

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

VICTIMS' CASE

TITLE PAGE

I. INDEX OF AUTHORITIES	3
1. International Treaties and Conventions	3
2. IACHR Contentious Cases	3
4. ECHR Cases.....	4
5. Other Materials	4
II. STATEMENT OF FACTS.....	6
III. LEGAL ANALYSIS.....	11
A. JURISDICTION.....	11
1. This Court has competence <i>ratione personae</i> because the Victims’ petition fulfills the procedural requirements under Articles 44 and 46 of the ACHR.....	11
a. The domestic remedies pursued and granted to the Victims were inadequate to redress their violated human rights.	11
b. Furthermore, the Clinic is the Victims’ legal representative to file their petition.	13
2. Furthermore, this Court possesses competence <i>ratione loci</i> under Article 1.1 of the ACHR over the State’s failures to act in Primelia and Finca El Dorado.	14
a. The State failed to ensure that their domestic labour laws were complied with and enforced, resulting in the violation of the Victims’ human rights.....	15
b. The State’s failure to conduct unannounced site supervision visits to the Victims’ workplaces allowed the violation of the Victims’ human rights.	15
B. SUBSTANTIVE MERITS.....	17
1. The State materially infringed on the Victims’ rights to due process under Articles 8(1) read with 25(1) of the ACHR.....	17
a. The preliminary exception is inapplicable because the Victims’ treatment by the State’s judicial proceedings falls under this Court’s subsidiary nature.	17
b. The State’s repeated failure to investigate the unidentified women’s whereabouts, thereby violating the Victims’ right to the truth.	18
2. This State’s failure to prevent and investigate Maldini from human trafficking the Victims from Primelia back to Lusaria violates the Victims’ freedom from forced labor under Article 6(1) of the ACHR.....	19
a. The Victims’ treatment in Primelia amounts to “forced labour.”	19
b. Furthermore, this Court should find that freedom from human trafficking is found under Article 6, which includes “forced labor”.	20
c. Finally, the State failed to uphold their obligations against preventing the Victims’ from being human trafficked.	23
i. The State failed to provide adequate measures regulating immigration, to prevent human trafficking, at the Campo de Santana border.....	23
ii. The State has credible suspicion that the Victims were being human trafficked and yet, failed to take preventive operational measures.	24
iii. The State failed their procedural duty to carry out an effective investigation once	

informed of the Victims' being human trafficked.	25
3. The State's repeated failure to conduct periodic checks on the worksites violated the Victims' personal integrity under Article 5(1) of the ACHR.	26
a. The State failed to conduct unannounced supervision visits to the Primelia worksite after the Victims arrived.	26
b. The State failed to conduct unannounced supervision visits in Finca El Dorado ensured the subsistence of the Victims' inhumane treatment.	27
c. The State failed to prosecute Hugo Maldini domestically, creating complete uncertainty which heightened the Victims' feelings of fear and anxiety sufficiently to constitute a violation of their personal integrity.	29
4. The State violated Art 7 of the BDPC by failing to investigate the inhumane treatment and disappearances of the female Victims.....	30
a. The State did not conduct formal investigations into the poor living conditions in Aravania, which violates the BDPC.	31
b. The State's lack of formal investigations into the poor living conditions in Aravania violates the BDPC.....	32
5. The State did not prevent the deprivation of the Victims' liberty in Lusaria, thereby violating the Victims' right to liberty and security under Article 7(1) of the ACHR.....	33
a. The State did not inspect Finca El Dorado in person, therefore breaching Art 7(1) by ensuring the Victims were continuously subjected to a deprivation of their personal liberty.	34
b. The State did not monitor the premises in Primelia closely after the Victims arrived and therefore breached Art 7(1) by ensuring the subsistence of conditions that deprived them of their liberty.	35
6. Finally, this Court should find that the Victims' rights to dignified working and living conditions under Articles 26 and 1(1) of the ACHR were violated because of the State's failure to intervene.	36
IV. REQUEST FOR RELIEF	39

I. INDEX OF AUTHORITIES

1. International Treaties and Conventions

1. American Convention of Human Rights (“ACHR”)
2. American Declaration of The Rights And Duties Of Man 1948 (“American Declaration”)
3. Charter of the Organization Of American States (“OAS Charter”)
4. Convention of Belém do Pará (“BDPC”)
5. Conventions No. 29 of the International Labor Organization.1957. (“ILO”)
6. International Covenant on Economic, Social and Cultural Rights (“ICESCR”)
7. Rules of Procedure of The Inter-American Court Of Human Rights (“ROP”)
8. United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children 2006 (“UNTIP”)
9. Vienna Convention on Diplomatic Relations 1961 (“VCDR”)

2. IACHR Contentious Cases

10. *Acevedo Buendia v Peru* (2009), **Pages 11,34**
11. *Artavia Murillo et al. (“In Vitro Fertilization”) v Costa Rica* (2012) **Page 24**
12. *Cuscul Pivaral et al v Guatemala* (2018) **Pages 34, 35**
13. *González et al. (“Cotton Field”) v. Mexico* (2009) **Page 29**
14. *Gutiérrez Hernández y otros vs Guatemala* (2015) **Pages 19,20,21,**
15. *Ituango Massacres v. Colombia* (2006) **Pages 17, 18**
16. *Lagos del Campo v Peru* (2017) **Page 35**
17. *Las Palmeras v. Colombia(Preliminary Objections)* (2000) **Page 11**
18. *López Soto y otros v Venezuela* (2018) **Page 33**
19. *Mejía Drovo v. Ecuador* (2011) **Page 15**

- 20. *Muelle Flores v Peru* (2019) **Page 35**
- 21. *Pacheco Tineo Family v Plurinational State of Bolivia* (2009) **Page 27**
- 22. *Pueblo Bello Massacre v. Colombia* (2006) **Page 33**
- 23. *Ramírez Escobar et al. v Guatemala* (2018) **Page 31**
- 24. *Ríos et al. v. Venezuela* (2009) **Page 29**
- 25. “*Street Children*” (*Villagran-Morales et al.*) *v. Guatemala* (1999) **Page 15**
- 26. *Velásquez Rodríguez v. Honduras* (2018) **Page 10**

3. IACHR Advisory Opinions

- 27. Report No. 112/10, *Admissibility, Franklin Guillermo Aisalla Molina* (2010) **Page 10**
- 28. OC Report No. 23/17, *The Environment and Human Rights* (2017) **Page 24**

4. ECHR Cases

- 29. *Al-Skeini and others v UK*. (2007) **Page 12**
- 30. *Chowdury et al v Greece*. (2015) **Page 22**
- 31. *C.N. and V. v France*. (2009) **Page 17**
- 32. *Rantsev v. Cyprus and Russia*. (2004) **Page 21**
- 33. *SM v Croatia*. (2014) **Page 21**

5. Other Materials

- 34. *General Comment 23/16 on the right to just and favourable conditions of work (Article 7 of the ICESR)*, UN Committee of Economic, Social and Cultural Rights (“CESCR”) **Pages 35, 36**
- 35. *The American Convention on Human Rights: Crucial Rights and their Theory and Practice* 3rd Edition by Cecilia Medina Quiroga and Valeska David Contreras **Pages 32**

II. STATEMENT OF FACTS

1. This case is about A.A. and nine other women (“the Victims”), citizens of the Republic of Aravania (“the State”), who took jobs created by the State. Being promised a better life for themselves and their families, the Victims, instead, were subjected to poor working conditions, gender discrimination, and worst of all, being denied their right to return home, all because the State failed to intervene.
2. The State is a developing country in South America where 17% of people live in poverty, a result of it failing to provide public education and social security.¹ These issues are further exacerbated by the State’s rampant gender discrimination, especially in rural areas. Women have less access to higher education, are paid less than men in domestic labor markets, and struggle more to cover costs of care for their families. Consequently, women living in the State take on strenuous workloads and accept job offers abroad to earn more. Furthermore, the State is often at their weather’s mercy.² Droughts and flooding were commonplace, resulting in people, agriculture, and the economy being in constant jeopardy.³
3. The Democratic State of Lusaria (“Lusaria”) is the State’s neighbouring country, which mainly cultivates and exports AERISFLORA, a plant species native to Lusaria used to create sustainable and efficient models for large-scale rainwater treatment to prevent flooding.⁴ AERISFLORA production requires substantial manpower, thereby requiring domestic workers to work longer hours and a need for foreign staff to cut costs.⁵

¹ Hypothetical at [2]

² Ibid

³ Hypothetical at [3]

⁴ Hypothetical at [14]

⁵ Ibid

4. When the State suffered a major flood which destroyed property and displaced 150,000 Aravanians in May 2012, they looked to transplanting Aerisflora from Lusaria to mitigate flooding.⁶ On July 2, 2012, the State and Lusaria signed the Bilateral Cooperation Agreement for the Transplantation of Aerisflora (“the Cooperation Agreement”), which affirmed both the State and Lusaria’s commitment to upholding human rights and dignity, accountability structures to ensure proper labor conditions and no workplace discrimination, and dispute resolution via the Special Arbitration Panel (“the SAP”).⁷ On July 16, 2012, EcoUrban Solutions, a Lusarian public company, selected Finca El Dorado as the first Lusarian farm to execute the Cooperation Agreement.⁸
5. Hugo Maldini (“Maldini”), the Lusarian President’s publicist, was central to the Cooperation Agreement in two ways. Firstly, as Lusaria’s Special Attaché for Public and Commercial Relations for Aerisflora, Maldini was granted one-time diplomatic immunity under Art 50 of the Cooperation Agreement to transplant Aerisflora into the State on October 25, 2012.⁹ Secondly, Maldini personally advertised Aerisflora farming jobs on ClicTik between July 16 and August 31, 2012 as the hired publicist of Finca El Dorado.¹⁰ Maldini specifically leveraged Aravanian women’s disgruntlement with domestic socio-economic circumstances, and curated the advertisements’ message that the job opportunities were for the purpose of empowering women.¹¹

⁶ Hypothetical at [20]

⁷ Hypothetical at [25]

⁸ Hypothetical at [26]

⁹ Hypothetical at [30]

¹⁰ Hypothetical at [29]

¹¹ Ibid

6. A.A.'s circumstances neatly reflect the circumstances of the 60 Aravanian women enticed by the Aerisflora job advertisements. She lacked higher education, struggled to find good jobs and yet, had to support her family as the sole breadwinner.¹² She was captivated by Maldini's ClicTik advertisements and inquired about the Aerisflora jobs in Finca El Dorado on August 17, 2012.¹³ Maldini made representations that the Aerisflora jobs in Lusaria enabled mothers to achieve family education and placed pressure on A.A. that she had to indicate her interest.¹⁴ A.A. indicated her interest four days later and signed an employment contract.¹⁵ The contract expressly stated her working hours, compensation, work permits, access to health insurance, day care, and education for her dependents, and paid travel to Lusaria for her and her dependents.¹⁶
7. The Victims started work in Finca El Dorado on November 24 2012, till late December 2013, where working and living conditions progressively worsened over time. Both workers and their families were made to live in tiny makeshift bunkhouses made of sheet metal with no room dividers,¹⁷ which was far from the paradise the ClicTik videos depicted the farm to be. Furthermore, the female farmers, including the Victims, were overworked. Not only were they required to complete their Aerisflora farming targets, but they were also solely responsible for cooking and cleaning for all workers, responsibilities which were far beyond their employment.¹⁸ Consequently, the Victims extended their workdays, reporting at 6am and finishing work late into the night.¹⁹ During this period, complaints of working conditions and mistreatment in Finca

¹² Hypothetical at [31]

¹³ Hypothetical at [34]

¹⁴ Ibid

¹⁵ Hypothetical at [35]

¹⁶ Ibid

¹⁷ Hypothetical at [39]

¹⁸ Hypothetical at [37]

¹⁹ Hypothetical at [41]

El Dorado were anonymously tipped to the State's Prosecutor General's Office. However, the Prosecutor General's Office dismissed the complaints without considering their merits solely because no crime occurred in its given physical jurisdiction.²⁰

8. On January 5, 2014, the Victims travelled back to Primelia, a farm located in Aravania's province of Velora, with Maldini.²¹ The Victims were subjected to similar conditions in Finca El Dorado, sharing a tiny residence with 10 people, being constantly surveilled by Lusarian staff, and other similar working conditions.²²
9. The Victims were supposed to work in Primelia until January 12, 2014, to transplant the cultivated Aerisflora.²³ However, Maldini extended his and the Victims' stay in Primelia for another week because the Aerisflora plants died due to unforeseen circumstances.²⁴ A.A. then demanded payment from Maldini, who casually dismissed her distress and responded with a threat to revoke the social security benefits to A.A.'s daughter and mother should she stop working.²⁵
10. On January 14, 2014, A.A. was left with no other but to leave Primelia and went to the Velora Police to lodge a complaint in fear of Maldini's threat to her family in Lusaria, which included the poor working conditions the Victims experienced. The Velora Police confirmed the truthfulness of A.A.'s story and began investigations in Primelia that same day, where the remaining nine women were missing and disappeared.

²⁰ Hypothetical at [54]

²¹ Hypothetical at [45]

²² Hypothetical at [46]

²³ Hypothetical at [47]

²⁴ Ibid

²⁵ Ibid

11. On January 15, 2014, Maldini was arrested,²⁶ and was brought before the State's Second Criminal Court Judge.²⁷ However, the State did not prosecute Maldini domestically by virtue of his diplomatic immunity, which Lusaria refused to waive despite the gravity of the breaches alleged against him.²⁸ Lusaria also refused to waive Maldini's immunity and argued that they complied with sending periodic reports to the State which showed that the farm's working complied to the Cooperation Agreement.²⁹
12. The State's Second Criminal Court dismissed the case, and A.A. approached the Trafficking Victims Support and Reintegration Clinic ("the Clinic") to advance her appeal.³⁰ However, the Velora Court of Appeals affirmed the decision on April 17, 2014, and dismissed A.A.'s claims. Notably, the State never further investigated whether A.A.'s claims were meritorious after Maldini pleaded his diplomatic immunity.³¹ Yet, Lusaria began investigations against Maldini and found him criminally liable for abuse of authority in their courts.³²
13. The State later initiated arbitration proceedings against Lusaria,³³ where the SAP found Lusaria liable for violating working conditions under Article 23 of the Cooperation Agreement to pay the State US\$250,000 in damages on September 17, 2014.³⁴ The State only compensated A.A. with US\$5,000 for Lusaria's failure to ensure adequate working conditions in its territory.³⁵

²⁶ Hypothetical at [48]

²⁷ Ibid

²⁸ Hypothetical at [50]

²⁹ Ibid, Clarification Question 22

³⁰ Hypothetical at [51]

³¹ Ibid

³² Hypothetical at [53]

³³ Hypothetical at [55]

³⁴ Clarification Question 31

³⁵ Hypothetical at [55]

14. The Clinic, representing the Victims, filed a petition with the Commission to hold the State accountable for failing to prevent the activities occurring in both Finca El Dorado and Primelia to the Victims' detriment.³⁶
15. By the previously reported facts, the following considerations are presented to prove before this Court that the State is internationally responsible for violating Articles 5, 6, 7, 8, 25, 26 read with 1(1) of the ACHR and Article 7 of the BDPC.³⁷

III. LEGAL ANALYSIS

A. JURISDICTION

1. This Court has *competence ratione personae* because the Victims' petition fulfills the procedural requirements under Articles 44 and 46 of the ACHR.

16. The Clinic fulfils the specific procedural obligations under Articles 44 and 46 of the ACHR:
 - a. The Clinic can petition for the Victims as a "*nongovernmental entity legally recognized*" by both Aravania and Lusaria as signatories of the ACHR.³⁸
 - b. The Victims' petition falls within the 6-month time period³⁹ from the Velora Court of Appeals' final judgement to the Victims' filed petition.⁴⁰
 - c. Whilst the Victims are petitioning in this Court against Lusaria in a separate petition, it is only at the merits stage⁴¹ and is not pending for settlement.⁴²

³⁶ Hypothetical at [56]

³⁷ Hypothetical at [58]

³⁸ Article 44 of ACHR

³⁹ Article 46(1)(b) of ACHR

⁴⁰ Hypothetical [51], [56]

⁴¹ Hypothetical Clarification [42]

⁴² Article 46(1)(c) of ACHR

a. The domestic remedies pursued and granted to the Victims were inadequate to redress their violated human rights.

17. The Victims lacked adequate domestic inadequate to redress their violated human rights⁴³ provided by both the State's judicial proceedings and the SAP.
18. To begin with, the Aravanian court lacked criminal jurisdiction to hold Maldini liable for his actions in Primelia as the Cooperation Agreement provided Maldini diplomatic immunity.⁴⁴ This grants complete immunity from the receiving State's criminal and civil jurisdiction, but may be expressly "*waived by the sending State.*"⁴⁵ Lusaria's refusal to waive Maldini's diplomatic immunity from finding liability in Aravanian courts⁴⁶ consequently prevented the Victims from pursuing any remedies to guarantee their personal safety and security from Maldini domestically.
19. Additionally, A.A. only received US\$5,000 in damages⁴⁷ when the SAP had ordered Lusaria to pay US\$250,000 to the State for breaching Article 23 of the Cooperation Agreement.⁴⁸ This is inadequate to redress the Victims' violated human rights on three grounds:
 - a. To begin, the State did not compensate the remaining nine victims who suffered equally with A.A. in Lusaria.
 - b. Moreover, the SAP's purpose is to resolve "*any dispute arising from the implementation and interpretation*" under the Cooperation Agreement."⁴⁹ The damages arose from Lusaria having breached Article 23 by maintaining poor working conditions in their worksites,⁵⁰ not

⁴³ *Velásquez Rodríguez v. Honduras* (No. 4, 1988), [64]

⁴⁴ Hypothetical at [25]

⁴⁵ Article 32 of VCDR

⁴⁶ Hypothetical at [55]

⁴⁷ Ibid

⁴⁸ Hypothetical at [25]

⁴⁹ Ibid

⁵⁰ Clarification Question 46

from any liability the State had in failing to protect the Victims' human rights. The apportionment of damages to A.A. likewise is not a result of the State accepting liability for any breaches of the Victims' human rights.

- c. Finally, only this Court, not the SAP, can substantively analyse whether the Victims' human rights were violated as these fall under the ACHR.⁵¹ The SAP's remedy of damages to the Victims is still inadequate to address the psychological distress and cover the safe return of all Victims and their families, which only this Court can provide.

20. Therefore, the Victims' have exhausted and pursued all domestic remedies because these remedies were inadequate in fully redressing the Victims' specific alleged violation of human rights.⁵²

b. Furthermore, the Clinic is the Victims' legal representative to file their petition.

21. The Clinic's petition contains their "*name, nationality, profession, domicile, and signature,*"⁵³ and functions as the Victims' common intervenor to represent them before this Court.⁵⁴ The State argues that this Court cannot hear the petition of the remaining unidentified nine victims because neither they, nor their next-of-kin, could grant the Clinic power of attorney to legally represent them.⁵⁵ This is misconceived. This Court has "*no restriction of competence arising from the "full and complete" identification of the individuals affected*" by human rights violations.⁵⁶ Given this Court has found petitions admissible even when not all the victims were identifiable,⁵⁷ the Victims' case is admissible on two grounds:

⁵¹ Clarification Question 31

⁵² Article 46(1)(a) of ACHR

⁵³ Article 46(1)(d) of ACHR

⁵⁴ Article 25(1) of ROP

⁵⁵ *Acevedo Buendia v Peru* at [4]

⁵⁶ IACHR, Report 86/06, Petition 499-04, *Mariano Lopez et al.* (Operation Genesis), Admissibility (Colombia) (Oct. 21, 2006), [34].

⁵⁷ *Las Palmeras v. Colombia* (Preliminary Objections), [43]

- a. The Clinic has identified the majority of the unidentified nine victims. The petition includes the full confidential details of A.A. and details of the nine missing victims (which include names, age-ranges, and their domiciles).⁵⁸ Even if such identification is insufficient, the Clinic possesses the names of seven of the nine missing victims (albeit confidential) from helping the victims in Lusarian criminal proceedings against Maldini.⁵⁹ These circumstances evidenced that the remaining victims did suffer the alleged human rights violations and entrusted the Clinic to represent them.
- b. A.A., the sole identified victim, could report the human rights violations to the Clinic as the other nine women disappeared.⁶⁰ A.A. would be the only identifiable person at the time the petition was filed⁶¹ and would be logically impossible to expect any of the other victims to be named then.

22. Therefore, this Court has *competence ratione personae* to hear the Victims' petition because it follows the requirements under Article 44 and 46 of the ACHR.

2. Furthermore, this Court possesses *competence ratione loci* under Article 1.1 of the ACHR over the State's failures to act in Primelia and Finca El Dorado.

23. State Parties are “*responsible for the acts and omissions imputable to [the State]*,”⁶² even when they occur extraterritorially. The European Court of Human Rights (“ECtHR”) clarified that establishing *competence ratione loci* requires a causal nexus between the state's extraterritorial

⁵⁸ Article 46(1)(d) of ACHR

⁵⁹ Clarification Question 46

⁶⁰ The inference being, Maldini made them disappear, Hypothetical at [49]

⁶¹ Hypothetical at [56]

⁶² IACHR, Report No. 112/10, Admissibility, *Franklin Guillermo Aisalla Molina* at [90]

conduct in exercising “*executive or judicial functions...in accordance with state parties’ custom, treaty or other agreement*”⁶³ and the violation of the Victim’s human rights.⁶⁴

24. The State’s jurisdiction over Primelia and Finca El Dorado arises from the Cooperation Agreement to ensure “*compliance with its respective labor laws through appropriate governmental actions.*”⁶⁵ This includes:

- a. “*Supervising compliance*” and “*establishing mechanisms to hear complaints*” when domestic labor laws are violated⁶⁶ and;
- b. “*Conduct[ing] unannounced on-site activity supervision visits.*”⁶⁷

a. The State failed to ensure that their domestic labor laws were complied with and enforced, resulting in the violation of the Victims’ human rights.

25. The State did not take a single step to ensure that Lusaria complied with Aravanian labor laws when the Victims were in Primelia harvesting Aerisflora. Thus, Maldini was allowed to impose poor living and working conditions, constant surveillance, and threats to withhold payment onto the Victims’.⁶⁸

26. Furthermore, the State failed to establish any new complaint mechanisms, as evidenced by the dismissal of A.A’s complaints against Maldini’s conduct in Primelia⁶⁹ because of Maldini’s diplomatic immunity and the Prosecutor General’s dismissal of the complaints in Finca El

⁶³ *Al-Skeini and others v UK* at [135]

⁶⁴ *Ibid*

⁶⁵ Hypothetical at [25]

⁶⁶ *Ibid*

⁶⁷ *Ibid*

⁶⁸ Hypothetical at [39] - [47]

⁶⁹ Hypothetical at [51]

Dorado.⁷⁰ The Victims had no further recourse under the State's legal process to hear their complaints, let alone seek remedies for their violated human rights.

b. The State's failure to conduct unannounced site supervision visits to the Victims' workplaces allowed the violation of the Victims' human rights.

27. The State relied solely on Lusaria's monthly reports to ensure compliance with the Cooperation Agreement,⁷¹ despite having the discretionary power to conduct unannounced visits in Finca El Dorado.⁷² In doing so, the State disregarded the very purpose of the power to conduct unannounced visits, which was to independently verify actual working conditions, especially when suspicion arises regarding Lusaria's reporting.
28. The State's limited site visits in Primelia were confined to its construction phase. Consequently, the State never examined and inspected the Victims' actual living and working conditions in Primelia.⁷³ Subsequent reliance on Lusaria's assurances to manage the special mission in Primelia and investigate, without independent verification,⁷⁴ demonstrates the State's lack of involvement in ensuring the Victims' human rights were upheld.
29. Thus, the State's failure gave Maldini and Lusaria unchecked authority over the Victims, which facilitated the violation of the Victim's human rights via poor living and working conditions, mistreatment, and their disappearances.
30. Therefore, this Court should declare that it possesses *competence ratione loci* to adjudicate the State's omissions under Article 1.1 of the ACHR.

⁷⁰ Hypothetical at [54]

⁷¹ Clarification Question 22

⁷² Hypothetical at [25]

⁷³ Clarification Question 10

⁷⁴ Ibid

B. SUBSTANTIVE MERITS

1. The State materially infringed on the Victims' rights to due process under Articles 8(1) read with 25(1) of the ACHR.

a. The preliminary exception is inapplicable because the Victims' treatment by the State's judicial proceedings falls under this Court's subsidiary nature.

31. This Court's subsidiary nature is limited to settling parties' disputes regarding the scope of domestic law in areas directly related to compliance with international human rights obligations under the ACHR.⁷⁵ The State argues that the preliminary exception applies because A.A. received full reparation for her harm and therefore, the Victims' petition is beyond this Court's subsidiary nature. This is misconceived and irrelevant. This Court's subsidiary nature can examine whether the State's judiciary's actions and proceedings⁷⁶ breached the State's obligations to investigate and the violation of the Victims' human rights conferred under Articles 8(1) read with 25(1) of the ACHR.⁷⁷
32. A.A.'s remedy of US\$5,000 was not from the State's judicial proceedings, but the SAP's arbitral award.⁷⁸ The States of the Cooperation Agreement, not the Victims, were parties bound to the SAP arbitration. Therefore, the Victims could not seek remedies nor bring an action to the SAP and thus, is unexaminable under Article 8.
33. Therefore, this Court can examine how the Victims' were denied their right to due process under the State's legal proceedings because of Maldini's diplomatic immunity.

⁷⁵ *Mejía Drovo v. Ecuador*, at [16]

⁷⁶ *Ibid*, [20]

⁷⁷ *"Street Children" (Villagran-Morales et al.) v. Guatemala*, at [224]

⁷⁸ Hypothetical at [55]

- b. The State's repeated failure to investigate the unidentified women's whereabouts, thereby violating the Victims' right to the truth.*

34. This Court established that the right to the truth is within Articles 8(1) and 25(1) of the ACHR. This right is available for the Victims, their next of kin, and even the public to “obtain clarification of the events that violated human rights” from the State. The State, within its competence, must “cooperate, support, and assist” through a proper investigation of the facts to uphold this right so long as there is uncertainty about the disappeared person’s fate. This State violated this right because they failed to discharge this duty throughout the entire investigation.
35. To begin with, the Veloran Police failed to thoroughly investigate A.A.’s complaint and thus, lacked sufficient evidence to revoke Maldini’s diplomatic immunity. This prevented the Victims from continuing legal proceedings and pursuing remedies against Maldini. For instance, the Veloran Police’s evidence of Maldini’s social media accounts, corroborated with A.A.’s statements, and physical investigations of the worksite in Primelia were sufficient to arrest and charge Maldini. However, this State’s Second Criminal Court still held that it was insufficient to warrant waiving his diplomatic immunity expeditiously because Maldini had abused his diplomatic authority beyond his official functions.
36. Furthermore, the Veloran Police requested the immigration records at the border between January 5 to 15, 2014, but found it was unhelpful to their investigations. The Veloran Police alleged they lacked key information regarding the other nine women’s identities and the sheer number of migrants passing through the border. However, the Victims could have been identified and filtered by their special service permits provided under Article 50.2 of the Cooperation Agreement. The State only needed to identify persons transiting through the border holding the special work permits to enter and leave the State’s physical territory on border records of January

5, 14, and 15, 2014. Had the State's executive organs contacted and communicated with one another, such an error would not have occurred and perhaps, the remaining nine women would not have been taken back to Lusaria.

37. Finally, the State did nothing to investigate the whereabouts and living status of the nine women after their judicial proceedings had concluded. Currently, both the public and the Victims were owed the right to the truth given the media stir and public outrage. Whilst the State has strengthened employment and living conditions in commercial agreements since the Victims' incident, they have taken no information nor actions for the nine other women residing in Lusaria.
38. Therefore, this Court should find the State's efforts to investigate before and after domestic judicial proceedings were insufficient and therefore, violated the right to the truth under Articles 8(1) read with 25(1) of the ACHR.

2. This State's failure to prevent and investigate Maldini from human trafficking the Victims from Primelia back to Lusaria violates the Victims' freedom from forced labor under Article 6(1) of the ACHR.

a. The Victims' treatment in Primelia amounts to "forced labor."

39. "Forced labor" under the ACHR has been interpreted through the International Labor Organization ("ILO") Convention No. 29 and sets out three elements,⁷⁹ which Maldini's prolonged stay in Primelia against the Victims' will satisfies.
40. Firstly, the Victims' work or service is exacted "*under the menace of a penalty.*"⁸⁰ Penalties are defined broadly to encompass not only physical harm, but also financial and psychological harm.

⁸¹ A.A. and the Victims' extended stay in Velora to transplant Aerisflora was induced by

⁷⁹ *Ituango Massacres v. Colombia* at [160]

⁸⁰ *Ibid*, [161]

⁸¹ *C.N. and V. v France* at [52]

Maldini's threats to withhold all payments for their work and social security benefits the Victims' families benefited from should they fail to comply.⁸²

41. Secondly, the Victims' work was performed involuntarily⁸³ because of Maldini's psychological coercion and threats to withhold all financial and social security benefits they and their families rely on.⁸⁴
42. Lastly, the Victims' violated human right in Primelia is attributable to the State's acquiescence in its lack of intervention in Maldini's actions. The State is empowered by Article 23 of the Cooperation Agreement to not only uphold "working conditions compatible with.... the observance of human rights", but also "supervise compliance" with domestic labor laws. Given the State's active review of the Primelia special mission site several times before the Victims' arrival,⁸⁵ the State certainly would have had the capacity to supervise compliance during the Victims' supposed one week stay. Consequently, Maldini had unfettered discretion to act as he pleased without being accountable to the State in any way, which came at the Victims' expense of being forced to work without any possible recourse.

b. Furthermore, this Court should find that freedom from human trafficking is found under Article 6, which includes "forced labor".

43. This Court should find, just as the ECtHR did, that human trafficking is contrary to the purpose of the freedom of slavery clause in human right treaties like the ACHR.⁸⁶ Freedom from human trafficking can be accommodated within Article 6's text of freedom from slavery.⁸⁷ Aspects of

⁸² Hypothetical at [47]

⁸³ *Ituango Massacres v. Colombia* at [164]

⁸⁴ Hypothetical at [47]

⁸⁵ Clarification Question 10

⁸⁶ *SM. v Croatia* [292]

⁸⁷ *Ibid*, [290]

human trafficking which the Victims suffered, like “*close surveillance*” from constant security in Primelia⁸⁸ and the special mission’s poor living and working conditions⁸⁹, can be found in slavery, forced, and compulsory labor under Article 6.⁹⁰

44. Whilst the ACHR does not define human trafficking, other international legal materials the State is signatory to, aids to provide a definition.⁹¹ The UNTIP, which the State is a signatory to,⁹² expresses 3 elements:⁹³

- a. There is an action of trafficking such as “*recruitment, transportation, transfer, harbouring or receipt of persons*”⁹⁴;
- b. The means of trafficking grants the trafficker control over persons This can be through using threats, coercion, abduction, abuse of power etc⁹⁵; and
- c. The trafficker has an exploitative purpose which includes slavery and forced labor.⁹⁶

45. Maldini’s conduct in Primelia satisfies all three elements under the international definition of human trafficking.⁹⁷

46. Firstly, he has demonstrated several actions of trafficking to recruit the Victims to embark on the special mission⁹⁸ and transported them to-and-from Finca El Dorado to Primelia.⁹⁹

⁸⁸ Hypothetical, [46]

⁸⁹ Ibid

⁹⁰ Ibid, [291]

⁹¹ Ibid, [293]

⁹² Hypothetical, [10]

⁹³ *SM. v Croatia* [114]

⁹⁴ Article 3(a) of UNTIP

⁹⁵ Ibid

⁹⁶ Ibid

⁹⁷ *SM. v Croatia* [233]

⁹⁸ Hypothetical, [45]

⁹⁹ Ibid, [46] and [49]

47. Secondly, Maldini coerced and threatened the Victims into compliance to transplant Aeriisflora in Primelia. If not, they and their families would lose their social security and medical benefits they relied on.¹⁰⁰ Furthermore, Maldini was criminally liable under Lusarian domestic law for “abuse of authority.”¹⁰¹
48. Lastly, the Victims’ mistreatment suffices as forced labor under Article 6(2) of the ACHR as established previously.
49. The State argues that Maldini was not found guilty for human trafficking under both the State and Lusaria’s domestic laws and thus, unfairly faced liabilities under international law. This is misconceived. Whilst a charge of human trafficking by the domestic courts only strengthens the Victims’ case, human trafficking obligations are first created by international law, which this Court can examine under Article 6.
50. Furthermore, the State’s domestic laws are to mirror international law obligations against human trafficking under Article 1(1) of the ACHR. The State’s Constitution confers constitutional status to all treaties like UNTIP,¹⁰² and its human trafficking law under Article 145 of the State’s Criminal Code is *in pari materia* with Article 3(a) of the UNTIP.¹⁰³ The Victims’ position is not to use this Court as a court of fourth instance to overturn the State’s judgment. Instead, the Victims’ position is that violating human trafficking freedoms attracts liabilities in international law. Domestic law provisions are to mirror the language derived international law treaties regarding human trafficking and therefore, can be evidence to satisfy the international legal elements of human trafficking.

¹⁰⁰ Hypothetical at [47]

¹⁰¹ Hypothetical at [53]

¹⁰² Clarification Question 38

¹⁰³ Hypothetical at [9]

51. Therefore, this Court should find Article 6 encompasses the freedom from human trafficking, and “forced labor” of the Victims would also constitute human trafficking.
- c. Finally, the State failed to uphold their obligations against preventing the Victims’ from being human trafficked.*
52. ECtHR jurisprudence suggests the State has three positive obligations against human trafficking under the text’s freedom from slavery or forced labor:¹⁰⁴
- a. Duty to put in place a legislative and administrative framework to prohibit and punish trafficking;
 - b. Take operational measures to protect victims or potential victims, of trafficking when there is credible suspicion; and
 - c. Procedural obligation to investigate situations of potential human trafficking.
53. The Victims submit that the State failed to discharge their positive duties and should be liable for human trafficking in violation of Article 6 of the ACHR.
- i. The State failed to provide adequate measures regulating immigration, to prevent human trafficking, at the Campo de Santana border.*
54. Whilst the State does provide criminal law provisions to punish human trafficking, Article 6 also requires the State to place “adequate measures,” including immigration rules which address concerns of encouraging, facilitating or tolerating human trafficking¹⁰⁵ especially considering Campo de Santana is a rural area bustling with travellers and informal trade.¹⁰⁶
55. Though the border at Campo de Santana likely received a large volume of people, the Victims had special work unique to the Cooperation Agreement that the State could easily identify the

¹⁰⁴ *SM v Croatia* at [306]

¹⁰⁵ *Rantsev v Cyprus and Russia* at [284]

¹⁰⁶ Hypothetical at [1]

Victims despite this sheer volume of people. The Victims would have been identifiable had the immigration authorities developed any administrative framework to identify suspected victims of human trafficking. Such actions could have helped the Veloran Police have concrete evidence that Maldini abused his diplomatic immunity to traffic the nine women.

ii. *The State has credible suspicion that the Victims were being human trafficked and yet, failed to take preventive operational measures.*

56. The Veloran Police, when taking A.A.'s statement, had credible suspicion that the Victims had been or was at real and immediate risk of being trafficked defined by international law treaties (i.e. the UNTIP Article 3(a)).¹⁰⁷ The Police and by extension, the State as a whole, did not embark on preventive and protective measures the State was called to adopt under international law treaties.¹⁰⁸ Prescribed under the UNTIP, this Court should find that the State, at that time, failed to:

- a. Facilitate effective cooperation between the Veloran Police and immigration authorities at Campo De Santana to determine types of travel documents Maldini used to traffic the nine women¹⁰⁹ as evidence for prosecution;
- b. Train the Veloran police to effectively prevent human trafficking (given the hastiness of their investigations);¹¹⁰ and
- c. Strengthen border control authorities at the Campo De Santana border.¹¹¹

¹⁰⁷ *Ibid*, [286]

¹⁰⁸ *Chowdury and others v Greece* at [110]

¹⁰⁹ Art 10(1) of the UNTIP

¹¹⁰ Art 10(2) of the UNTIP

¹¹¹ Art 11(1) of the UNTIP

iii. *The State failed their procedural duty to carry out an effective investigation once informed of the Victims' being human trafficked.*

57. Whilst the Veloran Police and the Prosecutor General's Office were prompt to assess A.A.'s allegations of the Victims being human trafficked, both still made significant mistakes during investigations which affected significant flaws or shortcomings in the relevant domestic proceedings.¹¹²
58. The Veloran Police did not thoroughly investigate the limits to Maldini's diplomatic immunity. They did not seek further information or report A.A.'s complaints to the State's Ministry of Foreign Affairs to clearly determine whether Maldini could be punished without any restrictions. Yet, it is this promptness in the State's legal proceedings that resulted in their failure to collect more evidence to build a stronger case against him for Lusaria to waive his diplomatic immunity before he was arrested.
59. The Prosecutor General's Office also failed to investigate the alleged breaches. They simply dismissed the emergency hotline call of the women in Finca El Dorado alleging forced labor of their own citizens solely because it occurred beyond their physical territory.¹¹³ Even if the State argues that the Prosecutor General cannot bring an action due to the unidentified victim in domestic courts, they did nothing to further investigate. The State's Ministry of Foreign Affairs was not informed by the Prosecutor General, which may have shown discrepancies from Lusaria's reporting, nor further investigate whether these allegations regarding forced labor were true. The State in both instances, failed, in their means, of identifying and punishing Maldini and Lusaria.

¹¹² *CN v Croatia*, [334]

¹¹³ Hypothetical at [54]

60. Therefore, this Court should find the State's repeated inaction has resulted in the Victims being human trafficked under forced labor, violating Article 6(1) of the ACHR.

3. The State's repeated failure to conduct periodic checks on the worksites violated the Victims' personal integrity under Article 5(1) of the ACHR.

61. Every person has the right to have their "*personal, mental and moral integrity respected*".¹¹⁴

Even if the aggressor is a private party, the State violates this right if the State:

- a. Knew or ought to have known that the Victims' personal integrity was under real and immediate risk; and
- b. Did not adopt the necessary measures, within their scope of powers, that could be expected to prevent or avoid that risk when reasonably judged.¹¹⁵

a. The State failed to conduct unannounced supervision visits to the Primelia worksite after the Victims arrived.

62. Personal integrity is violated when individuals lack access to conditions that ensure a "dignified life".¹¹⁶ This encompasses the person's complete physical, social and mental well-being.¹¹⁷ The Victims' poor living conditions (living in constricted quarters, monitored entries and exits)¹¹⁸ undermined the mental well-being of the Victims, therefore violating their personal integrity under Art 5(1).

¹¹⁴ Article 5(1) of ACHR

¹¹⁵ *Gutiérrez Hernández y otros* at [140]

¹¹⁶ IACHR, Report No. 23/17, *The Environment and Human Rights*

¹¹⁷ *Artavia Murillo Et Al. ("In Vitro Fertilization") v Costa Rica* at [148]

¹¹⁸ Hypothetical at [46]

63. The State ought to have known that there was a real and immediate risk this would happen in light of the complaints it received in 2013 regarding EcoUrban's alleged violation of their Aravanian workers' rights.¹¹⁹
64. The State's surveyance of the property prior to the arrival of the Victims in Primelia¹²⁰ was additionally insufficient to discharge the obligation the State had to prevent such a risk materialising. The denigration of the Victim's personal integrity and social well-being came in how the Lusarian staff coordinated the premises,¹²¹ not the premises in and of itself. A survey of the property without the Lusarian staff and the Victims thus is insufficient for the State to be able to discharge its obligations under the second element canvassed above.
65. Their lack of an unannounced check of the premises is even more egregious given that Art 3.3 of the Cooperation Agreement explicitly empowers the State to conduct such checks.¹²²
66. Therefore, the State's failure to conduct such an inspection despite explicitly being given the power to do so constitutes an even more flagrant violation of Art 5(1).
- b. The State failed to conduct unannounced supervision visits in Finca El Dorado ensured the subsistence of the Victims' inhumane treatment.***
67. A prudent state, upon receiving the two complaints about possible human rights violations in Finca El Dorado, would have enforced its right under Art 3.3 of the Cooperation Agreement¹²³ to conduct an unannounced inspection of the premises in Lusaria.

¹¹⁹ Hypothetical at [54]

¹²⁰ Clarification Question 10.

¹²¹ Hypothetical at [46]

¹²² Hypothetical at [25]

¹²³ *Ibid.*

68. Such an inspection would have revealed all of Lusaria's breaches of the Cooperation Agreement, one including the long hours the Victims and the other women were forced to work,¹²⁴ the Victims being kept from leaving the premises,¹²⁵ the threat of violence non-compliant women faced¹²⁶ and the poor living conditions.¹²⁷ The State's failure, however, resulted in these conditions persisting and the Victims having their personal integrity undermined by virtue of their lack of access to a dignified life.
69. The Cooperation Agreement between the State and Lusaria explicitly empowered the former in Art 3.3 to be able to conduct unannounced checks of the premises where the Victims were being sent.¹²⁸ The State's request for a report following these complaints was moreover insufficient in discharging a state's obligation to prevent risks they were aware, or should have been aware of, were real and immediate. Art 3.3 already imposes an obligation to send monthly reports on Lusaria to the State. Requesting a report was therefore not an extra or special measure the State took in assessing the validity of the complaints lodged with them; it was an established routine for both States. This is an indication that the State did not accord these complaints their necessary importance, thereby influencing its lack of prudence in preventing what they should have known was a real and immediate risk to the safety of the Victims.
70. Additionally, it is presumable that the inclusion of such a right would indicate that neither party intended for the reports themselves to be exhaustive in its reporting of the conditions in Finca El Dorado. Had this been intended, an additional right allowing the State to conduct unannounced checks of the premises would be otiose. It follows that it would then be unreasonable for the State

¹²⁴ Hypothetical at [41], [42]

¹²⁵ *Ibid.*

¹²⁶ Hypothetical at [43]

¹²⁷ Hypothetical at [40]

¹²⁸ Hypothetical at [25]

to believe that a sole reliance on these written reports would help them unearth all the necessary information regarding the conditions of Finca El Dorado it needed to evaluate the merits of the complaints it received, and whether commencing arbitration proceedings against Lusaria was warranted.

71. This failure also constitutes a breach of the State's obligation to respect the rights and freedoms of all persons subject to their jurisdiction without discriminating between social conditions like race, sex, social origin etc.¹²⁹ This translates to the States having to refrain from carrying out actions that are either aimed directly or indirectly at creating situations of *de jure* or *de facto* discrimination.¹³⁰
72. Presently, the State's failure to conduct unannounced supervisory visits to Finca El Dorado created *de facto* gender-based discrimination in light of the complaints it received of gender-based violations taking place in the camp. Although male workers also worked in Finca El Dorado, the complaints the State received detailed gender-specific human rights violations.¹³¹ The State's subsequent lack of investigation into these alleged violations ensured the subsistence of this gender-based discrimination, thereby perpetuating *de jure* discrimination against Aravanian women.

¹²⁹ Art 1(1) of ACHR

¹³⁰ *Gutiérrez Hernández y otros vs Guatemala* at [150]

¹³¹ Hypothetical at [54]

c. The State failed to prosecute Hugo Maldini domestically, creating complete uncertainty which heightened the Victims' feelings of fear and anxiety sufficiently to constitute a violation of their personal integrity.

73. Whilst the Victims' feelings of fear and anxiety¹³² alone are insufficient to constitute a breach under Art 5.1, a violation of personal integrity may occur if the Victims are in a state of complete uncertainty as a result of the State's actions¹³³.
74. The State's failure to sufficiently investigate the disappearances of the victims constituted a third breach of Art 5.1, as this lack of investigation likely caused feelings of fear and stress in A.A and the missing victims.
75. Presently, the lack of prosecution of Hugo Maldini in Aravania likely caused the victims in Aravania to experience feelings of complete anxiety and uncertainty with regard to the safety of their family members in Finca El Dorado. Given how the Victims had observed a woman go missing after making complaints regarding the working conditions in Finca El Dorado,¹³⁴ it would follow that the State's lack of prosecution of Hugo Maldini would have caused great fear and anxiety to the Victims for their family members' lives. Even though A.A. was eventually reunited with M.A. and F.A.,¹³⁵ for the period between Maldini being returned to Lusaria and M.A. and F.A. being reunited with A.A. safely, A.A. is likely to have experienced fear and anxiety over their safety sufficient to find a breach of Art 5.1 given the total uncertainty she had over the safety of her family members.

¹³² Hypothetical at [43]

¹³³ *Pacheco Tineo Family v Plurinational State of Bolivia* at [207]

¹³⁴ Hypothetical at [44]

¹³⁵ Clarification Question 1.

4. The State violated Art 7 of the BDPC by failing to investigate the inhumane treatment and disappearances of the female Victims.

76. The BDPC establishes the right women have to be free from violence in public and private spheres.¹³⁶ Article 7, in particular, enshrines the positive obligation signatory states have in preventing, punishing and eradicating violence against women. It becomes even more important for a State to militate against acts of violence if they were committed against women, taking into account the duties States have to prevent gender-based violence following the signing of the BDPC.¹³⁷
77. As a preliminary matter, this Court has the competence to deal with the alleged violations of the BDPC as Art 12 of the BDPC had been duly complied with. Article 12 instructs that petitions of violations of Article 7 of the BDPC may only be directed to the Inter-American Commission of Human Rights if the petition was filed by “any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization”.¹³⁸ The Clinic is an NGO,¹³⁹ and thus fulfils Art 12 of the BDPC.
78. Article 12 additionally provides that the Commission will consider these claims “in accordance with the norms and procedure established by the American Convention on Human Rights”. The Inter-American Commission on Human Rights is fully empowered to refer cases to court to review petitions made regarding the breach of the BDPC.¹⁴⁰ Therefore, this Court has the requisite competence to hear this petition alleging a violation of Article 7 of the BDPC.

¹³⁶ Art 1 of the BDPC

¹³⁷ *Gutiérrez Hernández y otros vs Guatemala* at [149]

¹³⁸ Art 12 of the BDPC

¹³⁹ Clarification Question 6.

¹⁴⁰ *González et al. (“Cotton Field”) v. Mexico* at [40]-[41], [54]-[56]

a. The State did not conduct formal investigations into the poor living conditions in Aravania, which violates the BDPC.

79. The State's failure to visit the premises the Victims occupied in Primelia after they moved in¹⁴¹ violated Art 7(b) of the BDPC as the State had been aware of possible violations of women's rights happening for which Aerisflora was responsible.
80. A State attracts liability under Art 7(b) if they were aware of a similar gender-based pattern of discrimination existing at the time the acts of violence were committed against women¹⁴². This is even in situations where the act *prima facie* does not seem to have been perpetrated as a result of gender-based discrimination, which is an important requirement for the exercise of the BDPC jurisdiction.¹⁴³
81. The State had been made aware by the two complaints it received in 2013 that Aerisflora was potentially violating its female Aravanian workers' rights in Lusaria.¹⁴⁴ The anonymous complaint the office received additionally revealed a pattern of Aravanian women being taken as victims of forced labor.¹⁴⁵ In light of the State being aware of a pattern of violence being perpetrated against its women by Aerisflora, its failure to visit the premises at Primelia after the Victims moved in¹⁴⁶ to investigate such a pattern constitutes a breach of Art 7(b) of the BDPC. Moreover, the State had dismissed the complaints in 2013 on the grounds of its lack of jurisdiction over these breaches, not on the merits of the complaints made.¹⁴⁷ Therefore, to have been truly diligent in its investigations, it should have enforced its contractual right under Art 3.3

¹⁴¹ Clarification Question 10.

¹⁴² *González et al. ("Cotton Field") v. Mexico* at [282]-[283]

¹⁴³ *Ríos et al. v. Venezuela* at [279]

¹⁴⁴ Hypothetical at [54]

¹⁴⁵ *Ibid.*

¹⁴⁶ Clarification Question 10.

¹⁴⁷ Hypothetical at [54]

of the Cooperation Agreement¹⁴⁸ and conducted an unannounced check-up on the women while they were in Aravania.

b. The State's lack of formal investigations into the poor living conditions in Aravania violates the BDPC.

82. The State's failure to enforce its right under Art 23.3 of the Cooperation Agreement¹⁴⁹ further consolidates its overall lack of diligence in investigating possible gender-discrimination in Lusaria.

83. In light of how focused on female employment the Cooperation Agreement was,¹⁵⁰ the State's duty to eradicate gender-based violence against women was engaged.¹⁵¹ The victims' employment contracts included a policy to hire more Aravanian women.¹⁵² The Cooperation Agreement between Aravania and Lusaria additionally referred to a positive obligation on Lusaria to promote gender equality in the workplace.¹⁵³ Aerisflora's marketing on ClicTik was also largely aimed at women, more specifically mothers with newborns.¹⁵⁴

84. There were no proactive measures taken by the State to ensure that the women were being treated fairly in Lusaria. It does not appear like the State ever exercised its rights under Art 50.2 and appointed any individual to act as its diplomat to Lusaria to "fulfil the purpose of this Agreement"¹⁵⁵ and ensure no gender-based discrimination was taking place. This failure to

¹⁴⁸ Hypothetical at [25]

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

¹⁵¹ Preamble of the BDPC

¹⁵² Hypothetical at [35]

¹⁵³ Hypothetical at [25]

¹⁵⁴ Hypothetical at [33]

¹⁵⁵ Hypothetical at [25]

enforce this right falls even shorter of their Art 7(b) duty following the complaints of gender-based discrimination in Lusaria being made in 2013.¹⁵⁶

85. The State's continued lack of diligence in ensuring that the women, which the BPDC recognises as subjects of gender-based discrimination,¹⁵⁷ were not abused in Lusaria despite knowing the employees they sent to Finca El Dorado were primarily women, which constitutes a breach of Art 7(b) of the BPDC.

5. The State did not prevent the deprivation of the Victims' liberty in Lusaria, thereby violating the Victims' right to liberty and security under Article 7(1) of the ACHR.

86. Having personal liberty under Art 7(1) entails being able to do all that is not prohibited by law¹⁵⁸. It entails self-determination, i.e., the right every person has to organise their individual and social lives in accordance with his own choices and beliefs.¹⁵⁹ This widens the scope of Art 7(1) past just situations of deprivation of physical liberty. Personal liberty being wider than just physical liberty is also evident from Art 7 itself, which implicitly distinguishes between the two by using "personal liberty" in Art 7(1) but "physical liberty" specifically in Art 7(2).

a. The State did not inspect Finca El Dorado in person, therefore breaching Art 7(1) by ensuring the Victims were continuously subjected to a deprivation of their personal liberty.

87. Presently, the Victims experienced a deprivation of both their personal and physical liberty while working in Finca El Dorado. The Victims were forced to do a number of things in Finca El Dorado they expressed a desire not to do; for example, taking on the cooking and cleaning

¹⁵⁶ Hypothetical at [54]

¹⁵⁷ Preamble of the BDPC

¹⁵⁸ *Ramírez Escobar et al. v Guatemala* at [329]

¹⁵⁹ *The American Convention on Human Rights: Crucial Rights and their Theory and Practice* by Cecilia Medina Quiroga and Valeska David Contreras at page 260.

responsibilities in addition to their already onerous work obligations.¹⁶⁰ This lack of “self-determination” the Victims had with their own lives is a breach of their personal liberty.

88. Their physical liberty was further curtailed with the installation of the 2.5-meter-high metal fence around the property, combined with the 24-hour video surveillance of the grounds and guards to monitor the entries and exits of all persons.¹⁶¹ The caging in of the Victims effectively ensured that none of them had the liberty to enter and exit Finca El Dorado outside their working hours. Additionally, the Victims’ personal liberty was further curtailed by the cleaning duties they had during the weekend outside of their work obligations.¹⁶² The Victims effectively were not allowed to leave Finca El Dorado even during the weekends as they were hampered with cleaning which was outside the scope of their employment. Therefore, the Victims experienced a dual violation of both their personal and physical liberty under Art 7(1) and Art 7(2).
89. The State additionally bears responsibility for these violations as this was something they could have prevented had they properly discharged their duty to protect the Victims.
90. If the deprivation of liberty concerned could have been prevented had the State complied with its prevention and protection obligations,¹⁶³ the State would be liable for breaching Art 7(1). This is even when the aggressor is a private party.¹⁶⁴
91. Had the State conducted an unannounced check of Finca El Dorado following the two complaints lodged with it in 2012,¹⁶⁵ it could have prevented the continuous breaches of the Victims’ personal and physical liberty. Additionally, Art 23 of the Cooperation Agreement obliged the

¹⁶⁰ Hypothetical at [44]

¹⁶¹ Hypothetical at [39]

¹⁶² Hypothetical at [42]

¹⁶³ *Pueblo Bello Massacre v. Colombia* at [170]

¹⁶⁴ *López Soto y otros v Venezuela* at [137]

¹⁶⁵ Hypothetical at [54]

State to ensure that the working conditions in Finca El Dorado complied with domestic labor laws.¹⁶⁶ The discretion to conduct *unannounced* checks gives the State an additional way to satisfy itself that the conditions on Finca El Dorado are up to standards, implying that the State did have an obligation to ensure that working conditions were compliant with domestic labor laws.

92. Therefore, as the State could have prevented these breaches in Lusaria had they exercised their discretion, as well as requested more reports, the State is liable for breaching Art 7(1).

b. The State did not monitor the premises in Primelia closely after the Victims arrived and therefore breached Art 7(1) by ensuring the subsistence of conditions that deprived them of their liberty.

93. The Victims' personal liberties were further undermined in Aravana, which the State is responsible for due to their failure to monitor the works in Aravana more closely.
94. The State only conducted inspections of the site in Primelia prior to the arrival of the Victims and EcoUrban.¹⁶⁷ Had the State continued to make such visits to the site, they may have discovered through their interaction with the Victims that EcoUrban had been withholding income payment, which contradicted Art 23.3(b) of the Cooperation Agreement.¹⁶⁸ Had the State made more visits to the site, they may have been able to discover that EcoUrban had not established a complaint-hearing mechanism either, which also breached Art 23.3(b).¹⁶⁹ This second breach was evident from how the Victims' often faced severe repercussions upon

¹⁶⁶ Hypothetical at [25]

¹⁶⁷ Clarification Question 10.

¹⁶⁸ Hypothetical at [25]

¹⁶⁹ *Ibid.*

criticising EcoUrban’s employment policy.¹⁷⁰ Both these breaches ensured the maintenance of affairs that A.A. explicitly did not want. A.A had made it clear to Maldini that she wanted to stay in Aravania at the end of the week.¹⁷¹ However, the threat of not receiving payment for her painstaking work compelled her not to exercise her liberty and leave the premises when she wanted to. The State would have likely realised that the Victims were having their personal liberties curtailed in such a way had they conducted more unannounced site visits in Primelia, which did not pose practical issues either given that Primelia was within Aravania.

95. Therefore, because the State could have easily prevented the continuous breach of personal liberties of the Victims while in Primelia by conducting unannounced site visits after the Victims had moved in, the State is liable for breaching Art 7(1).

6. Finally, this Court should find that the Victims’ rights to dignified working and living conditions under Articles 26 and 1(1) of the ACHR were violated because of the State’s failure to intervene.

96. This Court affirmed that the State is obligated to “*respect the rights and freedoms*” recognized under Article 1(1), including economic rights under Article 26.¹⁷² Alleged rights under Article 26 are examinable under this Court’s jurisdiction to determine its scope, obligations and violations.¹⁷³ The Victims can establish the following three steps required for a violation of the right to dignified working and living conditions before this Court:¹⁷⁴

a. This right is autonomous and justiciable under Article 26;

¹⁷⁰ Hypothetical at [43]

¹⁷¹ Hypothetical at [47]

¹⁷² *Acevedo Buendia v Peru* at [100]

¹⁷³ *Lagos del Campo v Peru* at [142]

¹⁷⁴ *Muelle Flores v Peru* at [171]

- b. The right is scoped international *corpus juris* on the matter;¹⁷⁵ and
- c. The State lacked to uphold the Victims' rights both immediately and progressively.

97. Firstly, the Victims' right to dignified working and living conditions undoubtedly falls under Article 26 as rights derived from international and domestic law.¹⁷⁶ The State's Constitution first affirms to protect human rights, including "economic" rights¹⁷⁷ and the right to work.¹⁷⁸ The OAS Charter, the ICESR, and the American Declaration defined labor rights constitute "work under proper conditions"¹⁷⁹, "safe and healthy working conditions"¹⁸⁰, "acceptable working conditions" to ensure "health, and a decent standard of living" for workers and their families.¹⁸¹

98. Secondly, the Victims' right to dignified working and living conditions is scoped substantially under international law.¹⁸² This Court has relied on reports from the CDESCR to specifically define rights under Article 26.¹⁸³ 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.*"¹⁸⁴ 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."¹⁸⁵ This right's

¹⁷⁵ *Cuscul Pivaral et al v Guatemala*, at [100]

¹⁷⁶ *Lagos del Campo v Peru* at [143]

¹⁷⁷ Hypothetical Case at [8]

¹⁷⁸ *Ibid*

¹⁷⁹ American Declaration Article XIV

¹⁸⁰ ICESCR Article 7(b)

¹⁸¹ OAS Charter Article 45(b), *Lagos del Campo v Peru* at [143]

¹⁸² *Ibid* at [145]

¹⁸³ *Ibid* at [148]

¹⁸⁴ CDESCR at [29]

¹⁸⁵ Hypothetical at [25]

scope gives rise to immediate obligations, which require effective measures to ensure access¹⁸⁶ to formalised complaints mechanisms for the Victims.

99. Finally, the State's repeated failures to ensure the Victims were in proper working conditions in Primelia and Finca El Dorado breached the State's immediate obligations. They could not report the deterioration of their living conditions from the makeshift homes at the Aerisflora plantations in Finca El Dorado.¹⁸⁷ Additionally, the State's monitoring of both Primelia and Finca El Dorado was limited to only before the Victims arrived. The State did not send any agents to supervise compliance, did not exercise their right to unannounced inspections, and did not provide any formalised remedies to the workers should their rights be violated.

100. The State argues that this right is scoped largely to progressive measures to concretely and constantly make the "*most effective and rapid progress possible towards the full realization of the right*" as their "*available resources permit.*"¹⁸⁸ This was evidenced through Resolution 2020 to further uphold labor rights in commercial relationships and ensure effective mechanisms hearing employment complaints.¹⁸⁹ However, this misunderstands how the right is scoped. The CDESCR's scopes this right not as aspirational principles, but as tangible practical steps the State can immediately embark on. All the State had to demonstrate was that they provided tangible mechanisms available to the Victims to suffice this right and yet, still failed to do so during that period.

101. Therefore, this Court should find that the right to dignified working and living conditions is within Article 26 of the ACHR, which the State had violated by failing to respond swiftly.

¹⁸⁶ *Cuscul Pivaral et al v Guatemala*, at [97]

¹⁸⁷ Hypothetical at [25]

¹⁸⁸ *Cuscul Pivaral et al v Guatemala*, at [98]

¹⁸⁹ Clarification Question 8

IV. REQUEST FOR RELIEF

102. Based on the factual and legal arguments set forth above, this Court is respectfully requested to declare the State internationally responsible for failing to comply with its obligations of respect and guarantee contained in Articles 1(1), 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.

103. By virtue of this international responsibility, based on Article 63(1) of the ACHR, in order to achieve *restitutio in integrum*, the following measures are requested by the State to:

- a. Reimbursement of costs to the Victims for both domestic and international legal proceedings;
- b. Publicly apologize to the Victims and/or to their families and publication of pertinent parts of the Court's judgment in the State's nationally circulated newspaper;
- c. Use all means available to initiate investigations of the location of the remaining nine women's' fates in Lusaria to return them back to the State;
- d. Damages from the unpaid income owed to the Victims;
- e. Consequential damages to the Victims' families; and
- f. Counselling provided by the State for the Victims.