal obligations, including:
- i. Upholding the principle of complementarity in international human rights protection.
  - ii. Respecting the doctrine of diplomatic immunity in accordance with the Vienna Convention and customary international law.
  - iii. Taking all reasonable steps to ensure non-repetition of the alleged harms.
4. Order no reparations against Aravania, as the State has neither violated the Convention nor failed in its obligations to prevent or remedy the harms alleged.
5. Dismiss all claims brought against the Republic of Aravania, and affirm that the responsibility for the primary violations, if any, lies with the Republic of Lusaria or private actors beyond Aravania's jurisdictional reach.

Respectfully submitted,

Counsel for the Republic of Aravania

Before the Inter-American Court of Human Rights