

A.A. and Nine other Women v. Republic of Aravania

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3. Charter of the Organization Of American States (“OAS Charter”)
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II. STATEMENT OF FACTS

1. The Republic of Aravania (“The State”) and the Democratic State of Lusaria (“Lusaria”) are neighbouring countries situated in South America. By virtue of their geography, both nations frequently struggle with extreme weather conditions, the harshest of which being floods and droughts.¹ While Lusaria has demonstrated a steadfast commitment to its sustainability initiatives since the 1990s,² the State’s efforts remain at an early and developing stage.
2. Carlos Molina’s election as the State’s President in 2011 brought about the “Impulso 4 Veces” policy; the main objective of which was to pursue innovative strategy to finally combat its longstanding challenge facing extreme weather conditions.³ Efforts to carry out this policy were unexpectedly expedited in 2012 following the catastrophic flood the State experienced in May of 2012.⁴ The uninterrupted precipitation over 20 days resulted in the nation’s precipitation quintupling, extreme damage to key capital and infrastructure surrounding its Nimbus River, and the devastating displacement of over 150,000 Aravadians.⁵
3. The State wasted no time responding to this dire situation. It did so by engaging in cross-border discussions with Lusaria to potentially find a way to exploit its years of expertise combating similar issues. Though cross-border disputes are notoriously time inefficient, the State acted expediently and entered the Bilateral Cooperation Agreement for the Transplantation of Aerisflora (“Cooperation Agreement”) with Lusaria just two months within the flooding in July of 2012.⁶

¹ Hypothetical at [4]

² Hypothetical at [13]

³ Hypothetical at [7]

⁴ Hypothetical at [20]

⁵ Ibid

⁶ Hypothetical at [25]

4. Pursuant to the Cooperation Agreement, EcoUrban, a Lusarian public company, would export Aerisflora flowers to the State for the development of the latter's "sponge cities."⁷ Aerisflora was singled out for its ability to absorb and purify unwanted nutrients in rainwater to mitigate the effects of flooding.⁸ Aside from its whopping US\$136 million investment into the project,⁹ the State additionally ensured that the project would create employment for its women as well as negotiated for the agreement to provide for the fair treatment of these women in the course of their employment.¹⁰ Therefore, the agreement between the two nations not only marked the beginning of the State's sustainability efforts, it also symbolised a national effort to uplift its women, a historically downtrodden demographic in Aravania.
5. The Aravanian women ("the Victims") who were employed by EcoUrban took up this employment opportunity upon successful marketing campaigns launched by EcoUrban on social media platform ClicTik.¹¹ The interested women would initiate contact with EcoUrban, upon which they would be presented with an employment contract.¹² The contract these women eventually signed spared no detail in its job description.¹³ The job was described as highly labor-intensive, including a clause stating that the Victims were to work regardless of weather conditions.¹⁴ These terms were phrased plainly; it was made exceedingly clear in the contract what the risks of taking up such a job was.
6. The demands of the job, however, were also notably offset against the numerous benefits, including education, daycare and medical service for the families, the employees would receive in turn.¹⁵

⁷ Hypothetical at [26]

⁸ Hypothetical at [13]

⁹ Hypothetical at [24]

¹⁰ Hypothetical at [25]

¹¹ Hypothetical at [33]

¹² Hypothetical at [35]

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid

7. EcoUrban, being a long-term player in the Aerisflora producing industry, was trusted by the State to comply with the terms of their agreement by ensuring dignified living and working conditions in Finca El Dorado. The State was geographically removed from the worksite in Lusaria,¹⁶ and therefore relied on Lusaria completely to be kept in the loop.
8. Despite the State's well-founded belief that EcoUrban was complying with its agreement in Lusaria, it received two complaints in 2012 regarding possible violation of human rights occurring in the farm. The first complaint was made anonymously, while the second complaint was made by an identified Aravanian woman.¹⁷ Though the State was unable to investigate these matters domestically for want of jurisdiction, the State did not let its good relationship with Lusaria stop it from demanding an additional report regarding the working and living conditions on the farm from the Lusarian government. The reports revealed nothing amiss and included Lusaria's referral of the breaches to its domestic Prosecutor's Office, thereby putting the State at ease and causing operations to revert to normal.¹⁸
9. Following the first successful cultivation phase of the Aerisflora in Lusaria, 10 Aravanian women were brought back home to implant these flowers in the designated sponge cities.¹⁹ Prior to their arrival, the State surveyed their living premises in Primelia as an additional step of precaution to ensure that nothing was amiss.²⁰ Upon being satisfied that nothing about the premises was alarming, the State left the premises and gave way to EcoUrban to facilitate their implantation phase of the agreement.²¹

¹⁶ Hypothetical at [21]

¹⁷ Hypothetical at [54]

¹⁸ Clarification Question 10

¹⁹ Hypothetical at [43]

²⁰ Clarification Question 10

²¹ Ibid

10. Despite the many steps the State took to ensure its women's human rights were being duly complied with during the course of their employment, it nonetheless received a report from A.A. alleging a myriad of violations.²² The State accorded the complaint with its due urgency, making immediate visits to the site in Primelia and promptly arresting Hugo Maldini, the Lusarian political figure in charge of recruiting women at Finca El Dorado.²³ The State also noted the disappearance of nine of the victims, and promptly contacted relevant authorities including the immigration authorities for additional information regarding the disappeared women. After facing immense difficulty obtaining relevant and sufficient evidence to assist them with their efforts to locate the women, the State had to make the difficult decision of not pursuing this investigation anymore given the sheer impossibility of the task.²⁴
11. Nonetheless, the State ensured that its one identified victim, A.A, was duly taken care of. It promptly commenced arbitration proceedings against Lusaria pursuant to Article 71.1 of the Cooperation Agreement.²⁵ The Special Arbitration Panel ("the SAP") awarded a hefty sum of US\$5000 to A.A. from the damages it received from Lusaria even though A.A had never requested for such relief.²⁶ The State even tried prosecuting Hugo Maldini domestically in an effort to vindicate the Victims' human rights; but were unsuccessful entirely because of Lusaria's refusal to cooperate with these efforts and waive Maldini's diplomatic immunity.²⁷ M.A. and F.A. were additionally reunited with A.A. in Campo de Santana.²⁸

²² Hypothetical at [48]

²³ Hypothetical at [50]

²⁴ Clarification Question 4

²⁵ Hypothetical at [55]

²⁶ Ibid

²⁷ Hypothetical at [53]

²⁸ Clarification Question 1

12. In response to the facts above, the Victims have alleged that the State has violated its rights found Article 3, Article 5, Article 6, Article 7, Article 8, Article 25 and Article 26 read together with Art 1(1) of the ACHR and Article 7 of the BDPC.²⁹
13. The State submits that it is not liable for any of these breaches alleged by the Victims through the Trafficking Victims Support and Reintegration Clinic (“the Clinic”) on their behalf with the Inter-American Court of Human Rights.

²⁹ Hypothetical at [58]

III. LEGAL ANALYSIS

A. JURISDICTION

1. This Court lacks *competence ratione personae* because the Victims' petition ignores the petition's procedural requirements under Article 46 of the ACHR to identify the Victims.
14. The Victims' petition is problematic due to A.A. being the sole identified victim within their petition at the time of filing. A petition with the Inter-American Commission on Human Rights requires all the Victims to be identifiable.³⁰ In cases with multiple victims, a common intervenor must be appointed as the legal representative before this Court³¹ for the same human rights violations. The legal representative must also be given power of attorney signed by all the Victims or their next-of-kin.³²
15. Whilst the State acknowledges that A.A. was the only possible person clearly identifiable within the petition to allege her claims, she cannot be said to represent the remaining nine women. A.A. lacks any evidence showing she was formally appointed by the other nine women or their next of kin to represent them. Whilst A.A. may have witnessed violations which the other nine women also may have suffered, she cannot be a proxy to claim reparations under this petition for the harms suffered to the other nine women as she was not formally appointed by the other Victims or their next of kin.
16. Moreover, the Clinic fails to satisfy this procedural requirement. It is uncontested the Clinic is an “nongovernmental entity legally recognized”³³ by the State and Lusaria who can petition for the Victims in this Court.³⁴ However, the Clinic lacks any evidence of being appointed the common

³⁰ *Acevedo Buendia v Peru* at [4]

³¹ Article 46(1)(d) of ACHR

³² Art 25(1) of ROP

³³ Clarification Question 6

³⁴ Article 44 of ACHR

intervenor or granted power of attorney by the Victims as a whole. Considering the Clinic did locate, identify, and assist seven of the nine women in Lusarian criminal proceedings,³⁵ the Clinic could have obtained the consent of at least eight of the women to represent them in this petition and yet, failed to do so.

17. Therefore, this Court should find it lacks *competence ratione personae* over the unidentified nine women because their lack of identification was possible to resolve by the Clinic in fulfilling the petition's procedural requirements.

2. Furthermore, this Court lacks *competence ratione loci* under Article 1.1 of the ACHR because the State could not control Lusaria's actions which allegedly violated the Victim's human rights.

18. Whilst the State is “*responsible for the acts and omissions imputable to [them]*,”³⁶ there is no provable causal link between the State's extraterritorial conduct through exercising “*executive or judicial functions...in accordance with state parties' custom, treaty or other agreement*” and the alleged human rights violations.³⁷

19. The Victims' position is that the State's jurisdiction over Primelia and Finca El Dorado arises from the Cooperation Agreement, which states that the parties have to ensure “*compliance with its respective labor laws through appropriate governmental actions*.”³⁸ This includes the State's role to “*conduct unannounced on-site activity supervision visits*”³⁹ and “[*supervise*] compliance” and “*establishing mechanisms to hear complaints*.”⁴⁰

³⁵ Clarification Question 46

³⁶ IACHR Report No. 112/10, *Franklin Guillermo Aisalla Molina* at [90]

³⁷ *Al-Skeini and others v UK* at [135]

³⁸ Hypothetical at [25]

³⁹ *Ibid.*

⁴⁰ *Ibid*

20. However, these measures are to be contextualised within the Cooperation Agreement. Article 3.3 of the Cooperation Agreement first expresses that “*Lusaria agrees to send monthly status reports to [the State] on the activities...and the working conditions*” before the State has reason to conduct unannounced on-site activity supervision visits in either Primelia or Finca El Dorado. The State should not be blamed for not exercising this power when Lusaria’s reports themselves did not give any suspicion that there were any forms of human rights violations. Lusaria reported no labor lawsuits or complaints were filed and were transparent regarding the Victims’ employment contracts and changes to schedule and infrastructure compiled under Lusarian labor law.⁴¹ The State had no reason to investigate if the reports did not suggest there may be human rights violations.
21. Moreover, the State’s role to “*supervise compliance and establish mechanisms to hear complaints*” under Article 23.2 is only within the “*labor laws of their respective jurisdictions.*”⁴² Whilst the Article empowers the State to uphold labor laws, the State has no power to uphold and regulate Lusaria’s labor laws. Thus, the alleged violations against the Victims within Finca El Dorado cannot be attributed to the State given that the Cooperation Agreement confers that authority only onto Lusaria.
22. Finally, even if this Court finds the Cooperation Agreement conferred jurisdiction over Finca El Dorado and Primelia to the State, the State cannot exact judicial function over breaches that occur outside its physical territory. Article 71 of the Cooperation Agreement agrees to settle disputes through the SAP, not domestic litigation.⁴³ Consequently, the State’s judicial proceedings cannot

⁴¹ Clarification Question 22

⁴² Hypothetical at [25]

⁴³ Ibid.

assess the substance of the breaches under the Cooperation Agreement regarding working conditions and gender discrimination which the Victims allegedly suffered.

23. Therefore, this Court should find it lacks *competence ratione loci* because the Cooperation Agreement did not attribute the State primary responsibility to prevent and regulate the alleged human rights violations.

B. SUBSTANTIVE MERITS

1. The State discharged its obligations of due process owed to the Victims under Article 8(1) read with Article 25(1) of the ACHR.

a. The preliminary exception is applicable because the Victims' complaint that they lacked a fair trial in the State's legal proceedings is beyond this Court's subsidiary nature.

24. This Court affirmed that its international jurisdiction is subsidiary, and cannot function as a “court of fourth instance.”⁴⁴ This implies this Court cannot function like an appellate court, and cannot assess whether the State erred in domestic legal proceedings on the evidence, facts, or domestic law.⁴⁵ This Court therefore only has competence to assess whether the State's domestic measures effectively upheld the Victims' right to due process and judicial protections under the ACHR.⁴⁶

25. The Victims seek to overturn the State's judgments by the Second Criminal Court and Veloran Court of Appeals. They alleged the State erred in upholding Maldini's diplomatic immunity and that his resulting lack of domestic prosecution and liability led to their injustice. This is misconceived. The Victim's claim does not focus on the State's actions to uphold fair due process to them, but instead, to obtain a favourable judgement, which directly contradicts the subsidiary principle.

26. Therefore, this Court should find the Victim's complaint in the State's substantive judgement was incorrect, falls beyond its subsidiary nature and apply the preliminary exception.

⁴⁴ *Mejía Drovo v. Ecuador*, [18]

⁴⁵ *Cabrera Garcia and Montiel Flores v Mexico*, [18]

⁴⁶ *Ibid*, para 19

b. Even if the Victims' complaint is valid, the State ensured the Victims' right to due process within domestic proceedings.

i. The State's judicial proceedings provided the Victims the right to a hearing before a "competent, independent, and impartial tribunal" established by law.

27. Briefly, it is uncontentious that the Victims did have the right to a hearing before the State's courts expeditiously. The State did not use its power to obstruct the Victims' claims from being heard. On the contrary, they expedited proceedings against Maldini within 24 hours⁴⁷ and heard the claim in a span of three months after A.A. reported the allegations.⁴⁸

28. Additionally, the Victims did not contest that the State's judiciary was a "*competent, independent, and impartial tribunal*" established by law.⁴⁹

ii. The State's judicial proceedings, in upholding Maldini's diplomatic immunity, did not impede the Victims' "due guarantees."

29. The State afforded "*due guarantees*"⁵⁰ to the Victims in legal proceedings in two ways. Firstly, the Victims had the right to be represented by both the State at first instance, and the Clinic at appeal.⁵¹

30. Additionally, the State afforded equal treatment to the Victims as a due guarantee. Equal treatment is violated if the State completely prevents the Victims from bringing their action entirely.⁵² The Victims assert they lacked equal treatment by the State because Maldini's diplomatic immunity prevented the Victim's action in the State's courts to hold Maldini liable. This is misconceived.

⁴⁷ Hypothetical at [49]

⁴⁸ Hypothetical at [51], [56]

⁴⁹ Article 8(1) of the ACHR

⁵⁰ Ibid

⁵¹ Hypothetical at [50] - [51]

⁵² *López Mendoza v. Venezuela*, [120]

31. The State is obligated to abide by international law, including the VCDR, which empowered Maldini's diplomatic immunity,⁵³ and could not revoke Maldini's diplomatic immunity granted by Lusaria.⁵⁴ Yet, the State still ensured that the Victims' actions were treated equally under domestic law, that the Victims' action could be fully exhausted at first instance and appeal proceedings regardless of Maldini's diplomatic immunity.

iii. Furthermore, the State's expedient judicial proceedings were within reasonable time and could not be extended just to waive Maldini's diplomatic immunity.

32. The State's judicial proceedings within a three-month window, when analysed under the four factors which this Court established, was within reasonable time.⁵⁵

33. Firstly, the legal proceedings were not complex. The State's trial and appellate courts only had to analyse one issue; whether Maldini could be prosecuted despite his conferred diplomatic immunity.⁵⁶ Given that the Veloran Police found sufficient evidence to substantiate A.A.'s complaints,⁵⁷ providing evidence for criminal charges against Maldini, hypothetically, would have been straightforward.

34. Secondly, the Victims' procedural activities in the State's court were incredibly quick. There were no administrative delays in the State's proceedings to suggest the Victims were denied justice. On the contrary, the State expedited legal proceedings to conclude within 3 months,⁵⁸ which distinguishes this case from this Court's jurisprudence where judicial proceedings were stalled for years to deny victims justice.⁵⁹

⁵³ Hypothetical at [25]

⁵⁴ Ibid, [50].

⁵⁵ *Kawas-Fernández v. Honduras* at [112]

⁵⁶ Hypothetical at [50] - [51]

⁵⁷ Ibid, [49]

⁵⁸ Ibid, [51]

⁵⁹ *Kawas-Fernández v. Honduras* at [116]

35. Thirdly, the State’s judicial authorities were diligent in swiftly advancing and concluding all legal proceedings within 3 months to avoid “*undue delays and obstructions*.”⁶⁰

36. Finally, the State’s legal proceedings were not delayed, and thus could not impair the Victims’ legal situation further.⁶¹ The Victims assert that the State’s speed of domestic legal proceedings shielded Maldini from criminal liabilities which denied them justice; which they allege is especially egregious given that Lusaria itself found him criminally liable for abuse of power. However, this is a misconception of the rule. This Court specifically assesses whether the lapse of time in proceedings worsened the Victims’ suffering. Whilst the harm the Victims’ suffered regarding their alleged lack of justice for Maldini’s actions appeared to arise from the State’s courts, the State’s prompt legal judgement did not worsen the Victims’ harm. Their harm can only be remedied in its proceedings against Lusaria for their violation of human rights.

2. This State’s prevention and investigation of Maldini for human trafficking of the Victims from Primelia back to Lusaria does not violate the Victims’ freedoms under Article 6(1) of the ACHR.

a. The Victims’ treatment by Maldini in Primelia did not constitute “forced labor”.

37. This Court has interpreted “forced labor” under the ACHR through the International Labor Organization (“ILO”) Convention No. 29 and sets out three elements,⁶² which Maldini’s treatment towards the Victims’ in Primelia does not satisfy.

38. Firstly, the Victims’ work or service was not “*under the menace of a penalty*.”⁶³ Penalties are defined broadly to encompass not only physical harm, but also financial and psychological harm.⁶⁴

⁶⁰ *Myrna Mack Chang v. Guatemala* at [210]

⁶¹ *Kawas-Fernández v. Honduras* at [115]

⁶² *Ituango Massacres v. Colombia* at [160]

⁶³ *Ibid*, [161]

⁶⁴ *CN and V v France* at [77]

Their work and service arose from fulfilling their obligations under their employment contract to transplant Aerisflora in exchange for their pay.⁶⁵ The Victims understood their contract paid them per unit made in Finca El Dorado, and Maldini's statements to A.A. were factually correct that payment only occurs after the transplantation was finished.⁶⁶ Furthermore, Maldini's statement about the Victims' losing their healthcare benefits was not a threat, but was factually accurate. Had the Victims decided to terminate their employment contract, factually, they would have lost access to their provided education, day care, and healthcare benefits.⁶⁷

39. Secondly, the Victims' work was voluntary.⁶⁸ The Victims allege that they continued working in Primelia because of Maldini's coercion and threats to withhold all financial and social security benefits they and their families rely on.⁶⁹ This is misunderstood.

40. The Victims, including A.A., worked on the basis of being paid for transplanting the Aerisflora. Maldini made his comments after one week of working in Primelia in response to A.A.'s demand for immediate payment.⁷⁰ His comments in response were not threats that had intended to coerce the Victims to continue working against their will. Maldini was not saying he intended to hold the Victims indefinitely with no reason. Instead, he was communicating that their stay in Primelia had to be extended, which was within his rights, to ensure that Aerisflora was successfully transplanted as per the Cooperation Agreement.⁷¹ This would be understandable to the Victims given they were paid per unit completed and worked to be paid.

⁶⁵ Hypothetical at [35]

⁶⁶ Hypothetical at [47]

⁶⁷ Ibid

⁶⁸ *Ituango Massacres v. Colombia*, [164]

⁶⁹ Hypothetical at [47]

⁷⁰ Ibid

⁷¹ Ibid

41. Lastly, the Victims alleged human rights violations in Primelia are not attributable to the State in their acquiescence to intervene against Maldini's actions.⁷² Article 23 of the Cooperation Agreement places obligations on the State to guarantee working conditions compatible with human rights.⁷³ This was through the State "[supervising] compliance" under domestic labor laws and "establishing mechanisms to hear complaints."⁷⁴ The Victims allege that the State failed to actively supervise EcoUrban's compliance during their stay in Primelia in spite of the State having reviewed the Primelia special mission site several times before the Victims' arrival.⁷⁵

42. The State did act within its obligations to specifically ensure the Primelia worksite's conditions complied with human rights obligations and domestic law regulations. Under the Cooperation Agreement, the State can only intervene if they received any complaints from the workers. The Veloran Police's expedited investigation of A.A.'s complaint and arrest of Maldini aligns with the principle that the State can only intervene ex-post once notified of the alleged complaints.

43. Therefore, this Court should find the Victims were not subject to "forced labor" and cannot be attributed to the State.

b. Maldini's conduct towards the Victims, regardless of if it constitutes "forced labor", is not human trafficking

44. This Court has accepted that human trafficking does attract violations under Article 6 of the ACHR.⁷⁶ Freedom from human trafficking is interpreted within Article 6's freedom from slavery.

⁷² Hypothetical at [35]

⁷³ Hypothetical at [25]

⁷⁴ Ibid

⁷⁵ Clarification Question 10

⁷⁶ *SM. v Croatia* [292]

Human rights treaties, like the ACHR, are “living instruments” interpreted along with the times and current living conditions.⁷⁷

45. This Court has relied on other international legal materials which the State is signatory to, to provide a definition for human trafficking.⁷⁸ The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children 2006 (“UNTIP”), which the State is a signatory to,⁷⁹ expresses 3 elements:⁸⁰

- a. There is an action of trafficking such as “recruitment, transportation, transfer, harbouring or receipt of persons”;⁸¹
- b. The means of trafficking grants the trafficker control over persons. This can be through using threats, coercion, abduction, abuse of power etc;⁸² and
- c. The trafficker has an exploitative purpose which includes slavery and forced labor.⁸³

46. Maldini’s conduct in Primelia has failed the second element under international law’s definition of human trafficking.⁸⁴ The State’s position is that Maldini did not exert control over the Victims using threats, coercion, or abuse of power. Maldini simply stated what were the consequences of terminating their employment contract should they refuse to work (i.e., the loss of education and healthcare benefits). The Victims knew at all times in arriving in Primelia that transplanting the Aerisflora in the State’s physical territory was well within the scope of their employment contract and therefore, willingly followed Maldini in the first place.

⁷⁷ Ibid, [290]. *Ituango Massacres v. Colombia* [144].

⁷⁸ *Hacienda Brasil Verde Workers*, [247]

⁷⁹ Hypothetical, [10]

⁸⁰ *SM. v Croatia* [114]

⁸¹ Article 3(a) of UNTIP

⁸² Ibid

⁸³ Ibid

⁸⁴ *SM. v Croatia* [233]

c. Regardless, the State discharged their obligations against the Victims' alleged human trafficking.

47. The State has adequately discharged their positive obligations to prevent and investigate potential cases of human trafficking and forced labor, which are one of means and not of results.⁸⁵ These obligations are to:⁸⁶

- a. Open an effective and immediate investigation to identify, prosecute, and punish those responsible when there is justified reason to believe there was an Article 6 violation;
- b. Conduct inspections or other measures to detect practices of human trafficking; and
- c. Adopt measures of protection and assistance to victims.

i. The State carried out a sufficient and effective investigation to the best of their abilities.

48. The Veloran Police in their best efforts, had sufficiently and effectively assessed the Victims human trafficking allegations.⁸⁷

49. The Veloran Police had no power to reverse Maldini's diplomatic immunity which shielded him from criminal liability within the State's judicial proceedings. If the Veloran Police were to ensure the immediate safety of the Victims at risk of being human trafficked, they only had to gather sufficient evidence to reasonably prove that A.A.'s allegations were valid.⁸⁸ This was to expedite criminal proceedings further to gather information of the other nine women's whereabouts and their safe return.

⁸⁵ Ibid, [215], *Hacienda Brasil Verde Workers*, [328]

⁸⁶ *Hacienda Brasil Verde Workers*, [319]

⁸⁷ Ibid

⁸⁸ Hypothetical at [49]

- ii. The State has since taken adequate measures to prevent human trafficking since the Victims' alleged human trafficking.

50. Notwithstanding the State having criminal law provisions which adequately cover human trafficking and forced labor, Article 6 also requires the State to place “adequate measures regulating businesses often used as a cover for human trafficking.”⁸⁹ The State has discharged this duty and learned from its mistakes in handling the Victims' ill treatment by Lusaria through issuing Resolution 2020.⁹⁰ Resolution 2020 imposes greater scrutiny on the State to uphold labor rights under the ILO before they enter any commercial relationship with another State.⁹¹ Furthermore, the State did ensure effective mechanisms to enable filing employment-related claims for alleged victims to ensure compliance with domestic labor laws.⁹² The State continually affirms upholding and valuing human rights, including the Victims', by shaping the State's decision-making in economic development and promoting better accountability.

- iii. Finally, the State compensated A.A., as the only identifiable victim, for her suffering harm.

51. The State could only have attempted to offer assistance to A.A. as she was the only victim who did not disappear. The State had no obligation imposed by law yet compensated her US\$5,000 out of the US\$250,000 received from the SAP against Lusaria⁹³ as a form of aid given that she effectively lost her employment.

52. Therefore, this Court should find that the State repeatedly took steps in its processes to try to prevent the alleged human trafficking of the Victims, and thereby complies under Article 6(1) of the ACHR.

⁸⁹ *Rantsev v Cyprus and Russia*, [284]

⁹⁰ Clarification Question 8

⁹¹ Ibid

⁹² Ibid

⁹³ Hypothetical at [55]

3. The State did not deny the Victims their juridical personality under Article 3 as the Victims' disappearance is not a forced disappearance.

53. Article 3 of the ACHR enshrines a person's right to being recognised under the law. The State is only liable in the context of disappearances when the Victims have forcibly disappeared.⁹⁴ It is imperative that the State itself has a role to play in both the Victims' disappearance and maintenance.⁹⁵

54. A state attracts liability under Article 3 in the context of a disappearance if the victim, by virtue of the State's actions, "was necessarily placed outside of and excluded from the juridical and institutional order of the State".⁹⁶ This denial of recognition therefore only happens when the person is a victim of an enforced disappearance.

55. A distinction is to be drawn between disappearances *simpliciter* and enforced disappearances. The latter will only occur when the following three elements are observed:⁹⁷

- a. Deprivation of liberty;
- b. Direct intervention of state agents or their acquiescence, and;
- c. Refusal to acknowledge the detention and to reveal the date or whereabouts of the person concerned.

56. Presently, the evidence available does not connect the disappearance of the nine women in any way to the State's actions. The furthest the available evidence goes is to show that the circumstances under which the women disappeared were suspicious.⁹⁸ This, however, does not

⁹⁴ *Gutiérrez Hernández y otros vs Guatemala* at [123]

⁹⁵ *Ibid.*

⁹⁶ *Tarcisio Medina Charry v. Colombia* at [64].

⁹⁷ *Gutiérrez Hernández y otros vs Guatemala* at [123]

⁹⁸ Hypothetical at [49]

connect the women's disappearance to any intervention or acquiescence of the State, which is an essential element to establish an enforced disappearance.

57. Furthermore, a State only attracts third-party liability under Art 3 when it fails to prevent “blatant violations of the right to legal personality”, which include human trafficking, forced labor and slavery.⁹⁹ While Maldini was not prosecuted domestically, the court in Lusaria found Maldini not guilty of human trafficking.¹⁰⁰ His lack of liability in committing such crimes necessarily means that the State is likewise not liable for any failure to prevent such violations from happening.

58. Therefore, the State is not liable for any breach of Article 3 as the disappearances were not enforced by the State itself.

a. The State's decision to stop investigating the disappearances of the Victims was consistent with the Victims' right to personal integrity, which is generally breached only when the Victims are forcibly disappeared.

59. The State was neither directly nor indirectly involved in the disappearance of the Victims here, which takes the present disappearances out of the realm of enforced disappearances.

60. Although forced disappearances generally regard the right to recognition in Art 3, it is a phenomenon that is distinct for its comprisal of constant and multiple violations of various rights in the ACHR, including the right a person has to integrity pursuant to Art 5.¹⁰¹ A disappearance simpliciter, however, does not share these same characteristics as it does not entail the direct involvement or acquiescence of state agents *inter alia*.¹⁰² As laid out above in [41], the current

⁹⁹ *López Soto et al. v. Venezuela* at [178], [182]

¹⁰⁰ Hypothetical at [53]

¹⁰¹ *Gómez-Palomino v. Peru* at [92]

¹⁰² *Gutiérrez Hernández y otros vs Guatemala* at [123]

facts do not suggest any state involvement in the disappearances of these women. Therefore, their disappearances do not constitute a breach of Art 3 as they were not enforced by the State.

61. Additionally, an investigation consisting of solely requesting for more information, like the present case, only breaches Art 3 if there is undeniable proof at the time that the Victims had been forcibly disappeared.¹⁰³ Presently, however, the State did not have any evidence suggesting that the Victims had been forcibly disappeared,¹⁰⁴ meaning that the nature of the State's investigations does not come under scrutiny for reason of Art 3.
62. Lastly, the State cannot be faulted for halting investigations into the disappearances of these women given that Aravania is a poverty-stricken country.¹⁰⁵ In a country lacking in resources, it would be undue to expect such a country to continue investigating disappeared persons even when the task is impossible given that their resources are limited.¹⁰⁶
63. Therefore, since the decision to halt the investigations here was made with regard to the impossibility of locating these women, the State cannot be faulted for being a poverty-stricken country trying to save its already limited resources.

¹⁰³ *Gudiel Álvarez et al ("Diario Militar") v Guatemala* at [246]

¹⁰⁴ Hypothetical at [49]

¹⁰⁵ Hypothetical at [3]

¹⁰⁶ Clarification Question 3

4. The State did not undermine the Victims' personal integrity under Article 5 because the State was diligent in monitoring the Victims' living and working conditions.

a. The State was diligent in monitoring the conditions in Finca El Dorado, and therefore did not undermine the Victims' personal integrity under Art 5(1).

64. The State could not have breached the Victims' personal integrity as at every point of the Cooperation Agreement's execution, the State did everything necessary as reasonably judged to avoid the risk of possible human right violations taking place in Lusaria.

65. Before a State even has the obligation to ensure that it did everything necessary to prevent or avoid a risk, it has to be proven that the State was aware of such a risk materialising.¹⁰⁷

66. The State did not know of the breaches taking place in Lusaria. The State only found out about the breaches *ex-post* by virtue of A.A's complaint,¹⁰⁸ at which point it could not have done anything to prevent the risk from materialising, given that the breaches had already occurred.

67. The State also could not have known about the breaches. The two complaints it received in 2012 regarding possible breaches were duly investigated by the State,¹⁰⁹ with these lines of investigation revealing that no such thing was occurring in Finca El Dorado at the time. The State had demanded Lusaria send them a report as part of its investigation into the merits of the complaints it received.¹¹⁰ Given that the report itself did not reveal anything amiss and included that Lusaria had referred matters to its own Prosecutor,¹¹¹ it follows that the State could not have known of the breaches either as the report itself did not reveal anything to this effect.

¹⁰⁷ *Gutiérrez Hernández y otros v. Guatemala* at [140]

¹⁰⁸ Hypothetical at [48]

¹⁰⁹ Hypothetical at [54]

¹¹⁰ Clarification Question 10.

¹¹¹ *Ibid.*

68. However, even if *in arguendo* the State ought to have known of these breaches, the State nevertheless did all that was reasonably judged as necessary to avoid further breaches. A reasonably necessary measure here would have been following up with Lusaria about these breaches, which the State duly did by requesting an additional report from them.¹¹²
69. Lusaria was in a far better position than the State to monitor the working conditions in Finca El Dorado and to draft an accurate report of these conditions. In fact, the State went above and beyond their duties under the Cooperation Agreement by requesting an additional report regarding the working conditions.¹¹³ There was no reason for the State to suspect that the reports were inaccurate. Therefore, it was reasonable for the State to conclude that no such breaches were taking place in Finca El Dorado.
70. Furthermore, the Cooperation Agreement itself affirms that Lusaria's position relative to the State's obliged it to keep the State informed. Both parties envisioned that the State would play a more passive, supervisory role while Lusaria would be active in its reporting. Art 23 of the Cooperation Agreement confers a mandatory positive duty on Lusaria to send monthly reports of the working conditions in Finca El Dorado, while the State was merely given the discretion to make unannounced site visits.¹¹⁴ It is clear that both parties to the contract envisioned the State to play a less active role in monitoring the working conditions in Lusaria, and that Lusaria would be much more active in ensuring that the working conditions complied with its domestic labor laws.
71. Requesting an additional report regarding the working conditions was thus reasonably expected to be a necessary measure the State would have had to take to discharge their obligation under this second element given that the reports were positive actions taken. Therefore, because the State

¹¹² Clarification Question 10

¹¹³ *Ibid.*

¹¹⁴ Hypothetical at [12]

discharged all of its duties with regard to breaches of personal integrity, it did not breach Art 5 of the ACHR.

b. The State was diligent in monitoring the premises within Primelia, and therefore did not breach the Victims' personal integrity while they were in Aravania as well.

72. The State additionally did not breach its obligations under Art 5 with regards to the breaches that occurred in Primelia as it had similarly taken all reasonably necessary steps to avoid any risk to the Victims materialising.

73. In light of the report Lusaria sent the State stating that all working conditions in Finca El Dorado complied with local labor law,¹¹⁵ the State had no reason to believe that there was a real and immediate risk that EcoUrban would violate the Victims' personal integrity, especially in Aravania itself. This is especially given that the premises in Primelia resembled the conditions in Finca El Dorado,¹¹⁶ which the State was aware did not breach the personal integrity of any of the Victims. Therefore, the State had taken all reasonably necessary measures to prevent any real and immediate risk to the Victims' personal integrity materialising.

74. Even if it is argued that the State did have knowledge of such a risk existing, much like the breaches in Lusaria, the State nonetheless did everything reasonably necessary for it to avoid such a breach by inspecting the premises in Primelia. The State, upon being satisfied that the premises in Primelia were up to standard, had sufficiently discharged its obligations to take all reasonably necessary steps to prevent real and immediate risks materialising. Therefore, the State cannot be considered to have breached the Victims' personal integrity with regard to the breaches in Lusaria either.

¹¹⁵ Clarification Question 10.

¹¹⁶ Hypothetical at [46]

c. The State's lack of prosecution of Hugo Maldini could not have undermined the Victims' personal integrity as the State could not have prevented this from happening.

75. The only way the State could have prosecuted Maldini domestically was if he had done something in Aravania outside the scope of his official function of overseeing the transplantation of Aerisflora in Aravania, which would have resulted in the cessation of his diplomatic immunity.¹¹⁷

76. Although Maldini had been harsh with his words with A.A,¹¹⁸ his words did not indicate a threat to her life or safety. While in Aravania, Maldini had only engaged in activities relating to the supervision of the Aerisflora transplantation.¹¹⁹ Therefore, even if the State knew or ought to know that a real and immediate risk to the Victims' personal integrity existed, the State would nonetheless not have been able to prevent the materialisation of any such risk as the facts did not allow it to waive Maldini's diplomatic immunity and therefore prosecute him domestically.

77. Additionally, the State's decision not to prosecute Maldini fails both the elements of the *Gutierrez* test:¹²⁰

- a. Whether the State knew or ought to have known a real and immediate risk existed to the Victims' personal integrity; and
- b. Whether the State did everything necessary as reasonably judged to prevent this risk from materialising.

78. It could not have been expected that the release of Maldini to Lusaria would pose a real and immediate risk to the Victims. Most of the violence and threats levelled against the Victims in

¹¹⁷ Art 31(1)(c) of the Vienna Convention on Diplomatic Relations

¹¹⁸ Hypothetical at [47]

¹¹⁹ Hypothetical at [45]-[47]

¹²⁰ *Gutiérrez Hernández y otros vs Guatemala* at [140]

Lusaria were perpetrated by other EcoUrban officials like Joaquin Diaz,¹²¹ not Hugo Maldini himself. Furthermore, no actual violence ensued from the State's release of Maldini to Lusaria, demonstrating that the lack of his domestic prosecution did not pose a real or immediate risk to the Victims' personal integrity. There was no risk, and even if there was (which is denied), this risk never materialised.

5. Additionally, the State did not breach its obligations under Art 7 of the BDPC as the State's conduct towards the Victims did not result from gender-based discrimination.

79. The State's ultimate decision to halt efforts to locate the missing women was not a decision made on the grounds that the Victims were women; it was a decision made pursuant to the impossibility of this task.¹²²

80. Art 7 of the BDPC comprises the positive duty States have to prevent, prohibit and eradicate violence perpetrated against women. The BDPC, however, only supplements the protection provided by the ACHR when the said violence has been especially directed against women.¹²³ Therefore, for the State to be found liable for breaching Art 7 of the BDPC, it has to be shown that their actions were "aggravated by [the victims'] female condition".¹²⁴

81. Presently, at no point of the State's investigation into the disappearances of the women and into the human right violations in Lusaria did it demonstrate any gender-based discrimination. As soon as A.A. made her complaint, the Aravanian authorities accorded the complaint its due consideration and investigated the state of affairs complained of by A.A adequately.¹²⁵ The State's ultimate decision to halt efforts to locate the missing women was a decision made pursuant to the

¹²¹ Hypothetical at [42]-[44]

¹²² Clarification Question 3.

¹²³ *Ríos et al. v. Venezuela* at [279]

¹²⁴ *Ibid.* at [280]

¹²⁵ Hypothetical at [48]-[49]

impossibility of this task, not because the Victims were women.¹²⁶ None of the typical facts present in breaches of Art 7 of the BDPC, for example gender stereotyping,¹²⁷ were present here either.

82. Furthermore, the State's dismissal of the two complaints lodged with it in 2012 was not on the basis that the complainants were women. The State dismissed these complaints for a want of jurisdiction; in spite of which the State still demanded a report from the Lusarian government to still ensure that the gender-discrimination complained of was not taking place in Finca El Dorado.¹²⁸ Contrary to perpetrating gender-based discrimination, the State properly considered the complaints made by these women and took steps to follow-up on these complaints.¹²⁹

83. The State was additionally proactive in introducing policy that empowered its women as opposed to perpetrating gender-based discrimination. Art 23.3 of the Cooperation Agreement explicitly protected the rights of the Aravanian women sent to work in Lusaria, and quite clearly makes gender equality a priority.¹³⁰ The inclusion of this Article was not strictly necessary for the purposes of this commercial agreement; but the fact that it was added as a precaution demonstrates the State's commitment to empowering its women safely.

¹²⁶ Clarification Question 3.

¹²⁷ *Gutiérrez Hernández y otros vs Guatemala* at [172]-[173]

¹²⁸ Hypothetical at [54]

¹²⁹ *Ibid.*

¹³⁰ Hypothetical at [12]

6. The State could not have easily prevented the breaches of personal liberty in Lusaria, and is therefore not liable under Art 7(1).

84. Personal liberty under Art 7(1) is breached when a person is unable to live their life in accordance with his own choices and beliefs.¹³¹ The State will only be held liable for such a breach if they could have done something to prevent such a breach from occurring, which they failed to do.¹³²
85. The only two instances where A.A. expressed a desire to do something different than what was expected of her were;
- a. when A.A. confessed her exhaustion and her desire to go back to Aravania;¹³³ and
 - b. in Aravania itself, when A.A. told Hugo Maldini that she wished to stay in Aravania after their week-long transplantation instead of being transported back to Lusaria.¹³⁴
86. On both occasions, however, A.A.'s ultimate decision to maintain the status quo was a decision borne from her own choice and beliefs. With regard to the first instance above, her decision to continue working on the farm reflected her beliefs that obtaining free healthcare and childcare for M.A. and F.A. were important.¹³⁵ Even though it was M.A.'s insistence that these were important that motivated A.A. to continue her employment with EcoUrban, the importance she accorded to these was also the reason she decided to even take up this job opportunity in the first place.¹³⁶
87. On the second occasion, A.A. never once in her discussion with Hugo Maldini did he expressly forbid her from doing what she wanted (i.e. staying on in Aravania).¹³⁷ His engagement with her was limited to just her request for her income, which he informed her would only be transferable

¹³¹ *The American Convention on Human Rights: Crucial Rights and their Theory and Practice* by Cecilia Medina Quiroga and Valeska David Contreras at p. 260.

¹³² *Pueblo Bello Massacre v. Colombia* at [170]

¹³³ Hypothetical at [43]

¹³⁴ Hypothetical at [47]

¹³⁵ Hypothetical at [43]

¹³⁶ Hypothetical at [34]

¹³⁷ Hypothetical at [47]

upon her return to Lusaria and thus advised her to travel back to Lusaria to receive her income.¹³⁸

It was still open to A.A. to stay on in Aravania should she wish. In fact, A.A. did ultimately exercise her personal liberty to stay on in Aravania following the complaint she lodged with the Velora Police.¹³⁹ Therefore, the fact that A.A. was able to easily exercise her liberty in this way and to choose to make this complaint, as well as effectively choosing to stay in Aravania, demonstrates that her personal liberty had never been curbed while in Aravania, and that she chose to stay on with EcoUrban for the short period between her conversation with Hugo Maldini and her lodging the complaint. Therefore, personal liberty was not undermined in either Lusaria or Aravania.

88. Since there were no personal liberty rights that were violated, the State likewise cannot be held liable for allowing such breaches to take place. However, even if these breaches were found, the State nonetheless cannot be held liable for a failure to prevent such breaches from taking place.

89. Following the complaints it received, the State did make an effort to investigate whether there were any breaches on the site, i.e. request Lusaria send a report to them.¹⁴⁰ The very act of requesting this report formed the State's effort to protect the Victims, as the State believed that the report would reflect any violation of personal liberty as well. The report not reflecting anything amiss that the State itself would have to investigate resulted in the State choosing not to exercise their discretion to conduct these unannounced checks.¹⁴¹ Therefore, the initial act of the State requesting such a report to properly investigate the complaints it received in 2012 was the State discharging its obligation to protect the Victims.

¹³⁸ *Ibid.*

¹³⁹ Hypothetical at [48]

¹⁴⁰ Clarification Question 10.

¹⁴¹ *Ibid.*

90. Therefore, even if there were breaches of personal liberty that took place in Finca El Dorado, the State discharged its obligations to protect the Victims and therefore, is not liable for breaching Art 7(1).

91. Additionally, the State is not liable for violating the Victims' physical liberty under Art 7(2) either. A breach of Art 7(2) specifically requires a total deprivation of physical liberty, which is distinct from a mere restriction of this right.¹⁴² The Victims' status in Finca El Dorado is an example of a mere restriction. While their entries and exits were closely monitored,¹⁴³ there was nothing to indicate that had the women tried leaving Finca El Dorado like the male workers did during the weekend,¹⁴⁴ they would be physically barred from doing so. Seeing as a breach of Art 7(2) specifically requires a total deprivation of physical liberty as opposed to just a restriction of this liberty, the State is not liable for breaching Art 7(2) either as such curtailment of the Victims' physical liberty did not take place.

7. Finally, this Court should find that the State's efforts to uphold the alleged rights to dignified working and living conditions does not violate Articles 26 and 1(1) of the ACHR.

92. This Court affirmed that the State is subject to general obligations to "*respect the rights and freedoms*" recognized under Article 1(1) which also includes Article 26.¹⁴⁵ Therefore, alleged rights under Article 26 are examinable under this Court's jurisdiction to determine its scope, obligations and violations.¹⁴⁶ This Court established three steps to determine whether an alleged right is violated under Article 26:¹⁴⁷

¹⁴² *Chaparro Álvarez and Lapo Íñiguez v. Ecuador* at [58]

¹⁴³ Hypothetical at [46]

¹⁴⁴ Hypothetical at [42]

¹⁴⁵ *Acevedo Buendía v Peru* at [100]

¹⁴⁶ *Lagos del Campo v Peru* at [142]

¹⁴⁷ *Muelle Flores v Peru* at [171]

- a. This right is autonomous and justiciable under Article 26;
- b. The right is scoped international *corpus juris* on the matter;¹⁴⁸ and
- c. The State failed to discharge obligations under Article 26 to uphold the alleged Victims' right to dignified working and living conditions.

93. It is uncontentious that the Victims' right to dignified working and living conditions likely falls under Article 26 under the State's Constitution, the OAS Charter, the American Declaration and the ICESR.¹⁴⁹

94. However, the State does contest that the Victims' right to dignified working and living conditions is scoped to mostly progressive obligations, which the State has discharged.

95. On first instance, the Victims' right to dignified working and living conditions is scoped under international law,¹⁵⁰ which this Court relied on reports from the CDESCR to specifically define rights under Article 26.¹⁵¹ The CDESCR has defined "*safe and healthy working conditions*" to constitute "*appropriate monitoring and enforcement provisions, including effective investigations, and provide adequate penalties in case of violations.*"¹⁵² This mirrors the State's obligations under the Cooperation Agreement to "[supervise] compliance with the labor laws of their respective jurisdictions" and "[establish] mechanisms to hear complaints."¹⁵³

96. This right is scoped largely to progressive measures which are to concretely and constantly make the "*most effective and rapid progress possible towards the full realization of the right*" as their "*available resources permit.*"¹⁵⁴ The State did ensure they complied with their progressive

¹⁴⁸ *Cuscul Pivaral et al v Guatemala*, at [100]

¹⁴⁹ *Lagos del Campo v Peru* at [143]

¹⁵⁰ *Ibid* at [145]

¹⁵¹ *Ibid* at [148]

¹⁵² CDESCR at [29]

¹⁵³ Hypothetical at [25]

¹⁵⁴ *Cuscul Pivaral et al v Guatemala*, at [98]

measures through Resolution 2020, where the State upheld the importance of labor rights in commercial relationships and ensured effective mechanisms for hearing employment complaints.¹⁵⁵

97. The Victims alleged that the right to dignified working and living conditions gave rise to immediate obligations as its scope was focused on tangible actions. The State allegedly failed to provide effective measures¹⁵⁶ at the time, such as the provision of formalized reporting mechanisms for the Victims. Thus, the Victims could not report the deterioration of their living conditions from the makeshift homes at the Aerisflora plantations in Finca El Dorado¹⁵⁷ and thus, had their alleged human rights violated during their stay.

98. This is misconceived. The State submits that the right's scope is to be interpreted as progressive measures, given that establishing monitoring, enforcement, and investigation processes are only effective when they are permitted within the State's available resources.¹⁵⁸ Furthermore, ensuring effective processes does require higher government expenditure and administration capabilities from nations. Should this right be an immediate obligation, poorer nations, like the State, risk having lesser resources to resolve immediate national needs such as the economy or public safety to prioritise human rights.

99. Therefore, this Court should find that the State's attempts to improve upholding the right to dignified working and living conditions is not a violation of Article 26 of the ACHR.

¹⁵⁵ Clarification Question 8

¹⁵⁶ *Cuscul Pivaral et al v Guatemala*, at [98]

¹⁵⁷ Hypothetical at [25]

¹⁵⁸ *Cuscul Pivaral et al v Guatemala*, at [98]

IV. REQUEST FOR RELIEF

100. Based on the factual and legal arguments set forth above, this Court is respectfully requested to declare the State not internationally responsible for failing to comply with its obligations of respect and guarantee contained in Articles 1(1), 3, 5, 6, 7, 8, 25, and 26 of the ACHR and Article 7 of the BDPC to the detriment of the Victims, all in relation to their obligations of respect and guarantees contained in Articles 1(1) and 2 of the ACHR.

101. Furthermore, the Court finds the reparations and costs inadmissible in the present case, as the absence of international responsibility on the part of the State has been demonstrated.