

2025 INTER-AMERICAN HUMAN RIGHTS MOOT COURT COMPETITION

BENCH MEMORANDUM

Topic: Human Trafficking and Human Rights

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

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¹ The authors note that this Bench Memo does not reflect the opinion of the Organization of American States, the Inter-American Commission on Human Rights, or its Executive Secretariat.

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I. Introduction

1. The hypothetical case prepared for the thirtieth anniversary of the Inter-American Human Rights Moot Court Competition addresses the topic of human rights and human trafficking. In the case of *A.A. and Nine other Women v. The Republic of Aravania*, participants will have the opportunity to debate and develop arguments on this regional problem from an intersectional and human rights perspective.
2. The Inter-American Commission on Human Rights (“the IACHR,” “the Commission,” or “the Inter-American Commission”) has prioritized the issue of human trafficking in its 2023-2027 Strategic Plan, due to the seriousness of its impact on human rights in the region and worldwide. It does so with the aim of enhancing prevention and strengthening the fight against this crime.²
3. The magnitude of this problem is worrying. The Organization for Security and Cooperation in Europe (OSCE) has noted that human trafficking is the third most lucrative crime, behind drug trafficking and counterfeiting, generating approximately US\$150 billion in criminal proceeds each year.³ The most recent figures from the United Nations Office on Drugs and Crime (UNODC) show that States reported 202,478 victims of this crime between 2020 and 2023.⁴
4. Human trafficking is a human rights violation that affects many victims, especially women, children, and adolescents. It is a complex phenomenon that requires the action of multiple sectors to provide timely, coordinated, and sustainable responses.⁵ Human trafficking is one of the main forms of violence against women that evidences unequal power relations and subordination by traffickers.⁶ In 2024, 61% of trafficking victims detected worldwide were women and girls, with the majority (39%) being adult women.⁷
5. Regarding trafficking for purposes of forced labor, cases reported to UNODC involve the exploitation of women and girls in domestic servitude and in the entertainment sector—often in combination with sexual exploitation—as well as in agriculture, roadside vending, and food preparation.⁸ The detection of human trafficking for purposes of forced labor increased by 47% globally compared to the period before the onset of the COVID-19 pandemic, and it is especially prevalent in South American countries.⁹ According to UNODC, trafficking for forced labor is now being detected more often than trafficking for sexual exploitation, but far fewer traffickers are convicted of this crime, and impunity prevails.¹⁰
6. In the Americas, women and girls continue to make up the majority of identified victims of human trafficking, with patterns and forms of exploitation varying by region. In North America, most victims are trafficked for sexual exploitation, although there has been a reported increase in victims trafficked for forced labor exploitation and various other forms of exploitation, and trafficking is mostly domestic.¹¹ In Central America and the Caribbean, sexual exploitation is the most commonly identified form of human trafficking and most of the victims identified in this region are nationals of the countries or neighboring countries.¹² In South America, trafficking for forced labor exceeds trafficking for sexual exploitation, and nearly three-fourths of all flows identified in this subregion are domestic; for the other flows, victims were trafficked from relatively short distances, particularly from other countries in the region.¹³
7. Trafficking victims continue to contend with impunity, stigmatization, and lack of protection. UNODC’s case analysis suggests that institutions fail to identify victims of trafficking and that, in some cases, the victims

² IACHR. [2023-2027 Strategic Plan](#), OEA/Ser.L/V/II.185. Doc. 310. October 31, 2022, pp. 25, 32.

³ OSCE. [Leveraging innovation to fight trafficking in human beings: A comprehensive analysis of technology tools](#). Vienna, May 2020, p. 12.

⁴ UNODC. [Global Report on Trafficking in Persons 2024](#), December 11, 2024, p. 20.

⁵ IDB. [La trata de personas en América Latina y el Caribe: situación, tendencias y respuestas del sector de seguridad y justicia](#) (Human trafficking in Latin America and the Caribbean: situation, trends, and responses from the security and justice sector) (in Spanish only). June 2022, p. 17.

⁶ IDB. [La trata de personas en América Latina y el Caribe: situación, tendencias y respuestas del sector de seguridad y justicia](#) (Human trafficking in Latin America and the Caribbean: situation, trends, and responses from the security and justice sector) (in Spanish only). June 2022, p. 17.

⁷ UNODC. [Global Report on Trafficking in Persons 2024](#), December 11, 2024, p. 45.

⁸ UNODC. [Global Report on Trafficking in Persons 2024](#), December 11, 2024, pp. 45, 47-48.

⁹ UNODC. [Global Report on Trafficking in Persons 2024](#), December 11, 2024, p. 50.

¹⁰ UNODC. [Global Report on Trafficking in Persons 2024](#), December 11, 2024, p. 51.

¹¹ UNODC. [Global Report on Trafficking in Persons 2024](#), December 11, 2024, pp. 134-135.

¹² UNODC. [Global Report on Trafficking in Persons 2024](#), December 11, 2024, pp. 128-129.

¹³ UNODC. [Global Report on Trafficking in Persons 2024](#), December 11, 2024, pp. 140-141.

themselves must take action and contact the authorities.¹⁴ In addition, the immunity held by certain state agents and members of special missions and international organizations who have been involved in trafficking activities may lead to impunity, and it has been recommended that States make good faith efforts to obtain waivers of diplomatic immunity in such cases and to prevent, monitor, and punish exploitation and protect the rights of persons who have been trafficked by diplomatic personnel.¹⁵

8. The *Case of A.A. and Nine other Women v. The Republic of Aravia* was designed to allow the teams to deepen their understanding of the concept of trafficking in persons, as well as to develop, under the American Convention on Human Rights (“the American Convention,” “the ACHR,” or “the Convention”), the international obligations of the States of the region in terms of the prevention, monitoring, and punishment of this crime, including protection and comprehensive reparation for the victims.
9. This document summarizes some of the arguments to be made by the participants, but does not exhaust all possibilities for argument. In general terms, the bench memorandum is organized to present the legal issues raised in the hypothetical case that the teams should analyze. It then evaluates the main theoretical foundations based on sources of international law and the inter-American system, and lastly, it indicates which arguments should be put forward by the teams. Presented below are key concepts that the teams should know in order to evaluate the case. The arguments related to the preliminary issues and preliminary objections raised in the case are then reviewed. Next, the issues on the merits are evaluated; and finally, reparation measures are examined.

¹⁴ UNODC. [Global Report on Trafficking in Persons 2024](#), December 11, 2024, p. 48.

¹⁵ UNODC. [Combating Trafficking in Persons: A Handbook for Parliamentarians](#), pp. 68-69; IOM. [Human Rights and Trafficking in Persons: A Handbook](#), 2003, p. 78.

II. Basic concepts

10. The basic concepts with which the participants should be familiar in order to evaluate the hypothetical case include the following:

Trafficking in persons: According to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“the Palermo Protocol”), trafficking in persons is the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, with the aim of exploitation.¹⁶ Exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.¹⁷ In its *Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking* (“the Inter-American Principles”), the IACHR adhered to the definition of trafficking in persons set forth in the Palermo Protocol.¹⁸

The Commission has recognized that, in **Spanish**, there is a difference between “*trata*” and “*tráfico*” of persons, the latter being understood as the facilitation of the irregular entry of a person into another country for the purpose of obtaining a financial or material benefit.¹⁹ However, it is essential that the judges bear in mind that in **English** and **Portuguese**, the expressions “human trafficking” (in English) and “*tráfico de pessoas*” (in Portuguese) refer to trafficking in persons according to the definition adopted by the Palermo Protocol and the Inter-American Principles of the IACHR, while the same distinction is not made in Spanish. Therefore, the judges are asked to take into account the multicultural and trilingual nature of the contest in their evaluations.

Forced labor: According to the Inter-American Court of Human Rights (“the Inter-American Court” or “the Court”), forced labor constitutes any work or service exacted from an individual under threat of any penalty and for which a person has not offered him or herself voluntarily.²⁰

Care work: According to the Inter-American Commission of Women (CIM), care work is understood as a wide array of everyday activities for managing and sustaining life that take place inside and outside the home, and that allow the physical, biological and emotional well-being of people, particularly those who lack the autonomy to perform these activities on their own. Caregiving includes self-care, providing direct care for others, establishing the preconditions for care, and managing care.²¹

Intersectionality: The concept of intersectionality was developed by Kimberlé Crenshaw, who highlighted the fact that Afro-descendant women face dual discrimination derived from both racism and sexism.²² In the framework of the inter-American system, the concept has been used to analyze discrimination in cases where a cross-cutting confluence of multiple factors of vulnerability and risk of discrimination are associated with a set of particular conditions.²³

Immunities: In international law, immunities are prerogatives granted to certain States, their bodies, or agents, to ensure the independence and effectiveness of their functions under the terms of Article 2.1 of the United Nations Charter.²⁴ These immunities are based on the principle of the sovereign equality of States and the need to prevent

¹⁶ UNODC. United Nations Convention against Transnational Organized Crime and its Protocols.

¹⁷ UNODC. United Nations Convention against Transnational Organized Crime and its Protocols.

¹⁸ IACHR. [Resolution 04/19](#), Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons. December 7, 2019.

¹⁹ IACHR. [Resolution 04/19](#), Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons. December 7, 2019.

²⁰ I/A Court H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, para. 291.

²¹ CIM. [Inter-American Model Law on Care](#), 2022, art. 4.

²² Kimberlé Crenshaw. [Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics](#). University of Chicago Legal Forum 1, No. 8, 1989, p. 149.

²³ I/A Court H.R., *Case of Gonzales Lluy et al. v. Ecuador*: Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1, 2015. Series C No. 298, para. 290; I/A Court H.R., *Case of the Employees of the Fireworks Factory of Santo Antônio de Jesus and their families v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 15, 2020. Series C No. 407, para. 62; IACHR. [Compendium on Labor and Trade Union Rights. Inter-American Standards](#). OEA/Ser.L/V/II., Doc. 331, October 30, 2020, para. 42.

²⁴ ICJ. Jurisdictional Immunities of the State (*Germany v. Italy: Greece intervening*). Judgment of 3 February 2012, para. 57. Alain Pellet; Patrick Daillier. *Droit International Public*. 7th ed. Librairie Générale de Droit et Jurisprudence, 2002, pp. 450-454.

outside interference in the exercise of their official functions.²⁵ They apply both to the State as such, protecting it from the jurisdiction of foreign courts, and to its representatives and agents.²⁶ State immunities are a rule of customary law and are regulated by the United Nations Convention on Jurisdictional Immunities of States and Their Property.²⁷

Diplomatic immunity: Diplomatic immunity is a privilege granted to diplomatic agents, allowing them to perform their functions without interference from the authorities of the receiving State.²⁸ It involves rules of customary law²⁹ based on the principle of reciprocity and the need to ensure effective representation of States. They are codified in the Vienna Convention on Diplomatic Relations of 1961 (“the VCDR”), which sets out a detailed regime of privileges and immunities.³⁰ Diplomatic agents enjoy absolute immunity from the criminal jurisdiction of the receiving State and, in civil and administrative matters, can only be sued in specific cases such as commercial activities unrelated to their official functions.³¹ Diplomatic immunity is different from “consular immunity,” the latter being governed by the 1963 Vienna Convention on Consular Relations and intended for consular officials, who are granted restricted privileges.³²

Special mission: According to Article 1 of the 1969 Convention on Special Missions, a “special mission” is a temporary mission, representing the State, which is sent by one State to another State with the consent of the latter for the purpose of dealing with it on specific questions or of performing in relation to it a specific task.³³

Immunity for members of special missions: Regulated by the 1969 Convention on Special Missions (“the CSM”), this is an extension of the general immunities regime protecting representatives sent by a State to carry out specific tasks in the territory of another State as part of special missions,³⁴ and is a rule of customary international law.³⁵ The members of these missions enjoy personal inviolability and jurisdictional immunity in respect of acts performed in the exercise of their functions.³⁶ According to the United Nations International Law Commission (“the ILC”), and its Special Rapporteur on the immunity of State officials from foreign criminal jurisdiction, Mr. Claudio Grossman Guiloff, the interpretation of international law applicable to diplomatic missions should be applied to special missions.³⁷

Relationship between security and climate change: The United Nations Security Council (“the UNSC”) has recognized the close link between security and the adverse effects of climate change. In this regard, it expressed the need to integrate climate-related security risks, and recognized the need to include the issue in its agenda.³⁸

Arbitration panel: Under international law, an arbitration panel is a body established by the parties to resolve disputes over specific agreements through an arbitration proceeding, interpreting international law and applying fundamental principles.³⁹

²⁵ Alain Pellet; Patrick Daillier. *Droit International Public*. 7e édition. Librairie Générale de Droit et Jurisprudence, 2002, pp. 450-454.

²⁶ Alain Pellet; Patrick Daillier. *Droit International Public*. 7e édition. Librairie Générale de Droit et Jurisprudence, 2002, pp. 450-454.

²⁷ ICJ. *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*. Judgment of 3 February 2012, paras. 54-57 Alain Pellet; Patrick Daillier. *Droit International Public*. 7e édition. Librairie Générale de Droit et Jurisprudence, 2002, pp. 450-454.

²⁸ ICJ. *Case concerning United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*. Judgment of 24 May 1980, paras. 68, 77, 84, 86.

²⁹ ICJ. *Case concerning United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*. Judgment of 24 May 1980, paras. 45, 62; ICJ. *Case concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium)*. Judgment of 14 February 2002, para. 52.

³⁰ UN. [Vienna Convention on Diplomatic Relations](#). 1961; ICJ. *Case concerning United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*. Judgment of 24 May 1980, para. 84

³¹ UN. [Vienna Convention on Diplomatic Relations](#). 1961. Arts. 29, 31; ICJ. *Case concerning United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*. Judgment of 24 May 1980, para. 79.

³² UN. [Vienna Convention on Consular Relations](#). 1963. Arts. 1, 43.

³³ UN. [Convention on Special Missions](#). 1969. Art. 1.

³⁴ UN. [Convention on Special Missions](#). 1969. Arts. 9.2, 20, 31; Andrew Sanger; Sir Michael Wood. *The Immunities of Member of Special Missions*. In: Tom Ruys; Nicolas Angelet; Luca Ferro. *The Cambridge Handbook of Immunities and International Law*. Cambridge University Press, 2019.

³⁵ James Crawford. *Brownlie's Principles of Public International Law*. 8th Edition. Oxford University Press, 2012, p. 414.

³⁶ UN. [Convention on Special Missions](#). 1969. Art. 31.

³⁷ ILC. [Draft articles on Jurisdictional Immunities of States and Their Property](#). Text adopted by the International Law Commission at its forty-third session, in 1991, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/46/10, at para. 28). *Yearbook of the International Law Commission, 1991*, vol. II, Part Two, art. 3.1; ILC. [First report on immunity of State officials from foreign criminal jurisdiction, by Claudio Grossman Guiloff, Special Rapporteur](#). A/CN.4/775. 3 May 2024, para. 98.

³⁸ UN. UNSC. [Draft Resolution](#). S/2021/990. 13 December 2021.

³⁹ Permanent Court of Arbitration. [The Island of Palmas Case \(or Miangas\)](#). *United States of America v. The Netherlands*. Award of the Tribunal. 4 April 1928; Iran-US Claims Tribunal. IUSCT Case No. 39. [Phillips Petroleum Company Iran v. The Islamic Republic of Iran, The National Iranian Oil Company](#). Award (Award No. 425-39-2). 29 June 1989.

III. Preliminary issues

11. According to the facts of the case, the State raised the following preliminary objections before the Inter-American Court: lack of jurisdiction *ratione personae*, lack of jurisdiction *ratione loci*, and violation of the principle of subsidiarity. These objections should be debated. Although the participants may present some additional ones, such as the application of Resolution 4/2023⁴⁰ by the IACHR in the processing of the case, the facts do not support the following preliminary objections: exhaustion of domestic remedies, objections based on time limits, duplication of proceedings, pending litigation before another international body, or untimely filing of the petition.
12. Preliminary objections are those objections that affect the Court's jurisdiction and can be dealt with without ruling on issues related to the merits of the case.⁴¹ This concept is distinguished from other issues on which a prior IACHR decision could be requested, but which do not constitute a preliminary objection, such as those related to the identification of the victims, requests for application of the principle of subsidiarity or complementarity, or requests for the Court to review of the legality of the IACHR's actions.⁴² The participants are expected to have a clear understanding of these concepts and, consequently, of the scope of their arguments regarding the Court's jurisdiction and others that go beyond preliminary matters.

A. Objection to jurisdiction *ratione loci*

1. Issues

13. The case presents a succession of events that occurred in the States of Aravania and Lusaria. Specifically, the alleged victims were ensnared in Aravania through videos posted from abroad by Hugo Maldini on the social network *ClicTik*. They were subsequently taken to Lusaria where they performed most of the activities established in the cooperation agreement signed between the two States. Four months later, they were taken back to Aravania where they carried out the final phase of the activities, in Primelia, under the supervision of Lusarian personnel through a special mission.
14. This objection requires the parties to discuss the facts that occurred under Aravania's jurisdiction over which the IACHR has jurisdiction and could determine State responsibility. The participants are expected, first, to coherently discuss the facts that occurred in Aravania territory and are clearly attributable to it; second, they may address whether facts that occurred in Lusaria can be considered in determining the scope of obligations of the State of Aravania, for example, for purposes of establishing the crime of trafficking; lastly, the parties may discuss whether the events that took place in Aravania as part of a special mission from Lusaria—even though carried out in its territory—have any effect on its jurisdiction in view of their particular characteristics.
15. Human trafficking cases often involve events occurring in different State jurisdictions, which is often a factor affecting access to justice. Indeed, the problem of human trafficking must consider the transnational nature of this phenomenon, the multiple criminal activities involved, the frequent involvement of organized crime groups, and the profound suffering, fear, and harm experienced by victims.⁴³

2. Arguments of the parties

16. The case contains facts that occurred within and outside the territory of Aravania. In order to determine whether the Court has jurisdiction *ratione loci*, the participants must provide the legal reasoning for their positions starting from the premise that the State may be responsible for acts or omissions of its agents, as long as it exercises control and authority over the territory where such acts occur.⁴⁴

a. Representatives of the alleged victims

⁴⁰ IACHR. [Resolution 4/23](#) - Doc. 329. Prioritization Policy for Petitions and Cases. December 20, 2023.

⁴¹ I/A Court H.R., *Case of Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 35; I/A Court H. R., *Case of Petro Urrego v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 8, 2020. Series C No. 406, para. 32.

⁴² I/A Court H.R., *Case of Las Palmeras v. Colombia*. Reparations and Costs. Judgment of November 26, 2002. Series C No. 96, para. 32; I/A Court H. R., *Case of Petro Urrego v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 8, 2020. Series C No. 406, para. 32.

⁴³ UNODC. [Toolkit to Combat Trafficking in Persons](#). New York, 2007, p. ix.

⁴⁴ IACHR. Report No. 112/10, Inter-state Petition PI-02. Admissibility. *Case of Franklin Guillermo Aisalla Molina, Ecuador v. Colombia*. October 21, 2010, para. 98 et seq.

17. The alleged victims' representatives should respond to the preliminary objection as presented by the State. In principle, it is expected that they will be able, first, to explain that certain facts occurred directly in Aravania and, therefore, within its jurisdiction. These facts include those related to the recruitment, transportation, and harboring of the alleged victims within Aravania and, subsequently, those related to the special mission that operated in Aravanian territory.
18. On both sets of facts, the representatives may argue that jurisdiction *ratione loci* clearly exists because the events occurred in Aravanian territory. With respect to the facts related to the recruitment of the alleged victims, the parties should argue that, even though Hugo Maldini was abroad, the State had trafficking prevention obligations for persons within its jurisdiction who received his messages in Aravania. The scope of those obligations is an issue that goes to the merits of the case.
19. As for the facts related to the special mission, the representatives should explain that the Court is competent to rule because those facts occurred in the State. Specifically, they should argue that, while special missions may establish a regime of immunities for certain representatives, the facts occurred in the territory of Aravania where its agents engaged in conduct that may give rise to their international responsibility.
20. The representatives may note that, while Article 25 of the Convention on Special Missions states that "[t]he premises where the special mission is established [are] inviolable" such that "agents of the receiving State may not enter the said premises, except with [the mission's] consent," this inviolability in no way limits the jurisdiction of the State of Aravania. In addition, beyond the specific premises where the mission took place, the alleged victims had to cross the border into the State under an agreement that was implemented in Aravania, which allows for jurisdiction *ratione loci*, since the alleged victims entered the State itself and not only the mission's premises.
21. To strengthen their argument, the victims' representatives may note that even in situations in which human trafficking has been reported at diplomatic headquarters or premises with immunity under international law, the IACHR has considered itself to have jurisdiction *ratione loci*⁴⁵ when such acts have been verified in the territory of the State in question.
22. Second, the victims' representatives may argue that the fact that the determination of the scope of certain State obligations is related to events that occurred outside Aravania does not mean that the Court must rule on events that happened outside its jurisdiction for the purpose of determining the responsibility of the State of Aravania. In this connection, the representatives may argue that it is relevant to analyze certain facts that occurred in Lusaria in order to determine some of Aravania's obligations, including the establishment of the offense of human trafficking, which affects the determination of the scope of its obligations to prevent and punish trafficking. This does not require the victims to argue for the extraterritorial application of the State's laws.
23. To support its arguments, the representatives may recall that Article 15 of the United Nations Convention against Transnational Organized Crime (hereinafter "the Convention against Transnational Organized Crime") establishes that each State shall take the necessary measures to ensure its jurisdiction over investigations, prosecutions, and proceedings related to the Palermo Protocol.⁴⁶ It can also cite the case law of the European Court of Human Rights ("the ECtHR" or "the European Court") which has raised the possibility of considering facts that occurred in a third State to determine the obligations of the State whose international responsibility is being examined.⁴⁷

b. The State

24. By filing the preliminary objection, the State objects to the Court ruling on facts that occurred outside the jurisdiction of Aravania and which are alleged to give rise to international responsibility.

⁴⁵ IACHR. Report No. 224/20. Petition 1481-07. Admissibility. Siti Aisah et al. United States of America. August 27, 2020.

⁴⁶ UNODC. United Nations Convention against Transnational Organized Crime and its Protocols.

⁴⁷ In the case of *Rantsev v. Cyprus and Russia*, the ECtHR found that it was competent to examine a transnational human trafficking case. It held that, although some of the alleged acts had occurred outside Russia's jurisdiction, in Cyprus, Russia's obligations to combat trafficking in persons meant that it had jurisdiction to examine whether it had complied with its obligations (to protect the victim and to investigate the possibility of trafficking) within the limits of its own jurisdiction. ECtHR. *Case of Rantsev v. Cyprus and Russia*. Application No. 25965/04. Judgment 7 January 2010. Final 10/05/2010. paras. 207-208.

25. The State is expected, first, to refute the assertion that the IACHR should hear the facts that occurred outside its territory, which are those related to the receipt of the alleged victims and the activities they carried out in Lusaria. As noted above, the victims' representatives should agree with this assertion in principle.
26. A second defense consists of asking the Court to find that the acts that occurred as part of the special mission were not carried out "under its jurisdiction" for the purposes of the Court's jurisdiction *ratione loci*. To this end, those playing the role of the State could distinguish between the notion of territory and jurisdiction, noting that, for purposes of the application of the ACHR, facts in which it has control and authority over the territory can be attributed to it.⁴⁸ The State could argue that, although the acts occurred within the territory of Aravania, they were carried out exclusively by Lusarian state agents who enjoy privileges and immunities under international law. Moreover, they were carried out on the premises of the mission, which according to Article 25 of the Convention on Missions "[are] inviolable." The State could also argue that this entails, in principle, a limitation on its jurisdiction under the Convention in the places where the mission operates. In addition, although the Convention establishes that those who are in the missions must "respect the laws and regulations of the receiving State," this does not mean that the State of Aravania may exercise jurisdiction over such premises, since they are under the control of the State that directs the mission, so much so that the Convention requires a request and consent to enter the premises.⁴⁹
27. In fact, the State could argue that the exercise of jurisdiction is an essential condition for attributing responsibility for imputable acts or omissions resulting in a violation of protected rights and freedoms.⁵⁰ The State could avail itself of the case law of the ECtHR, which has recognized that a third State may have effective control, albeit temporary and limited to a part of another State,⁵¹ and that it may be exercised by consent, invitation, or acquiescence of the host government when the other State exercises some or all of the public powers that the latter would exercise.⁵² Finally, to support this approach, it could present arguments aimed at equating the space occupied by the special mission with the headquarters of diplomatic missions where the foreign State exercises its jurisdiction⁵³ despite being in the other State's national territory.
28. Lastly, the State could ask the Court not to determine the scope of its obligations based on facts that took place in its territory and which could give rise to the State's responsibility based on acts that took place in a third State, in such a way as to exclude them from the factual framework of the case for the purposes of examining its international responsibility. This objection, for example, would seek to prevent the Court from determining whether the alleged victims was subjected to forced labor in Lusaria, which would have implications for the establishment of the offense of human trafficking in Aravania based on their recruitment. The State could argue that, according to the Palermo Protocol, the human trafficking definition applicable to the alleged victims requires the pursuit of one of the aims established in that instrument. In this case, the State could note that said aim must be evaluated in light of the proposal made to the alleged victim in Aravania, that is, the job offer to plant *Aerisflora* and the conditions that were in fact offered to her upon her arrival. The alleged labor exploitation would have happened some time later in Lusaria, only when the offer was modified in view of the need to transplant the crop; the Court would lack jurisdiction over this fact, and therefore, would be unable to attribute responsibility to the State.

⁴⁸IACHR. Report No. 112/10, Inter-state Petition PI-02. Admissibility. *Case of Franklin Guillermo Aisalla Molina, Ecuador v. Colombia*. October 21, 2010, para. 98 et seq.

⁴⁹ Sir Ivor Roberts. *Satow's diplomatic practice*. Oxford University Press, 2009, pp. 97-101; ICJ. Case concerning United States Diplomatic and Consular Staff in Tehran (*United States of America v. Iran*). Judgment of 24 May 1980, paras. 68, 77, 84, 86; ICJ. Jurisdictional Immunities of the State (*Germany v. Italy: Greece intervening*). Judgment of 3 February 2012, paras. 77, 92-93; Federative Republic of Brazil. Supremo Tribunal Federal do Brasil. ARE 954858. 2017; Argentine Republic. Supreme Court of Justice of the Argentine Nation. Judgment *Manauta v. Embassy of the Russian Federation*. 2007; Argentine Republic. Supreme Court of Justice of the Argentine Nation. *Cereales Asunción v. A. N. N. N. and P. of Paraguay*. 1998; Republic of Colombia. Constitutional Court of Colombia. Ruling SU443/16; Supreme Court of Justice of Uruguay. Judgment 247/1997.

⁵⁰ ECtHR. *Case of Ilaşcu and Others v. Moldova and Russia*. Application No. 48787/99. Judgment 8 July 2004, para. 311.

⁵¹ ECtHR. *Case of Issa and Other v. Turkey*. Application No. 31821/96. Judgment 16 November 2004, para. 71.

⁵² ECtHR. *Case of Chiragov and other v. Armenia*. Application No. 13216/05. Judgment 16 June 2015, para. 168; ECtHR. *Case of Banković v. Belgium et al.* Decision as to the Admissibility of Application No. 52207/99. Judgment 12 December 2001, para. 71.

⁵³ ILC. First report on immunity of State officials from foreign criminal jurisdiction, by Claudio Grossman Guiloff, *Special Rapporteur*. A/CN.4/775. Judgment 3 May 2024, para. 98; ECtHR. Decision, Application no 21119/19 *Association des familles des victimes du JOOLA contre la France*. Judgment 14 August 2019; IACHR. Report No. 121/18. Case 10.573. Merits (Publication). José Isabel Salas Galindo et al. United States. October 5, 2018, paras. 307-308; I/A Court H.R., *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights)*. Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 73.

Main arguments in relation to the objection to jurisdiction <i>ratione loci</i>	
Victims	State
<ul style="list-style-type: none"> - The Court has jurisdiction over the events in Aravania. Moreover, for purposes of determining the content of the State's obligations and, in particular, with respect to human trafficking and the associated obligations, it may consider the events that took place in Lusaria. - The fact that the events related to the transplant of <i>Aerisflora</i> in Aravania were carried out under the guise of a special mission does not exclude the Court's jurisdiction, as they took place within the territory of the State. 	<ul style="list-style-type: none"> - The Court only has jurisdiction over the facts that occurred in Aravania, and must exclude from its jurisdiction the facts that occurred in Lusaria. This means, for example, that the determination of whether the alleged victims were subjected to forced labor in Lusaria cannot be used to determine the scope of Aravania's obligations. - The Court must exclude the facts that occurred on the premises of the special mission because the State was not exercising jurisdiction in the sense established in the American Convention in light of general international law.

B. Objection to jurisdiction *ratione personae*

1. Issues

29. The case was filed with the Inter-American Court on behalf of A.A. and nine alleged victims whose identity is unknown. The Presidency of the Inter-American Court asked the representatives to file powers of attorney as evidence of their willingness to have a case in the inter-American system; however, they were not submitted, and there is no document containing any expression of willingness of the nine alleged victims to participate in an international proceeding. Their absence from the proceeding has meant that the State has been unable to comply with the recommendations issued because it has not been able to identify them or even determine their existence. The teams should not debate the confidentiality of the identity of A.A. and her next of kin, since Article 28.2 of the Commission's Rules of Procedure empowers it to decide whether to keep the identity of alleged victims confidential, and the IACHR and the Court have adopted this practice on several occasions.⁵⁴
30. The objection raises the problem of identifying victims of transnational human trafficking, which is an issue that frequently affects access to justice. According to UNODC research, only about 9% of trafficking cases come to the attention of the authorities as a result of community action.⁵⁵ For every victim identified, it is estimated that there are at least 20 more unidentified victims.

2. Arguments of the parties

31. The participants are expected to discuss whether the lack of individual identification and participation of the nine alleged victims is a valid preliminary objection and what effect it would have on the case.
- a. Representatives of the alleged victims**
32. The representatives of the alleged victims can begin by asserting that the State's arguments do not constitute a preliminary objection, as they do not affect the Court's jurisdiction to hear the case. They can cite various judgments in which the Inter-American Court has found that arguments related to the accreditation of the alleged victims' representatives or their individual identification in the report on the merits pursuant to Article 35 of the Rules of Procedure⁵⁶ do not affect the jurisdiction of the Court and are inadmissible.⁵⁷

⁵⁴ I/A Court H.R., *Case of María et al. v. Argentina*. Merits, Reparations and Costs. Judgment of August 22, 2023. Series C No. 494; I/A Court H.R., *Case of V.R.P., V.P.C. et al. v. Nicaragua*. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 8, 2018. Series C No. 350; I/A Court H.R., *Case of J. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 5.

⁵⁵ UNODC. *Global Report on Trafficking in Persons 2024*, December 11, 2024, p. 48.

⁵⁶ I/A Court H.R., *Rules of Procedure of the Inter-American Court of Human Rights*. Approved by the Court during its LXXXV Regular Period of Sessions, held from November 16 to 28, 2009.

⁵⁷ I/A Court H.R., *Case of Habbal et al. v. Argentina*. Preliminary Objections and Merits. Judgment of August 31, 2022. Series C No. 463 para. 15, 22-23. I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010 Series C No. 220, para. 17; I/A Court H.R., *Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270, paras. 34-35; I/A Court H.R., *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 4, 2012. Series C No. 250, paras. 44 et seq.

33. Without prejudice to the above, the victims' representatives could acknowledge that Article 35.1 of the Court's Rules of Procedure establishes that the report referred to in Article 50 of the Convention must identify the alleged victims, who must have "duly accredited" representatives. These considerations could lead the Court to rule prior to its examination of the case in order to be able to identify the alleged victims.
34. The representatives may recall that the IACHR has considered that, although Article 28 of its Rules of Procedure establishes that petitions must include the name, nationality, and signature of the person or persons filing the complaint, "the Commission does not consider that the absence of the names of the alleged victims inhibits it from assuming jurisdiction *ratione personae*."⁵⁸ This is because the ACHR allows for the filing of petitions on behalf of alleged victims, without them having to file the petition personally or to have a special power of attorney to do so. This requirement can be deemed satisfied when there is sufficient evidence to allege that the rights of a person under the jurisdiction of the State may have been infringed.
35. This issue was specifically addressed in the admissibility of the petition of *John Doe et al. v. Canada*.⁵⁹ At the merits stage of that case, the Commission again addressed this point, stating that "[...] under certain circumstances, where an alleged victim can be identified with sufficient detail and reliably situated at a particular time and place, it is not always necessary to provide the name of that person."⁶⁰ "This is particularly applicable when the State should have record of the alleged victim's presence at the time and place the alleged violations occurred."⁶¹
36. Similarly, in the case of *Cuban and Haitian Nationals Detained at and Deported from the Carmichael Road Detention Center: The Commonwealth of the Bahamas*,⁶² the Commission stated that, in certain cases, complex circumstances make it difficult to identify all the victims; for instance, they may not be under the jurisdiction of the State when the petition is filed with the IACHR.⁶³ Requiring the petitioner to present individualized information constitutes an undue and unreasonable burden, considering that information such as border control data is held by the State, allowing it to know which people have crossed its border.⁶⁴
37. Citing these precedents, the victims' representatives would need to explain that the facts of the case provide sufficient *prima facie* information to determine that the nine alleged victims were subject to deception and transported to perform activities in Lusaria and Aravania. They should assert that A.A.'s testimony establishes the existence of these individuals and that they faced the same circumstances she did when they were in the same place and at the same time. In particular, they should argue that A.A. informed the police of the first names of at least three of the nine women, namely María, Sofía, and Emma, and that this information would be sufficient for the State to check immigration entry records and search for women with those names.
38. They can also argue that it was the responsibility of the State of Aravania to help identify them, given that they entered and left through its borders, and that there should have been a record of their entry at a specific time that coincides with A.A.'s departure and entry, without prejudice to the fact that, under Article 50.2 of the cooperation agreement, Aravania should know who the workers were. The victims' representatives should emphasize that, in this case, the Aravanian immigration authorities searched the country's entry and departure records based on A.A.'s passport and the special work permits provided for in the cooperation agreement. They should also note that she presented sufficient evidence in her petition to the IACHR to help locate the victims, including their age, nationality, the fact that their relatives lived in Campo de Santana. On this basis, and since these nine alleged victims are specified in the report on the merits, jurisdiction is not an issue and the Commission met the requirement established in Article 35.1 of the Court's Rules of Procedure.
39. Lastly, regarding the alleged victims' representation and their willingness for the case to be heard by the Court, their representatives could argue that Article 44 of the ACHR states that any person or group of persons, or

⁵⁸ IACHR. Report No. 78/11. Case 12.586. Merits. *John Doe et al. Canada*. July 21, 2011, para. 76.

⁵⁹ IACHR. Report No. 121/06. Petition 554-04. Admissibility. *John Doe et al. Canada*. October 27, 2006, para. 55.

⁶⁰ IACHR. Report No. 78/11. Case 12.586. Merits. *John Doe et al. Canada*. July 21, 2011, para. 76; IACHR. *Massacre and Forced Displacement of Montes de Maria. Colombia*. Petition 1-06 Report No. 15/09. March 19, 2009, paras. 47-48; IACHR. *Members of the Union of State Workers of Antioquia (SINTRAOFAN)*. Petition 1470-05. Report No. 140/09. December 30, 2009, para. 52.

⁶¹ IACHR. Report No. 78/11. Case 12.586. Merits. *John Doe et al. Canada*. July 21, 2011, para. 76.

⁶² IACHR. Report No. 459/21. Case 12.071. Merits (Publication). *Cuban and Haitian Nationals Detained at and Deported from the Carmichael Road Detention Center: The Commonwealth of the Bahamas*. December 31, 2021.

⁶³ IACHR. Report No. 459/21. Case 12.071. Merits (Publication). *Cuban and Haitian Nationals Detained at and Deported from the Carmichael Road Detention Center: The Commonwealth of the Bahamas*. December 31, 2021, para. 44.

⁶⁴ IACHR. Report No. 459/21. Case 12.071. Merits (Publication). *Cuban and Haitian Nationals Detained at and Deported from the Carmichael Road Detention Center: The Commonwealth of the Bahamas*. December 31, 2021, para. 45.

nongovernmental entity, may submit individual petitions to the Commission, with no required formalities of representation. As the Presidency of the Court has previously indicated, Article 35 of the Rules of Procedure of the Court “does not require the provision of powers of attorney as such, and therefore the omission of this information does not necessarily pose a problem for the Commission in bringing the case before the Court.” It underscored that this is consistent with the Court’s established case law, in that “individual access to the inter-American system for the protection of human rights cannot be limited based on the requirement of having legal representation,” given that “the complaint may be filed by someone other than the alleged victim.”⁶⁵

40. In this regard, invoking the flexibility required by the inter-American system to fulfill its purpose, the representatives could be of the opinion that requiring powers of attorney in the circumstances of this case is disproportionate, especially when dealing with alleged victims in the context of human mobility.⁶⁶
41. The victims’ representatives should argue that, even if the current whereabouts of the alleged victims are unknown, this does not affect the Court’s jurisdiction or their identification as alleged victims in the case, since the report on the merits contains facts related to the nine alleged victims. This circumstance also does not affect the Court’s ability to order reparations. On this last point, the representatives could cite the case of *Acosta Calderón v. Ecuador*, in which the Court found that the victim’s unknown location did not affect the processing of the case, nor the Court’s examination of the merits, ruling that “the inability to locate the victim does not affect his right to the corresponding reparation,”⁶⁷ and ordering the State to deposit the reparations in a bank, to be claimed within a ten-year period.

b. The State

42. The State can argue that the failure to individually identify the nine alleged victims is a preliminary matter that affects the Court’s jurisdiction *ratione personae* to rule on the case. In particular, it may argue that, although the Court has generally considered that difficulty identifying alleged victims in the report on the merits (which is recognized in Article 35 of the Rules of Procedure) is not grounds for a preliminary objection, this case is *sui generis*. Here, the Commission did not argue on the basis of Article 35.2 of the Rules of Procedure that there were complications in determining a larger number of victims because these were “cases of mass or collective violations”; rather, it considered that the mere mention in the report on the merits that nine persons were subject to the same violations as A.A. was sufficient to satisfy the requirement to identify each victim individually.
43. The State may recall that the Court has, on an exceptional basis, considered admitting arguments of this nature as a “preliminary objection.” In particular, in the case of *Vereda La Esperanza v. Colombia*, the Court recalled that it is incumbent upon “to identify precisely and at the proper procedural opportunity the alleged victims in a case before the Court, except in the exceptional circumstances contemplated in Article 35.2 of the Court’s Rules of Procedure [...] when it has not been possible to identify one or more of the alleged victims affected by the facts of the case because it involves mass or collective violations.” In that case, the Commission referred to two of the alleged victims as alias “Fredy” and his “wife,” without providing an explanation for the lack of complete identification or the possible application of Article 35.2 of the Rules of Procedure. The Court found that “it is not appropriate to apply the exception contemplated in Article 35.2 of the Rules and decides to admit the State’s preliminary objection in relation to alias ‘Fredy’ and his ‘wife.’”⁶⁸ The State’s representatives could argue that acting contrary to this precedent would create significant legal uncertainty for the State, because although it is indicated that there were nine alleged victims, the absence of minimal information on their identity prevents the State from reliably proving that such persons were “under its jurisdiction.” This number would be subject to the discretion of the alleged victim A.A., and furthermore, since their identities are completely unknown, anyone could potentially come forward to request compensation for their own unlawful enrichment, which would be contrary to the legal certainty that the petition and case system must offer.
44. The State could also argue that, contrary to the assertions of the alleged victims’ representatives, the case of A.A. and the other nine women does not resemble the cases of *Nadege Dorzema v. Dominican Republic*, *Joe Doe v.*

⁶⁵ I/A Court H.R., *Case of Luis Williams Pollo Rivera v. Peru*. Order of the Inter-American Court of Human Rights of June 29, 2015. (Only in Spanish). Conclusion of law No. 8.

⁶⁶ The representatives could recall that in the case of *Nadege Dorzema et al. v. the Dominican Republic*, concerning the arbitrary detention and expulsion of migrants, the Court recognized that it may be difficult to determine the identity of victims in cases involving human mobility, due to their vulnerable and marginalized status. I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, para. 30.

⁶⁷ I/A Court H.R., *Case of Acosta Calderón v. Ecuador*. Merits, Reparations and Costs. Judgment of June 24, 2005. Series C No. 129, para. 154.

⁶⁸ I/A Court H.R., *Case of Vereda La Esperanza v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 341, para. 32.

Canada, or Cuban and Haitian Nationals Detained at the Carmichael Road Detention Center: The Commonwealth of the Bahamas (*supra*), because at no time were the alleged victims in its custody, so it would not be obligated to keep records of their identity.

45. Second, the State could argue that it took all necessary measures to identify the alleged victims, requesting the immigration records of their entry into the country at the Lusarian border between January 5 and January 15, but that it was impossible to identify the victims due to the scant information presented by A.A. It could add that all persons entering the country at its borders are registered by the immigration authorities, but that “Maria,” “Sofia,” and “Emma” are popular names common to many women, and that although certain factors made identification difficult, this procedural burden, according to the ACHR and the Rules of Procedure of the IACHR and the Court, falls to the victims’ representatives and the Commission.
46. Regarding the alleged victims’ participation in the case, the State may argue that the submission of powers of attorney shows contact between the representatives and the alleged victims, and is therefore relevant to the principle of the voluntariness of having a case filed with the Court.
47. On this point, the State could note that in the case of *Ramírez Escobar v. Guatemala*,⁶⁹ the Inter-American Court recognized that “legal certainty requires that alleged victims or victims in a case be defined at the latest in the decision that ends the dispute, i.e., the judgment” and that, although in principle the inter-American system allows petitions to be filed by any person, including *sua sponte* by the Commission, “As the processing of an individual petition advances, the involvement of the affected persons is increasingly required, for example, to give their consent to friendly settlements or their opinion on whether the case should be filed with the Court.” In this case, the Court found that despite efforts to contact an alleged victim, there was no information “indicating her interest in participating in the case,” and therefore she could not be considered a party to the case, as she had not given her consent.
48. The State might also recall that, in the European human rights system, the Court has at times considered that the lack of contact with an alleged victim may lead to the case being closed, since even if they have a representative, in certain circumstances this may make it impossible to make a proposal for reparation on the petitioner’s behalf.⁷⁰
49. In sum, the State could maintain that, although the Trafficking Victims Support and Reintegration Clinic filed the initial petition on behalf of the nine alleged victims, they have not participated in the entire process before the inter-American system; they have not been minimally identified, nor is there any statement from them about having a case before an international court. This would also make it impracticable to order and enforce reparations, since it is impossible to identify the parties entitled to receive reparations. Consequently, the State could argue that in such circumstances the lack of identification and participation of the victims should lead to their exclusion from the case.

Main arguments in relation to jurisdiction <i>ratione personae</i>	
Victims	State
<ul style="list-style-type: none"> - The issue related to the identification of the nine alleged victims does not constitute a preliminary objection, since it does not affect the Court’s competence to rule on the case, given that said persons were under its jurisdiction, and the question of whether there is sufficient evidence to prove whether or not they are victims is an issue for the merits stage. - Following precedents set by the Inter-American Commission, the requirement of personal jurisdiction and victim identification may be deemed satisfied when there is sufficient evidence to determine that violations of their rights occurred, especially when the 	<ul style="list-style-type: none"> The failure to individually identify the nine alleged victims in the report on the merits makes it impossible to determine whether they were under the jurisdiction of the State, since it cannot be proven that they were present in Aravania, and therefore this does constitute a preliminary objection. The failure to clearly identify the nine alleged victims violates the requirement set forth in Article 35.1 of the Rules of Procedure, creating legal uncertainty. Therefore, their exclusion from the case must be upheld as a preliminary matter. In this case, the State has no means of identifying them because they were never in its custody.

⁶⁹ I/A Court H.R., *Case of Ramírez Escobar et al. v. Guatemala*. Merits, Reparations and Costs. Judgment of March 9, 2018. Series C No. 351.

⁷⁰ ECtHR. *Case of Ali v. Switzerland*. Application No. 69/1997/853/1060. Judgment 5 August 1998, para. 32.

<p>State has control over means to facilitate their identification, such as border control.</p> <ul style="list-style-type: none"> - Requiring powers of attorney under the circumstances of this case does not affect the Court's jurisdiction and would be disproportionate, preventing the system from fulfilling its purpose of protecting victims. 	<p>Powers of attorney are an expression of the alleged victims' desire to have their case heard by an international court, so their submission is not a mere formality; their participation is necessary for the case to proceed. These victims should therefore be excluded.</p>
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C. Principle of complementarity or subsidiarity

1. Issues

50. A.A. received a payment of US\$5,000 from the State of Aravania for the inadequate working conditions to which she was subjected in Lusaria. Regarding access to justice, Aravania obtained a judgment against the State of Lusaria for violation of Article 23 of the cooperation agreement related to labor conditions and rights. It also sought Maldini's criminal prosecution, which was barred by his immunity; however, he was sentenced in Lusaria to nine months in prison for the crime of abuse of authority. Based on these actions, the State asked the Court to apply the principle of subsidiarity in view of its having remedied the violations that gave rise to the case.

2. Arguments of the parties

51. The parties are expected to discuss whether the above actions constitute reparations for the violation of A.A.'s rights, which, in light of the principle of complementarity or subsidiarity, would prevent the Court from ruling on the merits of certain violations, or whether they consider that they have been fully or partially redressed. The parties must be clear about the concept and elements required to apply the principle of subsidiarity; how this has been handled in the case law of the Inter-American Court of Human Rights; and whether its analysis is a preliminary or substantive issue.
52. To resolve this issue, the parties should bear in mind that for the principle of subsidiarity to apply, the State must have taken appropriate steps to "remedy the situations that gave rise to the case, have settled the alleged violation, have ordered reasonable reparations, or have exercised proper conventionality control."⁷¹ Depending on the role of the parties, they may also rely on case law in which the Court has addressed the application of this principle as a preliminary matter or when it has analyzed it on the merits. Furthermore, although the application of the principle of subsidiarity can be invoked primarily with respect to A.A., the participants may extend some of its components to all of the alleged victims.

a. Representatives of the alleged victims

53. The alleged victims' representatives should first argue that the application of the principle of subsidiarity does not constitute a preliminary objection because it in no way affects the jurisdiction of the Inter-American Court. To support their argument, they could cite case law such as *Martínez Vera*,⁷² *Urrutia Labraux*,⁷³ and *Petro Urrego*,⁷⁴ in which the Inter-American Court found that the analysis of whether reparations had the effect of redressing the internationally wrongful act—without it being necessary to determine responsibility and, consequently, to adopt complementary reparations—is a substantive issue rather than a preliminary one.
54. Second, the representatives could assert that for the principle of complementarity to operate in such a way that the State can be considered to have redressed the international wrong in this case, the reparations must have a causal link to the alleged violations and result in a restoration of the victims' rights. This entails acknowledging the violations, bringing them to an end, and providing "full" reparation. This notion of full reparation should include measures of satisfaction, compensation, rehabilitation, justice, and non-repetition.

⁷¹ I/A Court H. R., *Case of Petro Urrego v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 8, 2020. Series C No. 406, para. 104.

⁷² I/A Court H. R., *Case of Vera Rojas et al. v. Chile*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 1, 2021. Series C No. 439, para. 28.

⁷³ I/A Court H. R., *Case of Urrutia Labraux v. Chile*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2020. Series C No. 409, para. 90.

⁷⁴ I/A Court H. R., *Case of Petro Urrego v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 8, 2020. Series C No. 406, paras. 102-104.

55. On this basis, the victims' representatives could claim that the State has failed to provide full reparation. In fact, the amount received bears no relation to the violations committed by Aravania, but rather represents compensation for the State of Lusaria's failure to provide suitable working conditions, which is separate. Furthermore, none of the other nine alleged victims has received any reparation. Aravania has not made every effort to investigate and punish the facts with due diligence, given that Maldini's conviction in Lusaria was intended to punish him for abuse of authority; it in no way constitutes access to justice for the victims in relation to their trafficking and forced labor. The scope of such measures is a matter for debate at the merits stage, and in any event, they have not remedied the international wrongs at issue in this case.

b. The State

56. The State could begin by acknowledging that invoking the principle of subsidiarity does not constitute a preliminary objection, as it does not affect the jurisdiction of the Court. However, it may recall that there are cases in which the Inter-American Court of Human Rights previously analyzed the application of the principle of subsidiarity, finding that it was not necessary to "rule" on such violations. In particular, the State might recall that in the case of *Tarazona Arrieta v. Peru*, after noting that the State had punished the military officer responsible for the death and injury of the alleged victims and provided them with reparations, it found that "when a question has been definitively settled under domestic law—to use the language of the Convention—the matter need not be brought before this Court for 'approval' or 'confirmation.'"⁷⁵ On this basis, it held that, "in application of the principle of complementarity, it is not necessary to analyze the alleged violations of the rights to life and to personal integrity,"⁷⁶ and therefore that "the Court will not rule on the State's international responsibility for the alleged violations."⁷⁷
57. With this in mind, the State could say that the US\$5,000 compensation was given to A.A. as reparation for the alleged violations. To establish a causal link, it could point out that the arbitration panel ordered the State of Lusaria to pay US\$250,000 to Aravania for its breach of the treaty. Nevertheless, Aravania decided to compensate A.A. for the violations of her rights. The State would have to argue that, although that money came from the compensation awarded by the arbitration panel, when it was handed over by the State of Aravania, it came from its own assets and was intended to provide compensation for the violations committed. The State could argue that this compensation is a measure of satisfaction, but it also enables the victim to access rehabilitation, if necessary, through existing social programs in Aravania.
58. The above is complemented by the measures of justice adopted by the State, both through the arbitration panel and through the intended prosecution, which is impossible to pursue due to immunity recognized under general international law, as set out in the arguments relating to the objection of lack of jurisdiction *ratione loci*. However, the acts did not go unpunished, as the perpetrator in Lusaria was punished based on the complaint filed by the State of Aravania when it notified the Lusarian authorities of the crime.
59. Based on the above, the State could argue that it has provided full reparation for the violations of A.A.'s rights and will do so with respect to the nine alleged victims—provided they are identified—using the remaining amount of the compensation awarded by the arbitration panel, which is contested in the objection to jurisdiction *ratione personae*.
60. The argument of subsidiarity may not be advantageous for the State in principle, as it would have to acknowledge the existence of violations of the victims' rights that were remedied by compensation. In this regard, the participants in this role should carefully identify the violations they intend to consider remedied through this type of argument, which is an essential requirement for its admissibility. This could lead them to conclude that the violation was acknowledged at the domestic level, which could be detrimental to their defense. Otherwise, the State could be contradicting itself by saying it redressed an international wrong but not acknowledging that it happened.

⁷⁵ I/A Court H.R., *Case of Tarazona Arrieta et al. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 15, 2014. Series C No. 286, para. 136.

⁷⁶ I/A Court H.R., *Case of Tarazona Arrieta et al. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 15, 2014. Series C No. 286, para. 140.

⁷⁷ I/A Court H.R., *Case of Tarazona Arrieta et al. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 15, 2014. Series C No. 286, para. 141.

61. A plausible and more appropriate scenario would be for the State not to seek the application of the principle of subsidiarity in the sense referred to above, so it can ask the Court to refrain from ruling on its responsibility. Instead, it can ask the Court to consider the reparations measures adopted—specifically the pecuniary measures—when ruling on reparations, while continuing to address the case in dispute as a whole. Here, the State could argue, for example, that its responsibility to provide reparations does not stem from human rights violations attributable to it, but rather from the impact on A.A.’s employment rights in another State, such that the sum awarded is for her rehabilitation from the harm suffered, especially given that Aravania negotiated an agreement with that State. Notwithstanding the above, it can request that this amount be taken into account in the event of a determination of responsibility.

Main arguments in relation to the application of the principle of complementarity or subsidiarity	
Victims	State
<ul style="list-style-type: none"> - Invoking the principle of complementarity or subsidiarity is not a preliminary objection but a matter that must be examined at the merits stage and, where appropriate, in relation to reparations. - The State has not provided full reparation for the violations committed. The monetary compensation awarded to A.A. by the arbitration panel has no causal link to Lusaria’s international responsibility; and in any case, the nine remaining alleged victims have received no reparation whatsoever. 	<p>Possible argument</p> <ul style="list-style-type: none"> - Although invoking the principle of complementarity or subsidiarity is not a preliminary objection, it has been recognized by the Inter-American Court as a matter that may prevent it from analyzing or ruling on the responsibility of the State. - The State has provided full reparation for the rights violations. The monetary compensation awarded to A.A. was paid directly by the State of Aravania to restore her rights. Justice measures have been taken to the extent permitted by international law, and the perpetrator has been punished. The State is also prepared to compensate the other alleged victims once they have been identified. <p>Alternative argument</p> <ul style="list-style-type: none"> - The State should not invoke the principle of subsidiarity to ask the Court to refrain from ruling on its responsibility. Instead, it can ask that the measures of reparation adopted—specifically, the pecuniary measures—be considered by the Court when it decides on reparations, and that it continue to address the case in dispute as a whole at this point.

IV. Analysis of the merits

A. Establishing the offense of human trafficking

1. Issues

62. The main legal issue raised by the hypothetical case is for the parties to determine whether what happened to A.A. and the other nine women constitutes human trafficking. This involves examining the existing protections against this crime in the inter-American system, as well as the elements of the offense. As discussed below, establishing the offense of human trafficking is a prerequisite for determining that the State of Aravania is responsible for certain violations of the ACHR.

2. Protection against human trafficking in the inter-American system

63. Article 6 of the ACHR establishes that “No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.” Case law has recognized that, because it encompasses multiple offenses,⁷⁸ human trafficking contravenes Articles 3 (right to juridical personality), 5 (humane treatment), and 7 (personal liberty) of the ACHR. Article 26 of the ACHR is also applicable in the workplace. Furthermore, as it constitutes a form of violence against women, there are enhanced obligations under Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Belém do Pará). Article 29 of the ACHR also allows recourse to other international instruments for the interpretation of the obligations established in that instrument. In this case, it is crucial to invoke the Palermo Protocol to identify the definition of trafficking and its constituent elements. Both the definition set out in the Palermo Protocol and the elements developed by the Inter-American Court of Human Rights in its case law were subsequently incorporated into the Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Trafficking in Persons of the IACHR.⁷⁹

3. General considerations on establishing the offense of human trafficking

64. According to the Palermo Protocol,⁸⁰ trafficking in persons is defined as: (i) the recruitment, transportation, transfer, harboring, or receipt of persons; (ii) by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; (iii) for the purpose of exploitation, which may include sexual exploitation, forced labor or services, slavery, or practices similar to slavery, servitude, or the removal of organs.⁸¹

65. For minors under the age of 18, an analysis of consent is not required for a determination of trafficking. Furthermore, according to UNODC, once the use of deception, coercion, force, or other prohibited means has been proven, consent shall not be taken into account and may not be used as a defense.⁸² This is consistent with the UNODC Model Law against Trafficking in Persons, which states that, in line with the wording of the Palermo Protocol, if the elements of the crime of trafficking are proven, including the use of one of the means described (coercion, deception, etc.), any defense or claim that the victim “consented” is invalid. Even when victims are aware of the nature of the work, they may have been misled about the working conditions, which turned out to be exploitative or coercive.⁸³

66. The crime of human trafficking consists of three fundamental elements: the act, the means, and the purpose,⁸⁴ which must be met to establish the offense.

⁷⁸ I/A Court H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, para. 223.

⁷⁹ IACHR. Resolution 04/19 - [Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons](#), approved by the Commission on December 7, 2019.

⁸⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

⁸¹ I/A Court H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, paras. 289 y 290.

⁸² UNODC. [Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto](#), 2004, p. 272.

⁸³ UNODC. [Model Law against Trafficking in Persons](#), 2009, p. 28.

⁸⁴ UNODC. [Human trafficking](#), n.d.

Act	Means	Purpose (may include):
<ul style="list-style-type: none"> • Recruitment • Transportation • Transfer • Harboring • Receipt 	<ul style="list-style-type: none"> • Threat • Use of force • Coercion • Abduction • Fraud • Deception • Abuse of power • Abuse of vulnerable status • Payment or benefits to controlling parties 	<ul style="list-style-type: none"> • Exploitation of the prostitution of others • Other forms of sexual exploitation • Forced labor or services • Slavery or practices similar to slavery • Servitude • Removal of organs

67. States have an obligation to criminalize human trafficking as a combination of its constituent elements; therefore, any conduct that combines any of the actions and means indicated and is carried out for the purposes set forth above should be considered human trafficking.⁸⁵ All three elements must be present. Although cases of trafficking are generally brought to light when the intended purpose has been achieved, it is possible for trafficking to occur when the first two elements are present but, for various reasons, the intended purpose is not achieved. For example, human trafficking occurs when a victim is recruited through deception for the purpose of exploitation, even if that purpose is not actually achieved for various reasons (for example, if a victim who has been recruited is freed by law enforcement while being transported to the place where they will be exploited). Exploitation or forced labor may also exist without being preceded by a pattern of human trafficking (for example, when a person works in a workplace under exploitative or degrading conditions, without the first two elements of trafficking being present).

68. It is important to recall that human trafficking should not be confused with migrant smuggling. The latter has been understood as facilitating the illegal entry of a person into a State of which that person is not a national or permanent resident with the intention of obtaining, directly or indirectly, a financial or other material benefit.⁸⁶ The main difference is that migrant smuggling violates the laws of the State into which the migrant is brought unlawfully, whereas trafficking violates the human rights of a person.⁸⁷

4. Arguments of the parties

69. To determine whether human trafficking occurred in this case and whether the protection afforded by Article 6 of the Convention, as well as the instruments mentioned above (*supra*, para. 63) that characterize this crime as involving multiple offenses, are applicable, the parties must debate whether A.A. and the other nine alleged victims were victims of human trafficking. This requires determining, first, whether Hugo Maldini's activities in Aravania constituted recruitment (and therefore part of the trafficking pattern) and whether the State bears responsibility in this regard. It must also be determined whether the State had a duty to prevent and punish human trafficking when the alleged victims returned to Aravania after their stay in Lusaria.

a. Representatives of the alleged victims

70. The victims' representatives must present arguments to demonstrate that the essential elements of the definition of human trafficking are present in the case. That is, the act (recruitment, transportation, transfer, harboring, or receipt of persons), the means used (deception, abuse of vulnerability, threat, or coercion), and the purpose (exploitation). This is to prove that the facts that occurred in Aravania (mainly recruitment and transportation) constitute human trafficking and, as such, are a multi-offense crime that violates the aforementioned articles of the ACHR. As stated above in the section on preliminary objections, in order to prove that trafficking occurred, the representatives must assert that it is necessary to refer to events that took place in Lusaria.

i. Act and means

⁸⁵ UNODC. Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, 2004, p. 270.

⁸⁶ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

⁸⁷ IOM. Migrant Smuggling, Trafficking in Persons, and White Slave Trafficking, What's the Difference?, n.d.

71. The victims' representatives can argue that Hugo Maldini recruited women in Aravania through deception on social media. He used videos showing ideal working conditions, with promises of education, daycare, and social security, which led A.A. and other women to accept employment in Lusaria (recruitment). The use of this strategy demonstrates that recruitment specifically targeted a group in a particularly vulnerable situation.
72. It is also possible to argue that the workers were misled by false information about working conditions (deception). Economic and social vulnerability was exploited, as women with few opportunities in Campo de Santana were induced to accept job offers promising decent, legal, and temporary conditions abroad, under a labor cooperation program between Aravania and Lusaria. This initial deception was essential in obtaining their consent and ensuring their transfer, and the legality provided by the cooperation agreement between the two states strengthened the credibility of the working conditions offered. However, upon arriving in Lusaria, the women found that the working conditions were different from those originally agreed upon in the employment contracts.
73. According to UNODC, deception is one of the means by which traffickers lure victims into a situation of exploitation. The type of deception can vary in form and refer to the nature of the employment (for example, in cases of forced prostitution), working conditions (working hours, days off), or living conditions. There is no clear distinction between subtle and explicit forms of coercion. Traffickers sometimes use both forms and gradually change their behavior, ranging from kindness, in order to "seduce" the victim, to physical violence, restrictions on freedom, and explicit threats.⁸⁸
74. The abuse of a situation of vulnerability is related to the intention to ensure that all the different and subtle means by which an individual can be moved, placed or maintained in a situation of exploitation were captured. Although there is no internationally accepted definition, the UNODC Model Law against Trafficking in Persons⁸⁹ defines it as any situation in which the person concerned has no real or acceptable choice but to submit to the abuse in question.⁹⁰ The situation of vulnerability, in general terms, helps a court understand why victims were persuaded to become involved in an apparently dangerous situation and why they remained in that circumstance.⁹¹
75. It is important for the representatives to explain that, although the alleged victims signed employment contracts, this consent does not excuse the crime if prohibited means such as deception and abuse of vulnerability were used, as explained above.

ii. Purpose

76. The victims' representatives should explain, in line with the Palermo Protocol, that they were trafficked for labor exploitation, which means showing the elements of exploitation and how they relate to other concepts like slavery or forced labor mentioned in the Palermo Protocol. It is important that the representatives recognize that, for the purposes of establishing the offense of human trafficking, not just any labor exploitation will meet the elements of the crime. Labor exploitation is a broader concept that can include inadequate working conditions, lack of social security, or unfair wages; however, it does not necessarily constitute one of the purposes of human trafficking. What is relevant for its establishment is that trafficking involves coercion or a restriction of freedom in the sense that victims are unable to freely leave their work, which, according to the Protocol, takes the form of exploitation such as slavery or forced labor, although these are non-exhaustive examples of other forms of exploitation.
77. The victims' representatives could try to approach the labor exploitation in this case by using the concept of slavery as one of their arguments. Consistent with the Slavery Convention adopted in 1926, the Inter-American Court has recognized that for a situation to be classified as slavery, two elements must be proven: (i) the status or condition of a person, and (ii) the exercise of any or all of the powers attaching to the right of ownership, that

⁸⁸ Subtle forms of coercion are particularly relevant in modern cases of human trafficking. UNODC explains, for example, that in the case of *Wei Tang (Australia)*, the victims were not threatened or subjected to physical violence. They were not locked up and were properly fed, provided with accommodation, and had access to medical care. Even so, the defendants were convicted of slavery. This was because the court considered a number of circumstances, such as long working hours; the instilling of fear of arrest by immigration authorities due to the workers' irregular status and visa violations; and the withholding of wages and passports, among others. UNODC. *Evidential Issues in Trafficking in Persons Cases. Case Digest*, 2017, pp. 65-66.

⁸⁹ UNODC. *Model Law against Trafficking in Persons*, 2009, pp. 9-11.

⁹⁰ UNODC. *Abuse of a position of vulnerability and other "means" within the definition of trafficking in persons*, 2013, p. 23; Ivanka Marković. *A Case Law Compendium in Trafficking in Human Beings*, 2015, p. 47.

⁹¹ UNODC. *Evidential Issues in Trafficking in Persons Cases. Case Digest*, 2017, p. 68.

is, in other words, the enslaver exercises power or control over the enslaved person to the point of obliterating the personality of the victim.⁹² Based on these elements, the Supplementary Convention on the Abolition of Slavery (1956) recognized other similar forms of slavery such as debt bondage and serfdom. In this specific case, characterizing the purpose as slavery may be complicated given the need to prove coercion over the alleged victims' self-determination and freedom to the point of reducing them to property. To support this argument, however, the representatives could recall that the ECtHR has recognized that human trafficking has been regarded internationally as a form of modern slavery, given that, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership.⁹³ The Inter-American Court has also recognized that "several of the United Nations specialized agencies working in this area have referred to trafficking in persons as a form of slavery."⁹⁴

78. The case states that the alleged victims may have found it difficult to leave Finca El Dorado because their identity documents had been retained and their social security benefits depended on their work there. However, the facts of the case face challenges that could lead to a finding of the exercise of ownership with respect to A.A. and the other alleged victims that meets the threshold set by the Inter-American Court. This entails an understanding of one person's control over another, such that "when determining the level of control required to consider an act as slavery, [...] this could be equated to the loss of a person's own will, or to a considerable decrease in personal autonomy."⁹⁵ In this regard, the representatives could decide to characterize the facts as forced labor.
79. If it is argued that the purpose was forced labor, the representatives should characterize it according to the definition established in Article 2.1 of International Labor Organization (ILO) Convention No. 29, which requires an assessment of the following elements: (i) the existence of any type of personal work or service; (ii) the existence of any threat of punishment, understood in a broad sense, directed at the victim or their family members; and (iii) the absence of the victim's consent to such work and the impossibility of terminating the employment relationship.⁹⁶
80. To support their argument, the representatives should point out that the definition contained in Article 2 of Convention No. 29 is dynamic or evolving, in that it refers not only to criminal penalties but also to other forms of coercion that ultimately restrict the freedom to leave work.⁹⁷ Based on this, they should argue that coercion exists by citing factors such as the possible loss of services essential to their livelihood or that of their families, the threat of increasingly insecure working conditions, the risk of violence, or the nonpayment or late payment of wages; total dependence on the company for food and housing; use of fear and intimidation, including cases of sexual violence and reprisals against those who tried to leave, and the withholding of identity documents.
81. With regard to consent, the representatives could argue that, although the alleged victims consented to enter into an employment relationship through a contract, the original circumstances changed to such an extent that they found themselves in a different situation and were "trapped" in circumstances they had not agreed to in advance.⁹⁸ In order to determine that they are victims of forced labor, the alleged victims' representatives must prove that they were prevented from exercising any option other than abuse under some form of coercion. The representatives may draw on the set of indicators developed by the ILO to identify situations of forced labor.⁹⁹

⁹² I/A Court H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, paras. 269-271.

⁹³ ECtHR. *Case of Rantsev v. Cyprus and Russia*. Application no. 25965/04. Judgment 7 January 2010. Final 10/05/2010, para. 281.

⁹⁴ Thus, the Working Group on Contemporary Forms of Slavery declared that trafficking in women and girls for the purpose of exploitation is a contemporary form of slavery and that international treaties against slavery include trafficking. (Report of the United Nations Working Group on Contemporary Forms of Slavery. Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution E/CN.4/Sub2/RES/1998/19, para. 2); The Special Rapporteur on Trafficking in Persons, Especially Women and Children, also considered human trafficking to be "modern-day slavery" on a massive scale (Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, UNdoc.A/HRC/10/16, 20 February 2009, p. 5); In the case of *Rantsev v. Cyprus and Russia*, the European Court ruled that "trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership" (ECtHR, *Case of Rantsev v. Cyprus and Russia*, para. 282). Cited in I/A Court H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, para. 286-287.

⁹⁵ I/A Court H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, paras. 269-271.

⁹⁶ ILO. Forced labour and human trafficking: Handbook for labour inspectors, 2009; I/A Court H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, para. 291.

⁹⁷ ECtHR. *Case of Zoletic and others v. Azerbaijan*. Application No. 20116/12. Judgment 7 October 2021, para. 151; ILO. Guiding Principles to Combat Forced Labour, 2009; ILO. A Handbook for Employers & Business. Special Action Programme to Combat Forced Labour, 2009, pp. 15, 16, 19, 21.

⁹⁸ UNODC. Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, 2004, p. 272.

⁹⁹ ILO. Forced labour and human trafficking: Handbook for labour inspectors, 2009, p. 4; ILO. Análisis comparativo de los delitos de Trabajo Forzoso y Trata de Personas [Comparative analysis of the crimes of forced labor and human trafficking], n.d.

These include, in particular, violence or sexual violence; intimidation and threats; restriction of movement; withholding of wages or identity documents; deception; abuse of a situation of vulnerability; abusive working conditions involving the subjugation of workers; or excessive overtime.

82. In the analysis of indicators such as those mentioned above, the purpose of exploitation requires the provision of services and a lack of proportionality in the consideration.¹⁰⁰ The hypothetical case is formulated so that the alleged victims' representatives have to describe working conditions in relation to the care activities they performed in Lusaria. This element is essential in order to recognize the actual working conditions in which A.A. found herself. The representatives must characterize the care work as "work." To this end, they can note that the ILO has classified unpaid care work as a form of work, stating that "[u]npaid care work is care work provided without a monetary reward by unpaid carers. Unpaid care is considered as work."¹⁰¹ For its part, the CIM has noted that "[i]f work is understood to consist of activities that could be done by someone in exchange for payment, then by this definition, caregiving should be classified as work."¹⁰²
83. In view of the above, the representatives should argue that the work related to cleaning the farm and preparing food not only for themselves and their families but also for men who worked on the farm entailed additional working hours. The alleged victims had initially agreed to work on the activities detailed in their contract, but ultimately also had to work on food preparation, cleaning, and laundry. This made their working days much longer,¹⁰³ and they depended on work that went beyond the initial purpose of their hiring. The representatives could also note that Isabel kept the alleged victims' identity documents from the moment they arrived in Lusaria.
84. Based on these considerations, the representatives should seek to characterize the situation as human trafficking in accordance with the criteria set forth in the Palermo Protocol. This would support the assertion that multiple rights (*supra*, para. 63) recognized in the American Convention were violated, with a view to arguing that the State had an obligation to prevent and punish those violations, as explained below.

b. The State

85. The State, in its defense, may initially raise the objection that the case fails to show a pattern of human trafficking within its jurisdiction. It could then argue that the elements of the crime were not met, even considering the events that took place in Lusaria. Here the State can argue that it is not responsible—whether through a lack of prevention or a lack of punishment—for multiple violations of rights recognized in the ACHR (*supra*, para. 63) that would protect against trafficking.
86. The State could thus argue, initially, that the case should not be viewed as one involving trafficking, and that its obligations are therefore limited to analyzing whether the acceptance of employment in Lusaria and the transfer to Lusaria involved a violation of rights enshrined in the ACHR. The State may invoke Article 26 of the ACHR, noting that the right to stability in employment gives rise to obligations of adequate regulation and oversight.¹⁰⁴ The State can explain, first, that the alleged victims signed a contract that was drawn up by a company located in another State, in a manner over which it had no knowledge or control.
87. Second, the State could contend that, even taking into account the acts committed in Lusaria, the elements of human trafficking were not met. It can thus argue that it cannot be held responsible for violations of the multiple rights related to that crime under the ACHR (*supra*, para. 66) based on the failure to meet its obligations to prevent and punish trafficking. Specifically it could assert that the second and third elements that must be proven to establish the offense of trafficking (*supra*, para. 69) have not been met.
88. With regard to the second element, they could point out that the recruitment did not take place under the conditions required by the Palermo Protocol to constitute trafficking in persons, as it occurred freely, without

¹⁰⁰ ILO. Public Prosecution Service of the Attorney General's Office of the Argentine Republic. La trata de personas con fines de explotación laboral. Estrategias para la detección e investigación del delito [Human trafficking for labor exploitation. Strategies for detecting and investigating the crime], 2017, p. 12.

¹⁰¹ ILO. Care work and care jobs for the future of decent work. Geneva, 2019, p. xxvii.

¹⁰² CIM. COVID-19 in Women's Lives: The Global Care Emergency, OEA/Ser.L/II.6.27, 2020, p. 14.

¹⁰³ When the alleged victims moved to live at Finca El Dorado to comply with the terms of the cooperation agreement, the unpaid work and care hours began to extend until 11 p.m., where they continued with tasks related to caring for their families; as a result, the hours were much longer than those initially agreed upon (eight hours a day with one day off per week). These activities were carried out under constant surveillance, as the farm had 24-hour security with surveillance cameras and staff responsible for monitoring the entry and departure of all persons.

¹⁰⁴ I/A Court H.R., *Case of Lagos del Campo v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 340 (only in Spanish), para. 149.

coercion, fraud, deception, or the abuse of power or of a situation of vulnerability. If consent was given—as was the case with A.A. and the other nine women—human trafficking does not occur in the absence of the abovementioned criteria, according to the Palermo Protocol.

89. Regarding the third element, the State could note that the purpose is not apparent in this case. The State could argue that the criteria for defining the forms of exploitation mentioned in the Palermo Protocol have not been met in the case.¹⁰⁵
90. Indeed, with regard to slavery, the State could argue that the Slavery Convention requires proof of two elements: (i) the status or condition of a person, and (ii) the exercise of any or all of the powers attaching to the right of ownership, that is, in other words, the enslaver exercises power or control over the enslaved person to the point of obliterating the personality of the victim.¹⁰⁶ In this case, the State could argue that there is no evidence that Hugo Maldini or the company had exercised acts of ownership to the extent required by the Inter-American Court of Human Rights to consider that one person is the possessor of another (*supra*, para. 77). Similarly, in the case of *Siliadin v. France*, the ECtHR, interpreting the definition of slavery established in the 1926 Convention, held that for a person to be considered a victim of slavery *stricto sensu*, there must be genuine exercise of a legal right of ownership over that person, thereby reducing them to the status of an “object.”¹⁰⁷ These conditions have not been met in this case, as there was a regulatory framework governing the employment relationship, and the alleged victims had a salary and multiple social security benefits. And it has not been proven that they were unable to leave the farm freely, meaning that the issue is potentially a labor matter, which should have been brought before the courts in Lusaria.
91. With regard to forced labor, the State should point out that there is no evidence in this case that the work performed by the alleged victims in Lusaria was carried out under “threat of penalty” within the meaning of Article 2.1 of ILO Convention No. 29, such that they were subject to coercion or restriction of their liberty. The State may argue that the alleged victims were not in precarious working conditions, that they had access to social services for themselves and their families, and that there is no evidence in the case file that they tried to leave their jobs but were unable to do so; their situation merely reflected the difficulties of traveling to another country, which is something many migrants experience. This freedom is evidenced by the fact that, while in Aravana, they were able to leave the premises in Primelia freely.
92. Based on the above, the State can argue that this case involved a situation of noncompliance with Lusaria’s labor laws, which does not constitute trafficking and cannot be attributed to the State. In this regard, the State should maintain that while some situations may involve poor working conditions, such as excessive working hours or unfair wages, these are not situations of labor exploitation that can be classified as forced labor; nor do they involve the coercion or restriction of freedom needed to establish a case of human trafficking. This argument can be bolstered by the fact that the Federal Prosecutor’s Office in Lusaria convicted Hugo Maldini of abuse of authority. The existence of remuneration, albeit insufficient, and certain employment benefits such as access to social security and childcare, also departs from the classic trafficking pattern, where victims are often partially or completely deprived of their income.¹⁰⁸

¹⁰⁵ An example of this situation is provided in the ruling of the Criminal Court for Femicide and other Forms of Violence against Women and Sexual Violence, Exploitation, and Trafficking in Persons in the department of Petén in Guatemala, which found a lack of intent to exploit based on the failure to establish that “the defendant’s intention was to benefit from the economic situation surrounding the victim in the crime under discussion.” Lawyers Without Borders Canada. *Análisis de sentencias de trata de personas en Guatemala* [Analysis of human trafficking judgments in Guatemala], Guatemala, 2021, p. 86.

¹⁰⁶ I/A Court H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, paras. 269-271.

¹⁰⁷ ECtHR. *Case of Siliadin v. France*. Application No. 73316/01. Judgment 26 July 2005, para. 122.

¹⁰⁸ UNODC. *Evidential Issues in Trafficking in Persons Cases. Case Digest*, 2017, p. 91.

Main arguments in relation to the legal classification of the facts as human trafficking

Victims	State
<ul style="list-style-type: none"> - To determine whether Aravania is responsible for multiple rights violations arising from the trafficking of women (Articles 3, 5, 6, 7, and 26 of the American Convention on Human Rights), as well as for the violation of Article 7 of the Belém do Pará Convention, it must be determined whether human trafficking occurred, even if some of the necessary elements took place in another State. - All of the defining elements of human trafficking (acts, means, and purpose), developed on the basis of international conventions, international organizations with jurisdiction over human trafficking, and the case law of various regional courts, are present in the facts of the case. That is, the acts, the means, and the purpose (exploitation). - With regard to the purpose of trafficking, in this case, the two elements required by the ILO to prove that forced labor existed have been met: (i) a type of work was performed; and (ii) a “threat of punishment” prevented them from leaving their employment. This requirement should be interpreted dynamically in relation to other forms of coercion that, taken together, restricted the alleged victims’ freedom to leave their jobs. Here we refer specifically to the possible loss of services essential to their livelihood or that of their families, the threat of increasingly insecure working conditions, the risk of violence, or the nonpayment or late payment of wages; total dependence on the company for food and housing; use of fear and intimidation, including cases of sexual violence and reprisals against those who tried to leave, and the withholding of identity documents. - Labor exploitation should be found in this case, considering that the care work performed by the alleged victims constitutes work and was part of their regular workday. - Consequently, given that trafficking is a multi-offense crime, Aravania may be held responsible for failing to prevent and punish human trafficking in relation to the events that occurred within its jurisdiction, even though some of the elements of the crime took place in another State. 	<ul style="list-style-type: none"> • In Aravania, there was insufficient evidence to conclude that human trafficking had taken place. Only one employment contract was entered into in that State, and the State had no knowledge of or control over it. • Even considering the events that took place in Lusaria, there are no grounds for considering that trafficking occurred in that State; rather, it was a labor-related problem. In fact, it is not possible to prove the existence of slavery or forced labor as defined by international law. Specifically with regard to slavery, it has not been proven that the alleged victims were reduced to property; and with regard to forced labor, it has not been proven that they were subject to coercion or restrictions that forced them to continue in such work. • Consequently, in examining the responsibility of the State, no violation of the multiple trafficking-related rights recognized in the ACHR can be attributed to the State.

B. Analysis of State responsibility for the activities carried out by Hugo Maldini in Aravania (Articles 3 (right to juridical personality),¹⁰⁹ 4 (right to life),¹¹⁰ 5 (humane treatment),¹¹¹ 7 (personal liberty),¹¹² and 26 (right to work)¹¹³ of the American Convention in relation to Article 1.1 thereof, as well as Article 7 of the Belém do Pará Convention¹¹⁴)

1. Issues

93. The women from Campo de Santana, including the alleged victims, were recruited through videos posted by Hugo Maldini on social media platforms such as *ClicTik*, which led to their subsequent hiring and transfer to Lusaria. The teams are expected to argue whether the State fulfilled its duty to prevent the violations of rights involved in the crime of trafficking (*supra*, para. 63).

2. General considerations on the duty to prevent human trafficking

94. In *Hacienda Brasil Verde v. Brazil*, the Inter-American Court of Human Rights stated that Articles 1.1 and 6 of the ACHR establish the obligation to prevent such acts.¹¹⁵ According to the Court, States cannot be held responsible for all human rights violations occurring within their jurisdiction perpetrated by actors who are not their agents.¹¹⁶ When analyzing a specific case in order to determine State responsibility, it must be verified whether, at the time of the events, State authorities knew or should have known about the real and immediate risk to the person and, if they did know, whether they failed to take the necessary measures within their authority to prevent or avoid the risk.¹¹⁷ The ECtHR has applied the same test in cases involving human trafficking, such as *Rantsev v. Cyprus and Russia*.¹¹⁸

95. The United Nations Working Group on Trafficking in Persons has recognized that technology, and social media in particular, has become a tool for recruitment, as well as for the prevention and investigation of human trafficking.¹¹⁹ With the rise of new technologies, some traffickers have adapted their *modus operandi* to cyberspace, integrating technology and taking advantage of digital platforms to advertise, recruit, and exploit victims.¹²⁰ At the same time, the internet provides traffickers with a mask of anonymity that allows them to interact with potential victims through social media and communication platforms¹²¹ without traditional physical and geographical limitations.¹²² CEDAW has emphasized the role of information and communications technology, social media, and messaging apps in the recruitment and exploitation of women and girls, highlighting that abuse of a position of vulnerability is the most common means used to commit the crime of

¹⁰⁹ Every person has the right to recognition as a person before the law.

¹¹⁰ Toda Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

¹¹¹ Every person has the right to have his physical, mental, and moral integrity respected.

¹¹² Every person has the right to personal liberty and security.

¹¹³ The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

¹¹⁴ Article 7 of the Belém do Pará Convention establishes: “The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: [...] b. apply due diligence to prevent, investigate and impose penalties for violence against women; c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary [...]; f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures; g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies [...]”

¹¹⁵ I/A Court H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, para. 321.

¹¹⁶ I/A Court H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, para. 323.

¹¹⁷ I/A Court H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, para. 324.

¹¹⁸ ECtHR. *Case of Rantsev v. Cyprus and Russia*. Application No. 25965/04. Judgment 7 January 2010. Final 10/05/2010. para. 286.

¹¹⁹ UNODC. Working Group on Trafficking in Persons. [Successful strategies for addressing the use of technology to facilitate trafficking in persons and to prevent and investigate trafficking in persons](#), CTOC/COP/WG.4/2021/2, July 23, 2021, paras. 9-12.

¹²⁰ UNODC. [Global Report on Trafficking in Persons 2020](#), January 31, 2021, p. 119.

¹²¹ Working Group on Trafficking in Persons. [Successful strategies for addressing the use of technology to facilitate trafficking in persons and to prevent and investigate trafficking in persons](#), CTOC/COP/WG.4/2021/2, July 23, 2021, paras. 9-12.

¹²² UNODC. Working Group on Trafficking in Persons. [Successful strategies for addressing the use of technology to facilitate trafficking in persons and to prevent and investigate trafficking in persons](#), CTOC/COP/WG.4/2021/2, July 23, 2021, paras. 9-12.

trafficking and that victims are often subjected to multiple forms of exploitation.¹²³ In light of these situations and based on their international obligations, States should have a comprehensive prevention strategy. That is, they should be able to prevent risk factors while also strengthening institutions to provide an effective response to the phenomenon of contemporary slavery/trafficking in persons.¹²⁴ Operational measures taken by States to prevent human trafficking and protect the rights of persons may include those needed to strengthen national coordination among different anti-trafficking bodies and suppress demand for all forms of human exploitation.¹²⁵

3. Arguments of the parties

96. Based on the considerations presented, the parties should apply the model for analyzing the duty of prevention to the facts. This involves determining (i) whether Aravania knew or should have known about the risk to the alleged victims, (ii) whether it was a real and immediate risk, and (iii) whether the measures it took could reasonably have been expected to prevent the risk. The representatives of the alleged victims are expected to emphasize that the State's inaction allowed the crime of human trafficking to occur. The State, as discussed earlier, may deny that the case constitutes human trafficking in such a way as to "trigger" its duty to prevent it.
97. Because human trafficking is a multi-offense crime, the parties should make their arguments in connection with Articles 3 (right to juridical personality), 5 (humane treatment), 6 (freedom from slavery and involuntary servitude), and 7 (personal liberty) of the ACHR in relation to the duty of prevention established in Article 1.1 thereof.
98. They may also invoke Article 26 and the State's obligation to ensure employment under decent conditions through nondiscriminatory access. To support this position, the teams may argue that eliminating discrimination is fundamental to the enjoyment of economic, social, and cultural rights on an equal footing.¹²⁶ To this end, they may develop arguments on the general obligations arising from the right to work; namely, that the obligation to respect rights requires States to refrain from interfering directly or indirectly with the enjoyment of that right. The obligation to protect rights requires measures to prevent third parties from interfering with their enjoyment. The obligation to implement rights includes the obligations to provide for, facilitate, and promote that right.¹²⁷ Furthermore, it should be understood that the State has a duty to prevent trafficking with strict due diligence, as it is a form of violence against women, and Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (of Belém do Pará) is applicable.

a. Representatives of the alleged victims

99. **With regard to whether the State knew or should have known about the situation of risk**, the victims' representatives may first note that States have positive obligations to prevent trafficking within their jurisdictions, regardless of whether it occurs through digital means.
100. With regard to obligations relating to trafficking in persons, the *OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking* provide that all States, regardless of their place in the trafficking cycle, have an international legal responsibility to exercise due diligence in preventing trafficking in persons.¹²⁸ This prevention can be carried out in three main areas: reducing the demand for human trafficking, addressing the factors that increase vulnerability to trafficking, and identifying and eradicating public sector involvement and related corruption in human trafficking.¹²⁹ It is crucial for States to have a comprehensive prevention strategy that can address risk factors, and to strengthen institutions to provide an effective response

¹²³ CEDAW. [General recommendation No. 38 \(2020\) on trafficking in women and girls in the context of global migration](#). CEDAW/C/GC/38, 20 November 2020, para. 12.

¹²⁴ I/A Court H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, para. 320.

¹²⁵ ECtHR. *Case of V.C.L. and A.N. V. The United Kingdom*. Applications nos. 77587/12 and 74603/12. Judgment February 16, 2021, para. 153.

¹²⁶ UN. Committee on Economic, Social and Cultural Rights. [General Comment No. 16 The equal right of men and women to the enjoyment of all economic, social and cultural rights \(art. 3 of the International Covenant on Economic, Social and Cultural Rights\)](#), E/C.12/2005/4, 11 August 2005, para. 3.

¹²⁷ UN. Committee on Economic, Social and Cultural Rights. [General Comment No. 18: The Right to Work](#), U.N. Doc. E/C.12/GC/18, 24 November 2005, para. 22.

¹²⁸ OHCHR. [Recommended Principles and Guidelines on Human Rights and Human Trafficking](#), 2010.

¹²⁹ OHCHR. [Recommended Principles and Guidelines on Human Rights and Human Trafficking](#), 2010, Principles 4, 5, and 6 and related guidelines.

to human trafficking.¹³⁰ In the case of *V.C.L. and A.N. v. the United Kingdom*, the ECtHR found that only a combination of measures addressing these various dimensions can be effective in combating trafficking.¹³¹

101. The victims' representatives may refer to the socioeconomic context of Campo de Santana as conducive to human trafficking. The women faced structural inequality, lack of opportunities, and a notable absence of government services such as education and social security. The intersectionality between poverty and gender among the alleged victims in this context increased their vulnerability and risk of discrimination.¹³² In this context, the representatives can argue that the State was aware of the specific risk to women in Campo de Santana because of the anonymous complaint filed in October 2012 reporting that several women from Campo de Santana were receiving job offers through videos on *ClicTik*, where it was known that women were being targeted as victims of forced labor.

102. **As to whether there was a real and immediate risk**, the victims' representatives should maintain that there was, because the complaint concerned women who could be victims of forced labor. Based on this complaint, the State was also aware that recruitment activities (an element characteristic of human trafficking) were taking place within its jurisdiction, seeking to influence the alleged victims—who were vulnerable due to a lack of alternatives—to accept the offer to be taken to another State. It also had an enhanced obligation arising from the prevention of trafficking as a form of violence against women, as established in the Belém do Pará Convention. The victims' representatives may use references such as the UNODC Global Report on Trafficking in Persons,¹³³ which explains that there is a very clear modus operandi through internet technologies, one of which is posting advertisements online and waiting for responses from potential customers or victims (fishing). Traffickers use fishing strategies to recruit victims through publicly accessible advertisements, typically offering well-paid jobs, prompting potential victims to make initial contact with traffickers. They may also note that bodies such as CEDAW have noted the impact of social media on the recruitment and exploitation of women and girls for human trafficking.¹³⁴ They can highlight the existence of intersectional forms of discrimination associated with the victims' status as women, such as their age or poverty,¹³⁵ that placed them at particular risk.

103. The risk was also immediate given that the alleged victims were being recruited when the complaint was filed, days before A.A. and the other nine women were transferred to Lusaria in November 2012.

104. Lastly, regarding whether the State adopted **measures that could reasonably have been expected to prevent the risk**, it is up to the victims' representatives to specify what measures should have been taken to prevent the trafficking of the alleged victims. To this end, it can refer generally to the measures that the State should have taken to regulate the digital space as part of a comprehensive trafficking prevention policy, and specifically to the action it should have taken in response to the specific complaint.

105. With regard to the first type of argument, the victims' representatives may assert that, as part of a comprehensive policy to prevent human trafficking, the State should monitor social media by moderating the content of social media platforms. The Office of the Special Rapporteur for Freedom of Expression (SRFOE) of the IACHR has referred to content moderation as a legitimate measure to counteract the negative effects of such content and its impact on human rights.¹³⁶ This legal framework requires States to harmonize content moderation and curation rules with inter-American standards. Accordingly, platforms would only be able to

¹³⁰ I/A Court H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, para. 320.

¹³¹ The ECtHR has held that the set of safeguards established under domestic law must be adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking. In this regard, it has considered that, in addition to establishing criminal penalties for perpetrators of human trafficking, appropriate measures are needed to regulate the businesses that are often used as fronts for human trafficking. Victims of trafficking should also be allowed to claim compensation from their traffickers for loss of income. It has similarly considered that this type of measure under the Convention entails a positive obligation on States to address this category of trafficking through a legal and regulatory framework for the prevention of human trafficking and labor exploitation, the protection of victims, and the investigation of suspected cases of trafficking of this nature, together with the criminalization and effective prosecution of any act aimed at keeping a person in such a situation. See ECtHR, *Case of V.C.L. and A.N. v. The United Kingdom*. Applications nos. 77587/12 and 74603/12. Judgment February 16, 2021, para. 151; *Case of Chowdury and Others v. Greece*, Application No. 21884/15, Judgment 30 June 2017, paras. 86-89, 103, 104.

¹³² IACHR. *Movilidad humana y obligaciones de protección Hacia una perspectiva subregional* [Human Mobility and the Obligation to Protect: Toward a Subregional Perspective] (in Spanish). OEA/Ser.L/V/II. Doc. 194. July 21, 2023, para. 51.

¹³³ UNODC. *Global Report on Trafficking in Persons*, 202, p. 127.

¹³⁴ CEDAW. *General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration*, CEDAW/C/GC/38, 20 November 2020, para. 12.

¹³⁵ IACHR. *Movilidad humana y obligaciones de protección Hacia una perspectiva subregional* [Human Mobility and the Obligation to Protect: Toward a Subregional Perspective] (in Spanish). OEA/Ser.L/V/II. Doc. 194. July 21, 2023, para. 52.

¹³⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression, *Digital Inclusion and International Content Governance*, OEA/Ser.L/V/II, IACHR/RELE/INF. 28/24, June 2024, para. 187.

restrict freedom of expression under strict conditions of legality, necessity, and proportionality.¹³⁷ Although the information provided in the case indicates that Aravania had a comprehensive anti-trafficking policy, its components are not explicitly identified in the case. Therefore, the victims' representatives should focus their arguments on explaining how this policy was not applied or failed to cover the alleged victims' circumstances, depending on how the State develops its argument.

106. In this specific case, after the complaint was received, there is no evidence that the State took any measures to prevent the transfer of the alleged victims to Lusaria. According to the facts, the prosecutor's office concluded that no crime had been committed, given that the videos themselves did not constitute illegal action; instead, it concluded that labor regulations may have been violated outside its jurisdiction. However, the alleged victims' representatives may assert, first, that the State could have exercised a degree of ex-post moderation or automatic screening to identify clearly illegal comments as soon as possible and ensure their removal within a reasonable time, either by the provider or by the account holder, even without being notified by the victims.¹³⁸ It also could have stepped up anti-trafficking campaigns targeting that area.
107. The victims' representatives may also point to certain measures for investigating this type of incident that the State failed to take. For example, the Inter-Agency Coordination Group Against Trafficking in Persons (ICAT) has suggested the implementation of proactive investigative techniques such as surveillance (including of digital spaces), wiretapping, the use of informants, and undercover operations. Proactive investigation can help reduce reliance on victim testimony while helping investigators move up the chain to identify others involved in order to dismantle networks.¹³⁹ Similarly, in the case of *S.M. v. Croatia*, the ECtHR found that the failure to investigate obvious lines of inquiry that could have clarified the true nature of the relationship between the victim and the accused constituted an omission.¹⁴⁰ It is also important to have a proper understanding of what forced labor and exploitation mean, as well as their potential seriousness.¹⁴¹ The Aravanian authorities focused on the fact that the complaints cited inadequate working conditions, without considering the possibility of human trafficking, which—given that the incidents took place in Lusaria—would have required investigating the possibility of transnational trafficking networks.¹⁴²
108. Therefore, the State should have opened an effective criminal investigation on its own initiative,¹⁴³ to at least try to visit the area, interview people—especially women in Campo de Santana—and investigate the risk reported in Lusaria. However, no such investigation was carried out in this case. The alleged victims should allege the absence of a gender perspective in the actions taken by the State. To this end, they may assert that Article 7 of the Belém do Pará Convention complements the State's obligations regarding compliance with the rights enshrined in the ACHR¹⁴⁴ to prevent violence against women. The Inter-American Court has emphasized this point when determining the risk of special and differentiated impacts on the physical, sexual, and/or psychological integrity of women in a given case, which triggers the duty of enhanced or strict due diligence.¹⁴⁵
109. In the case of *Hacienda Brasil Verde v. Brazil*, the Inter-American Court held that a State incurs international responsibility if it fails to act in the face of clear indications of human trafficking.¹⁴⁶ Accordingly, the victims' representatives could conclude that the State's failure to take measures that could reasonably have been expected to prevent the risk in Aravania, despite knowing about that risk, was a breach of its duty of prevention.

a. The State

110. The State may initially emphasize that the acts related to the hiring of A.A. and the other nine women were not committed by its agents but by third parties, and that there is no evidence of its collaboration, acquiescence,

¹³⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression, Digital Inclusion and International Content Governance, OEA/Ser.L/V/II, IACHR/RELE/INF. 28/24, June 2024, para. 253.

¹³⁸ ECtHR. *Case of Sanchez v. France*, Application No. 45581/15. Judgment 15 May 2023, para. 190.

¹³⁹ ICAT. A Toolkit for guidance in designing and evaluating counter-trafficking programmes. Harnessing accumulated knowledge to respond to trafficking in persons, 2017, p. 43.

¹⁴⁰ ECtHR. *Case of S.M. v. Croatia*, Application No. 60561/14. Judgment 25 June 2020, para. 336.

¹⁴¹ ECtHR. *Case of Chowdury and Others v. Greece*, Application No. 21884/15, Judgment 30 June 2017, paras. 123-127.

¹⁴² ECtHR. *Case of Rantsev v. Cyprus and Russia*, Application No. 25965/04. Judgment 7 January 2010. Final 10/05/2010, paras. 308.

¹⁴³ ECtHR. *Case of Zoletic and others v. Azerbaijan*, Application No. 20116/12, Judgment 7 October 2021, paras. 200.

¹⁴⁴ I/A Court H.R., *Case of Velásquez Paiz et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 19, 2015. Series C No. 307, para. 108.

¹⁴⁵ I/A Court H.R., *Case of López Soto et al. v. Venezuela*. Merits, Reparations and Costs. Judgment of September 26, 2018. Series C No. 362, para. 141.

¹⁴⁶ I/A Court H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, para. 320.

or tolerance. In this regard, the State cannot be held directly responsible for the events, and it is therefore appropriate to analyze whether it fulfilled its duty of prevention, which is an obligation of means or behavior, noncompliance with which cannot be demonstrated by the mere fact that a right has been violated.¹⁴⁷ Consequently, the prevention test mentioned above in paragraph 96 should be applied. As explained above, the facts of the case indicate that Aravania has a comprehensive trafficking prevention policy. But its details are not specified, so the teams representing the State can incorporate various components to try to resolve the issue raised.

111. **As to whether the State knew or should have known about the situation of risk**, the State could indicate that, according to the facts of the case, Campo de Santana is a rural area where women have greater unpaid care burdens than men and face difficulties in meeting their families' living expenses. This context reveals a socioeconomic problem, in which the State must provide incentives for women to return to the workforce. However, it is not an indicator that women living there are victims of trafficking. In any case, in keeping with the case law of the Inter-American Court, the State could emphasize that a context in itself does not give rise to international responsibility, meaning that it must be proven in this specific case how it knew or should have known about the situation of risk.¹⁴⁸
112. With regard to the anonymous complaint filed in October 2012, the State could note that it became aware through this complaint that women in Campo de Santana were receiving job offers in Lusaria through *ClicTik* videos, allegedly being targeted as victims of forced labor. However, this does not mean that the State was aware of a real and immediate risk, or that it failed to take measures that could reasonably have been expected of it.
113. Thus, **as to whether the risk was real and imminent and whether it took the measures that could reasonably be expected to prevent that risk**, the State can assert that, after receiving and examining the complaint, it determined that no crime had been committed because the videos did not constitute illegal action; rather, they concerned possible noncompliance with labor regulations outside its jurisdiction.
114. Regarding the first element, the State could indicate that it reviewed the content of Hugo Maldini's videos that were broadcast in August 2012, but was unable to determine that they constituted a crime. Based on the facts of the case, it could first note that the videos showed the environmental benefits of *Aerisflora* and included testimonies from women who planted it in Lusaria or received social services thanks to their work there. However, none of the filters or hashtags associated with the videos contained any actual job offers (see paragraph 29 of the hypothetical case).
115. Second, the State could say that even though the complaint alleged that these videos were used to find women and make them victims of forced labor, this was hard to prove because the complaint was anonymous, so it was impossible to identify the group of women who might have been affected. The State could argue, as recognized by the ECtHR, that given the difficulties involved in policing modern societies and the operational choices which must be made in terms of priorities and resources, the obligation to take operational measures must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities.¹⁴⁹
116. Third, the State could indicate that, based on the information available to it, the removal of Hugo Maldini's videos from *ClicTik* could undermine the free dissemination of ideas on social media, which is protected by Article 13 of the ACHR. The State could note that while it could moderate content by removing, filtering, or blocking certain videos from the digital space, such moderation must be consistent with the restrictions on freedom of expression allowed under Article 13.2 of the Convention. This means that content moderation on the internet must be limited and meet the requirements of legality, legitimate purpose, and necessity in a democratic society; that is, it must be suitable and proportionate.¹⁵⁰

¹⁴⁷ I/A Court H.R., *Case of López Soto et al. v. Venezuela*. Merits, Reparations and Costs. Judgment of September 26, 2018. Series C No. 362, para. 130.

¹⁴⁸ In the case of *González et al. ("Cotton Field") v. Mexico*, the Court found that "... Even though the context of this case and the State's international obligations impose on it a greater responsibility [...] these factors do not impose unlimited responsibility for any unlawful act against [the] women." See I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 282.

¹⁴⁹ ECtHR. *Case of Rantsev v. Cyprus and Russia*. Application No. 25965/04. Judgment 7 January 2010. Final 10/05/2010, para. 287.

¹⁵⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression, *Digital Inclusion and International Content Governance*. OEA/Ser.L/V/II, IACHR/RELE/INF. 28/24, June 2024, para. 205.

117. In this specific case, the restrictions test is not satisfied with regard to Maldini’s videos because, although protecting women’s rights against all forms of violence is a legitimate aim, the restriction is not a necessary means to that end, nor is it necessary in a democratic society. The videos promoted the advantages of *Aerisflora*, a plant with proven benefits that the State actually intended to transplant because of its usefulness in combating the effects of climate change. The videos also showed the economic and personal well-being of the women working on these plantations, sending a message that empowered women. Consequently, blocking or removing this content would have affected Maldini’s freedom of expression. The State could emphasize the importance of ensuring that content moderation does not become a tool for unduly restricting freedom of expression, as it is only permissible in very exceptional cases, primarily when crimes are committed through the content itself, such as hate speech and child pornography.¹⁵¹

118. Finally, the State could argue that the previous determination that there was no real and immediate risk to the alleged victims’ rights also confirms that the case should not be considered trafficking, since the elements of trafficking have not been met (*supra*, paras. 88 and 89). The State could then argue that what happened in its jurisdiction in relation to A.A. and the other nine women was simply the voluntary acceptance of employment after they had expressed their interest by contacting an employer on their own initiative. The job offer contained information about the working conditions, which were indeed what they found upon arrival in Lusaria. Furthermore, the facts of the case show no evidence of any kind of direct coercion or forced transfer, which are essential elements in human trafficking. The workers also signed formal contracts, which—although it does not rule out the possibility of exploitation—suggests that the employment relationship was regulated, including with regard to access to education and health services in Lusaria. In addition, the cooperation agreement between Aravania and Lusaria included State supervision and ensured that working conditions in Lusaria for the *Aerisflora* project were compatible with its laws. In fact, Lusaria submitted reports on working conditions. The victims’ representatives may also argue that Aravania already has labor laws that comply with international standards in this area (see para. 21 of the hypothetical case). Consequently, the State bears no responsibility for these acts.

Main arguments in relation to the State’s responsibility for Hugo Maldini’s activities in Aravania	
Victims	State
<ul style="list-style-type: none"> - The requirements for establishing the State’s responsibility for failure to prevent the crime of trafficking and, consequently, for the violation of the rights enshrined in the Convention, given that this is a multi-offense violation, have been met: - With regard to whether the State knew or should have known about the situation of risk: States have a legal responsibility to exercise due diligence in preventing human trafficking, including when it occurs through digital means. Based on the context and the specific complaint filed in October 2012, the State became aware of videos on <i>ClicTik</i> offering jobs in Lusaria, where women were known to be taken as victims of forced labor. - As to whether it was a situation of real and immediate risk: This was a situation of real and immediate risk, as it involved the use of videos that were being disseminated to recruit women and transferred from Aravania to Lusaria for the purpose of exploitation. The State should have identified this as a human trafficking risk for women. 	<ul style="list-style-type: none"> - The requirements for establishing the State’s responsibility for failure to prevent the crime of trafficking and, consequently, for the violation of the rights enshrined in the Convention, given that this is a multi-offense violation, have not been met: - With regard to whether the State knew or should have known about the situation of risk: A context in itself does not give rise to international responsibility, so the manner in which the State knew or should have known of the risk must be proven in this specific case. Although the State was aware of a complaint in October 2012, there was no real and immediate risk, and it took the measures that could reasonably be expected. - As to whether the risk was real and immediate and whether it took the measures that could reasonably be expected to prevent such risk: The State reviewed the videos and determined that they were not offering employment, but rather showcased the benefits of growing <i>Aerisflora</i> and featured women talking about the favorable working conditions they enjoyed. They therefore did not constitute a real and immediate risk or any crime that needed to be investigated.

¹⁵¹ ECtHR. *Case of Sanchez v. France*. Application No. 45581/15. Judgment 15 May 2023, para. 209; ECtHR. *Case of Amvrosios-Athanasios v. Greece*, Application No. 47833/20. Judgment 27 June 2023, paras. 43, 47; IACHR. Office of the Special Rapporteur for Freedom of Expression, Digital Inclusion and International Content Governance, OEA/Ser.L/V/II, IACHR/RELE/INF. 28/24, June 2024, para. 258.

<p>- As to whether the State took measures that could reasonably have been expected to prevent the risk: The State had an obligation to take general and specific measures to prevent human trafficking and failed to do so. In particular, it failed to conduct a diligent investigation into the complaint (it did not visit Campo de Santana, did not seek to interview people, including women, and did not investigate the situation in Lusaria). It also could have moderated the content of the videos or carried out a campaign focused on preventing human trafficking in Campo de Santana.</p>	<p>- That determination proves that the case should not be analyzed as a trafficking case, and that no responsibility can be attributed to the State for its occurrence. Rather, the matter concerns the working conditions of the alleged victims in Lusaria.</p>
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C. Analysis of State responsibility for protecting the alleged victims after their return to Aravania

1. Issues

119. The parties may debate the issue of whether Aravania is responsible for failing to protect A.A. and the other nine women from being trafficked once they reentered the State on January 5, 2014, and were taken to Primelia, in Velora. In that case, the parties will argue as to whether the State fulfilled its duty to protect the trafficking victims by applying the prevention test explained above.

2. Arguments of the parties

a. Representatives of the alleged victims

120. The alleged victims' representatives should argue that the State of Aravania knew or should have known that the alleged victims were being trafficked in the State of Lusaria; that they therefore faced a real and immediate risk; and that the State failed to take the measures that could reasonably have been expected to mitigate that risk.

121. Thus, the victims' representatives should assert **that the State knew or at least should have known about** the occurrence of human trafficking in Lusaria, and specifically at Finca El Dorado. In particular, the State had received a complaint in October 2012 alleging that women from Aravania were being taken to Lusaria to be subjected to forced labor. As described in the facts of the case, the ILO had reported that Lusaria was the country in the Americas where people worked the longest hours. A new complaint was also received on October 25, 2013, in which a woman specifically reported that while at Finca El Dorado, she was denied payment and "lived in extreme conditions" under which the promises made to her were not fulfilled.

122. Furthermore, if the State had properly exercised the supervisory mechanism established in Article 3.3 of the cooperation agreement by conducting supervision visits to El Dorado without prior notice, it would have been aware of the specific situation of the alleged victims.¹⁵²

123. The victims' representatives could also argue that it is vitally important to have an effective inspection, police, and judicial system to monitor workplaces, especially in high-risk areas or sectors; to identify and free victims; and to prosecute and punish those responsible for noncompliance, in line with the State's obligations.¹⁵³

¹⁵² It should be recalled that, in the case of *Rantsev v. Cyprus and Russia*, the ECtHR recognized its jurisdiction over transnational trafficking. It reasoned that, although some of the acts complained of had occurred outside Russia's jurisdiction, in Cyprus, Russia's obligations in the fight against trafficking in persons meant that it had jurisdiction to examine whether it had fulfilled its obligations (to protect the victim and investigate whether she had been trafficked) within the limits of its own jurisdiction. ECtHR. *Case of Rantsev v. Cyprus and Russia*. Application No. 25965/04. Judgment 7 January 2010. Final 10/05/2010, paras. 207-208.

¹⁵³ ILO. Guía para la prevención e identificación del trabajo forzoso dirigida a organizaciones de trabajadores (Guide for the prevention and identification of forced labor aimed at workers' organizations) (in Spanish only), 2015, pp. 53-54.

Adequate legislation is meaningless without proper enforcement.¹⁵⁴ Here, the victims' representatives could cite ILO Convention No. 81 on labor inspection, which underscores that labor inspection focuses primarily on general working conditions, occupational health and safety, employment, and labor relations.¹⁵⁵ To this end, on-site visits were necessary to check on the situation of the women workers, regardless of the reports received by Aravania. Such visits would have made it possible to verify the accuracy of these reports and identify the situation of exploitation in order to protect the victims.

124. **As to whether the risk was real and immediate**, the victims' representatives must prove that the victims were indeed victims of forced labor in Lusaria, which is one of the purposes of trafficking. To support their position, as mentioned above in paragraphs 77 et seq., they should describe how the elements of forced labor have been met, especially coercion or restrictions on the ability to freely leave the job. They should also consider the care work done by the alleged victims as "work" for the purpose of highlighting their actual working conditions, including working hours, as one of the indicators of forced labor.

125. **As to whether the State adopted measures that could reasonably have been expected to prevent the risk**, the victims' representatives could note that, although the exploitation initially occurred outside Aravania, the chain of events following January 5, 2014, when they reentered the country for the *Aerisflora* transplant procedure, did take place within its jurisdiction. At that point, the State had a duty to act with due diligence to protect the victims and prevent the exploitation from continuing. As stated in the facts of the case, the women entered formally through the legally recognized borders between Aravania and Lusaria, in compliance with immigration procedures and under the cooperation agreement. At these checkpoints, given the real and immediate risk that the State knew or should have known about, the Aravanian authorities should have protected the alleged victims from continuing to be trafficked. Here, the victims' representatives could explain what measures States should take to identify and protect victims of trafficking at border crossings.¹⁵⁶

126. For example, the Regional Guidelines for the Preliminary Identification and Referral Mechanisms for Migrant Populations in Vulnerable Situations of the Regional Conference on Migration indicate that protection and assistance procedures can be activated if a potential victim is effectively identified. These guidelines include a set of indicators for the preliminary identification of potential human trafficking victims and propose pathways and mechanisms for referral to specialized institutions or entities for comprehensive protection, as well as measures for specific assistance and care, such as meeting immediate needs related to food, clothing, shelter, and personal hygiene, among others.¹⁵⁷ If these guidelines had been followed in this specific case, questions could have been asked at the border to help spot possible signs of trafficking. For example, the indicators mentioned in these guidelines for profiles of potential human trafficking victims are designed to determine whether the person received a job offer, who made the offer, whether or not the person had identification and/or travel documents, whether they were subjected to control and surveillance, whether they were forced to work in activities or conditions different from those promised, exploitative situations, or abuse. There is no evidence that the authorities took any action to investigate these signs. On the contrary, it appears from the facts of the case that the report requested after the October complaint—a general document on compliance with the cooperation agreement—was not an adequate measure for determining whether exploitation was taking place. This is because the lack of contact with the alleged victims limited the possibilities of detecting signs such as coercion, deception, or control. Furthermore, the special mission only reviewed documentary or administrative compliance and did not activate any individual identification protocol or immediate protection mechanism. Based on this, Aravania decided that it was not necessary to conduct an inspection visit (see answer 10 of the clarification Q&A), which prevented it from determining whether exploitation was taking place.

127. With the correct identification, Aravania could have protected the alleged victims and proceeded to investigate, prosecute, and punish those alleged to have committed human trafficking. Indeed, despite the fact that Aravania has laws that define human trafficking and forced labor consistently with international standards, the authorities failed to identify A.A. and the other women as potential victims of trafficking. To support their argument, the victims' representatives may assert that the immigration authorities in Aravania could have taken

¹⁵⁴ ILO. [Human Trafficking and Forced Labour Exploitation. Guidelines for Legislation and Law Enforcement](#), 2005, p. 49.

¹⁵⁵ ILO. Labour Inspection Convention, 1947 (No. 81).

¹⁵⁶ IACHR. [Resolution 04/19](#), Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons. December 7, 2019, Principle 20.

¹⁵⁷ The objective of these guidelines is to provide member countries with general guidance for the development and implementation of preliminary mechanisms for identifying profiles and facilitating referrals for migrant populations in vulnerable situations. See Regional Conference on Migration (CRM). [Regional Guidelines for the Preliminary Identification and Referral Mechanisms for Migrant Populations in Vulnerable Situations](#), June 2013, pp. 4-5.

action when A.A. and the other nine women crossed the border into Aravania. The IOM has pointed out that, when a potential victim of human trafficking enters through regular channels, it is the responsibility of immigration and airport, maritime, or land border personnel at points of entry into the country to report any situation that is suspicious or indicative of the crime.¹⁵⁸ There are various instruments that include indicators that can alert authorities to a situation of trafficking.¹⁵⁹ Although they do not establish absolute determining factors, they can at least preliminarily establish that a person may be a victim of this crime.¹⁶⁰

128. In this specific case, there were two previous reports of possible labor exploitation and trafficking of women from Aravania in Lusaria (October 2012 and November 2013). The alleged victims returned to Aravania in buses with tinted windows accompanied by Hugo Maldini, which could have drawn the attention of the immigration authorities. When they detect a possible human trafficking case, the authorities should set up a referral channel or mechanism to pass on the information to specialized investigation and/or analysis units, while referring the alleged victim to State institutions that can provide the humanitarian assistance they need.¹⁶¹
129. Beyond border control, the State had a second opportunity to protect the alleged victims when they were at the premises in Primelia. Although the agreement described the activities to be carried out in Lusaria as part of a “special mission,” which gave them certain special characteristics, the State could have prevented the trafficking from continuing by protecting the alleged victims. In fact, when the Velora Police went to Primelia on January 14 to investigate the situation, they found the structure described by A.A., as well as pieces of *Aerisflora*. They also visited the residence, where they observed unmade beds and women’s clothing. In other words, Aravania had already entered the mission premises and arrested Hugo Maldini. However, there is no evidence that the State of Aravania has taken additional steps to thoroughly and diligently investigate what happened in order to identify other perpetrators and punish them in accordance with the law. That is, the State failed to conduct an investigation on its own initiative, without delay, seriously, impartially, and effectively.¹⁶²
130. The complete failure to take measures to protect alleged victims in these two areas demonstrates the State’s lack of diligence in preventing trafficking. Aravania not only should have been aware of the risk of trafficking, but also had a real and concrete opportunity to prevent it. According to the facts of the case, the State only intervened when A.A. escaped and went to the police; the trafficking did not end as a result of State action, but rather as a result of the victim’s own actions. This lack of action by the State is also contrary to its obligations under the Belém do Pará Convention, specifically the obligation to exercise due diligence in cases of violence against women by adopting and effectively enforcing legal protection frameworks, as well as prevention policies and practices that make it possible to respond effectively to complaints. The obligation to prevent also requires the State to identify and remove the underlying causes of such violence and the actors who contribute to its prevalence.¹⁶³

State

131. To counter the arguments put forward by the representatives of the alleged victims, the State is expected to explain why there was insufficient evidence for it to be aware of a real and immediate risk of human trafficking, and why it had no real possibility of preventing it.
132. An initial argument should underscore that the events described by the alleged victims’ representatives occurred under the jurisdiction of Lusaria and not Aravania, and therefore responsibility cannot be attributed to the latter. To this end, the State could recall that, although the bodies of the inter-American system have affirmed

¹⁵⁸ IOM. Guide for the Detection of Cases of Trafficking in Persons among Migrant Populations for personnel of the National Migration Service, National Police, National Border Service and Civil Society, 2024, p. 34.

¹⁵⁹ IOM. Manual para la detección del delito de trata de personas orientado a las autoridades migratorias (Guide for the Detection of Cases of Trafficking in Persons among Migrant Populations for Immigration Authorities) (in Spanish), 2011. OSCE. Uniform Guidelines for the Identification and Referral of Victims of Human Trafficking within the Migrant and Refugee Reception Framework in the OSCE Region, 2019. IOM. Guia de identificação rápida de tráfico de pessoas em fronteiras do Mercosul e Estados associados (Guide for Rapid Identification of Human Trafficking at Mercosur Borders and Associated States) (in Portuguese), 2025.

¹⁶⁰ IOM. Guide for the Detection of Cases of Trafficking in Persons among Migrant Populations for personnel of the National Migration Service, National Police, National Border Service and Civil Society, 2024, p. 37.

¹⁶¹ IOM. Manual para la detección del delito de trata de personas orientado a las autoridades migratorias (Guide for the Detection of Cases of Trafficking in Persons among Migrant Populations for Immigration Authorities) (in Spanish), 2011, pp. 96-97.

¹⁶² I/A Court H.R., *Case of Velásquez Paiz et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 19, 2015. Series C No. 307, para. 143.

¹⁶³ I/A Court H.R., *Case of López Soto et al. v. Venezuela*. Merits, Reparations and Costs. Judgment of September 26, 2018. Series C No. 362, paras. 131, 134.

that the concept of jurisdiction is broader than the concept of “territory,”¹⁶⁴ jurisdiction is limited to circumstances in which the State has effective control and authority over that territory,¹⁶⁵ which opens the door to extraterritorial jurisdiction.¹⁶⁶ However, the cooperation agreement clearly and directly established that supervisory activities would be carried out under their respective jurisdictions in compliance with labor laws, such that although Aravania could conduct certain inspections at Finca El Dorado in Lusaria, this did not mean that it would exercise control or authority in Lusaria. Consequently, it would only have had jurisdiction when the alleged victims reentered Aravania on January 5, 2014.

133. When applying the test for the prevention of violations by third parties, the State should explain why it **did not know or should not have known about a real and immediate risk**. It can argue that although the cooperation agreement established its own monitoring mechanism through visits, this was a discretionary power. As such, the State was not obligated to identify situations posing a risk to human rights through this mechanism, especially since the events in question occurred outside its jurisdiction and Lusaria was responsible for safeguarding workers’ rights. The monitoring mechanism was primarily intended to alert the State of Lusaria to situations that may have violated the agreement, which would then be settled through the arbitration panel provided for in the agreement.
134. The State could also acknowledge that it became aware of an alleged situation of risk through the report dated October 25, 2013. However, **it took measures that could reasonably be expected to prevent risk**, considering that it requested a report from the State of Lusaria, which was received on December 10, 2013, and did not reveal the existence of exploitative conditions. Furthermore, these were acts that could not be investigated criminally because they occurred outside its jurisdiction, and no obligation to establish universal jurisdiction for acts committed beyond national borders has been recognized in relation to trafficking.¹⁶⁷ In that regard, the State was not required to take any measures to protect the alleged victims when they passed through the immigration checkpoints or when they were in Primelia, Velora.
135. In sum, the State should maintain that, although the alleged victims returned to Aravania for the *Aerisflora* transplant procedure, there was insufficient information at that time to determine that they were victims of trafficking and that they should receive special protection.
136. However, when the State was informed directly of the situation by A.A. on January 14, 2014, the police visited the premises in Primelia that same day, arrested Maldini, and took steps to bring charges against him. The State can therefore argue that it acted diligently and in accordance with its enhanced obligation to prevent any violence against women that the alleged victims may have been facing.

¹⁶⁴ IACHR. Report No. 121/18. Case 10.573. Merits (Publication). José Isabel Salas Galindo and Others. United States. October 5, 2018, paras. 307-308; I/A Court H.R., The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 73.

¹⁶⁵ IACHR. Report No. 112/10, Inter-state Petition PI-02. Admissibility. Case of Franklin Guillermo Aisalla Molina, Ecuador v. Colombia. October 21, 2010, paras. 98 et seq.

¹⁶⁶ I/A Court H.R., The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 93.

¹⁶⁷ ECtHR. *Case of J. and others V. Austria*. Application No. 58216/12. Judgment 17 April 2017, para. 114.

Main arguments in relation to the State's responsibility to protect alleged victims after their return to Aravania

Victims	State
<ul style="list-style-type: none"> - The State knew or at least should have known about the occurrence of human trafficking in Lusaria, and specifically at Finca El Dorado. If the State had properly exercised the supervisory mechanism established in Article 3.3 of the cooperation agreement regarding activities at El Dorado, it would have been aware of the exploitative situation in which the alleged victims found themselves. This is compounded by the fact that the State received a complaint in November 2013 in which a woman stated that while she was working at El Dorado, she lived in "extreme conditions" and was not given what was promised in the videos that led her to the job. - The State could have taken measures reasonably expected to prevent risk when the victims reentered the jurisdiction of Aravania for the <i>Aerisflora</i> transplant. The State had a duty to act with due diligence to protect the victims and prevent the exploitation from continuing. This could have been done when the victims entered through the immigration checkpoints at Aravania's border or in Primelia. 	<ul style="list-style-type: none"> - There was no reason to believe that the State knew or should have known about a real and immediate situation of risk. Aravania was under no obligation to identify situations of risk affecting human rights, as these events occurred outside its jurisdiction, and Lusaria was responsible for ensuring the workers' rights. The complaint filed in November 2013 was properly handled. - Despite not being aware of any real risk, the State took measures that could reasonably be expected to prevent risk; it requested a report from the State of Lusaria, which did not reveal any conditions of exploitation.

D. Analysis of the State's responsibility to investigate, prosecute, and punish (Articles 8¹⁶⁸ and 25¹⁶⁹ in relation to Articles 1.1¹⁷⁰ and 2¹⁷¹ of the American Convention, as well as Article 7 of the Belém do Pará Convention¹⁷²)

1. Issues

137. The parties should discuss whether the State of Aravania investigated with due diligence and, if applicable, punished those responsible for the acts said to have violated the alleged victims' rights. The teams are expected to carry out an analysis that identifies two points in time at which the acts could have been investigated and punished, taking account of the various implications arising from the immunity Mr. Maldini enjoyed while he was participating in the special mission: (i) before November 24, 2012, when the group of 60 women and their

¹⁶⁸ Article 8 of the ACHR establishes that: "Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature. 2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law [...]."

¹⁶⁹ Article 25.1 of the ACHR provides that: "Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties."

¹⁷⁰ Article 1.1 of the ACHR establishes that: "1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

¹⁷¹ Article 2 of the ACHR states: "Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms."

¹⁷² Article 7 of the Belém do Pará Convention establishes that: "Article 7 of the Belém do Pará Convention establishes: "The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: [...] b. apply due diligence to prevent, investigate and impose penalties for violence against women; c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary [...]; f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures; g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies [...]."

dependents were transferred to Lusaria; (iii) after January 5, 2014, when A.A. and the nine other women were taken to work in Primelia, Aravania.

2. Regarding the acts committed in Aravania before the alleged victims entered Lusaria

138. The parties may debate whether the State investigated with due diligence the facts relating to the recruitment and transfer of A.A. and the other nine women. In particular, they should focus their analysis on the State's response to the complaint filed in October 2012, one month before November 24, 2012, when A.A. was transferred to Lusaria to work at El Dorado. During this period, Hugo Maldini did not have diplomatic immunity; neither the cooperation agreement, nor the VCDR, nor the CSM provides for the retroactive application of immunity.

a. Arguments of the parties

i. Representatives of the alleged victims

139. The victims' representatives should maintain that the State failed to duly investigate the complaint received in October 2012, when the Office of the Prosecutor General of Aravania received an anonymous tip via the emergency hotline that several women from Campo de Santana were receiving job offers in Lusaria—where it had become known that women were being taken to be victims of forced labor—through *ClicTik* videos. The victims' representatives should link the complaint to what happened to the alleged victims and, as stated above in the section on the duty to prevent, should argue that the *notitia criminis* was sufficient for the State to open an investigation on its own initiative.

140. The Inter-American Court and the European Court of Human Rights have established that the obligation to investigate human trafficking should not depend on the filing of a complaint; once the authorities are aware of the situation, they must act on their own initiative. Furthermore, it has been held that the due diligence requirement is implicit in all cases. Even when there is a chance to rescue victims from the situation reported, the investigation should be carried out urgently.¹⁷³

141. In this particular case, the State determined that no crime had been committed, primarily because the videos themselves did not constitute an illegal act. The victims' representatives should argue that, although the videos did not formally contain an offer of employment, such material is often used to recruit trafficking victims.¹⁷⁴ This information was expressly supplemented by information indicating that the videos were being used for the purpose of labor exploitation of women in a third country.

142. Based on studies conducted by UNODC, the victims' representatives can recall that traffickers have integrated the use of the internet and social media into their recruitment of victims. In particular, UNODC¹⁷⁵ has identified two types of strategies: "hunting," in which a trafficker actively pursues a victim, usually on social media, and "fishing," in which criminals post advertisements and wait for potential victims to respond. It was precisely this second model that Hugo Maldini used to traffic victims by publishing content that ultimately led to the women's recruitment. Consistent with the Palermo Protocol, Article 145 of the Criminal Code of Aravania defines the crime of human trafficking to include the recruitment of alleged victims among the activities that constitute trafficking. The State, therefore, should have diligently investigated that *notitia criminis*.

143. In its *Toolkit to Combat Trafficking in Persons*, UNODC has emphasized that when reports of trafficking are received, even though there may be no opportunity to gather additional evidence, there should be an "immediate intervention against the traffickers in order to rescue other victims or to prevent further potential victims from being entrapped or to secure evidence that may otherwise be lost, or both," or at least the information or statement received should be used as a basis for an in-depth investigation of the traffickers. As for the possible difficulty of investigating the facts, given that the complainant was anonymous, it is important to recall that the UNODC Toolkit recommends conducting a proactive investigation that does not depend solely on the testimony of victims. To this end, they should use a combination of confidential information, human and technical

¹⁷³I/A Court H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, para. 364; ECtHR. *Case of Rantsev v. Cyprus and Russia*. Application No. 25965/04. Judgment 7 January 2010. Final 10/05/2010, para. 288.

¹⁷⁴UNODC. *Global Report on Trafficking in Persons 2024*, December 11, 2024, p. 97.

¹⁷⁵UNODC. *Human Rights Trafficking FAQs*; UNODC. *Global Report on Trafficking in Persons 2024*, December 11, 2024, pp. 97-98.

surveillance, undercover operations (where permitted by law), and standard investigative techniques to identify traffickers and ensure their effective prosecution.¹⁷⁶

144. In this specific case, there is no evidence that any action was taken in Campo de Santana, even though it was known that the events were taking place at a specific location, at a specific time, and against a specific group of people. The victims' representatives should argue that even the State had an enhanced obligation to investigate possible acts of violence against women arising from the Belém do Pará Convention.
145. Furthermore, although the fact that Hugo Maldini posted the videos from Lusaria could have undermined the possibility of an effective trial, the effect of the videos was felt in the jurisdiction of Aravania and there is no evidence that the State was aware of his location.

ii. The State

146. The State should maintain that the Office of the Prosecutor General of Aravania properly investigated the complaint received in October 2012, which concluded that Hugo Maldini's videos did not constitute a crime and that there were insufficient grounds to investigate the events as human trafficking.
147. The State could first note, as developed in the section on the duty to prevent (*supra*, para. 114), that the videos showed the environmental benefits of *Aerisflora* and featured testimonies from women who planted the crop in Lusaria or received social services for working there.
148. The State could thus argue that the dissemination of Maldini's videos was protected by Article 13 of the ACHR, as there was no legitimate reason to moderate their content by removing or blocking them for failure to meet the test for valid restrictions on the exercise of freedom of expression (*supra*, para. 116). In addition, in accordance with the international obligations of the State, any penalties on freedom of expression must be subsequent and non-criminal. The videos cannot be identified as types of speech that would be outside the scope of such protection and give rise to criminal penalties, which are limited under Article 13.5 of the ACHR to child pornography, direct and public incitements to genocide, and war propaganda and hate speech that constitute incitements to violence with the intent and ability to cause such violence.¹⁷⁷
149. With the above evidence, the State could say that, even though the *notitia criminis* indicated the videos were used to offer jobs and exploit women, the videos and hashtags did not actually make any job offers. Hence, the information before the State did not concern recruitment activities; rather, it concerned the dissemination of information about activities that were allegedly taking place under the jurisdiction of Lusaria. Lastly, the State could consistently argue that the case should not be considered trafficking because the elements of trafficking were not met. Furthermore, it was not aware of the specific recruitment and hiring of A.A. and the other nine women; therefore, strictly speaking, there was no possible criminal offense that could have been established.

¹⁷⁶ UNODC. Toolkit to Combat Trafficking in Persons. New York, 2007, pp. 69-70.

¹⁷⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework regarding the Right to Freedom of Expression, December 30, 2009, p. ix

Main arguments in relation to the duty to investigate, prosecute, and punish the acts committed in Aravania before the alleged victims entered Lusaria

Victims	State
<ul style="list-style-type: none"> - The State failed to investigate with due diligence the anonymous complaint received in October 2012 about possible acts of trafficking in Campo de Santana. - According to the <i>Case of the Hacienda Brasil Verde Workers v. Brazil</i> in the Inter-American Court and <i>Rantsev v. Cyprus and Russia</i> in the ECtHR, the duty to investigate cases of human trafficking attaches as soon as the State has knowledge of the facts. In this case, the 2012 complaint constituted sufficient <i>notitia criminis</i> to trigger the State’s duty to investigate on its own initiative, without the need for a formal complaint. - The Office of the Prosecutor General of Aravania concluded improperly that the videos were not illegal, ignoring that these materials are frequently used to recruit trafficking victims, as recognized by UNODC. Furthermore, it disregarded the fact that, under Article 145 of the Aravanian Criminal Code and the Palermo Protocol, recruitment through deceptive content may constitute human trafficking. - The recruitment model used by Hugo Maldini is described by UNODC as “fishing,” which involves posting advertisements or content to attract victims and elicit a response. - The State should conduct proactive investigations without relying on victims’ testimony. According to the UNODC Toolkit to Combat Trafficking in Persons, when allegations are made, even anonymously, States should take urgent action to rescue victims, prevent further recruitment, and secure evidence. - There were no minimal steps taken in Campo de Santana, even though the State knew the location, time, and group affected. Specifically, the State had an enhanced obligation to investigate violence against women victims under the Belém do Pará Convention. - The potential difficulty of prosecuting the case due to the extraterritorial origin of the videos (posted from Lusaria) does not exempt the State from responsibility, as the effects occurred in Aravania and the perpetrator’s location was unknown to the State. 	<ul style="list-style-type: none"> - The Office of the Prosecutor General of Aravania investigated the complaint filed in October 2012 and concluded that no crime had been committed. - Hugo Maldini’s videos only showed positive testimonials about <i>Aerisflora</i> and its environmental benefits, and did not contain explicit job offers or recruit people. - Article 13 of the ACHR protects the right to freedom of expression, allowing its restriction only in exceptional and well-justified circumstances. The videos disseminated by Hugo Maldini do not fall within the categories of speech expressly excluded from protection under Article 13.5 of the ACHR, such as war propaganda, advocacy of hatred that constitutes incitement to violence, direct and public incitement to genocide, or child pornography. - Any penalties for speech must be subsequent and non-criminal, as stated by the Special Rapporteur for Freedom of Expression of the IACHR in the <u>Inter-American Legal Framework regarding the Right to Freedom of Expression</u>. In this case, the test of valid restrictions on freedom of expression was not met, and the State was not aware of the specific job offers made to A.A. and other women, so the typical elements of the crime of trafficking were not present. - The <i>notitia criminis</i> referred to events allegedly occurring in Lusaria, outside the jurisdiction of Aravania.

3. Acts committed in Aravania, after the return of the alleged victims from Lusaria

a. Issues

150. The parties may debate whether the State investigated with due diligence the facts related to the alleged trafficking of A.A. and the other nine women after they entered Aravania on January 5, 2014, for the purpose of transplanting *Aerisflora*. In particular, they should focus their analysis on the implications of Hugo Maldini’s diplomatic immunity under the VCDR and the CSM.

b. General considerations

151. The teams should interpret the obligations to investigate and, where appropriate, punish the perpetrators—established in Articles 8 and 25 of the ACHR, in light of Articles 1.1 and 2 thereof—considering the specificities of public international law as it relates to the “special mission” established in the agreement between Aravania and Lusaria, as well as the immunity enjoyed by Hugo Maldini.¹⁷⁸ Article 50.1 of the cooperation agreement was drafted by the parties with the intention of applying those provisions to the two persons appointed by Lusaria, including Hugo Maldini, such that the activities carried out in Primelia should be understood as having been performed as part of a special mission.
152. The parties should bear in mind that the concept of “special mission” under the CSM is “a temporary mission, representing the State, which is sent by one State to another State with the consent of the latter for the purpose of dealing with it on specific questions or of performing in relation to it a specific task.” Such missions, under Article 2 of the aforementioned Convention, may only operate with the consent of the receiving State.
153. According to Article 31 of the CSM, “representatives of the sending State in the special mission and the members of its diplomatic staff shall enjoy immunity from the criminal jurisdiction of the receiving State,” with exceptions to such immunity in civil matters involving “...(c) an action relating to any professional or commercial activity exercised by the person concerned in the receiving State outside his official functions.” Article 43 recognizes residual immunity, stating that “When the functions of a member of the special mission have come to an end, his privileges and immunities shall normally cease at the moment when he leaves the territory of the receiving State, or on the expiry of a reasonable period in which to do so.” Article 28 of the Convention provides that the persons of the representatives of the sending State in the special mission and of the members of its diplomatic staff are “inviolable” and may not be subject to any form of detention or arrest.
154. The immunities arising from this provision should be interpreted in accordance with the VCDR,¹⁷⁹ Article 31.1 of which provides that “a diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State.” It also recognizes exceptions to civil or administrative immunity in specific cases, including in connection with “an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.” Under this treaty, and as widely recognized in international law,¹⁸⁰ only the accrediting State may waive the immunity from jurisdiction of its agents.

c. Arguments of the parties

i. Representatives of the alleged victims

155. The victims’ representatives should be able to identify three scenarios in which immunity could apply. Under international law, diplomatic immunity from criminal jurisdiction is considered, in principle, absolute and protects the person (*ratione personae*) during the exercise of their functions, covering all acts performed in that context. Once their mission has ended, immunity continues to apply to acts performed in the exercise of their official functions (residual immunity).¹⁸¹ Furthermore, international conventions provide for exceptions to immunity in civil and administrative matters.
156. Here, the representatives of the alleged victims should first demonstrate that Maldini’s acts are not covered by residual immunity, by showing that his conduct did not fall within the scope of his official functions and that the State of Aravania should have investigated and prosecuted him on its own initiative after the mission concluded. In addition, they should be able to argue that the acts fall under one of the exceptions to immunity from civil and administrative jurisdiction, such that the State could have availed itself of those remedies to ensure access to justice and reparation for the alleged victims even while the mission was ongoing. The alleged victims’ representatives may also contend that, following a proportionality analysis, immunity from criminal jurisdiction should not be absolute but should allow for certain exceptions in order to be compatible with the protection of

¹⁷⁸ ECtHR. *Case of Manoiilescu and Dobrescu v. Romania and Russia*. Application No. 60861/00. Judgment 3 March 2005, para. 70.

¹⁷⁹ ILC. Draft articles on Jurisdictional Immunities of States and Their Property. Text adopted by the International Law Commission at its forty-third session, in 1991, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session (A/46/10, at para. 28). *Yearbook of the International Law Commission, 1991*, vol. II, Part Two, art. 3.1; ILC. First report on immunity of State officials from foreign criminal jurisdiction, by Claudio Grossman Guiloff, Special Rapporteur. A/CN.4/775. 3 May 2024, para. 98.

¹⁸⁰ James Crawford. *Brownlie’s Principles of Public International Law*. 8th Edition. Oxford University Press, 2012, p. 414; Eileen Denza. *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations*. 4th Edition. Oxford University Press, 2016, [s/p].

¹⁸¹ Antonio Cassese. *International Criminal Law*. Oxford University Press, 2008, p. 304; Dapo Akande; Sangeeta Shah. *Immunities of States Officials, International Crimes, and Foreign Domestic Courts*. EJIL. Vol. 22. No. 4. 2011, p. 826.

human rights. Finally, there were other individuals involved in the network who did not enjoy immunity, and who were not subject to any investigation. The arguments set out above will be developed in this section.

157. With regard to residual immunity, the victims' representatives should argue that Hugo Maldini's immunity *ratione personae* ceased at the moment he ceased to perform his functions, especially considering that on March 31, 2015, the judgment convicting him of the crime of abuse of authority became final. It could therefore be argued, as a United States court held in *Swarna v. Al-Awadi*,¹⁸² that once the mission has ended and immunity has ceased, the courts must review the diplomatic agent's conduct to determine whether it would constitute an official act and qualify as residual immunity under Articles 39.2¹⁸³ of the VCDR and 43.1¹⁸⁴ of the CSM.
158. For this analysis, the victims' representatives should be able to differentiate between an official act and an unlawful act that cannot be understood as an act of the State rather than a private act. They will be expected to classify the alleged activities carried out to the detriment of A.A. and the nine victims as conduct that cannot legitimately constitute an act performed in the exercise of diplomatic functions at the mission, since the official act should have concerned exclusively "the transplantation of *Aerisflora* in the territory of the Republic of Aravania to improve water management, prevent flooding, and promote environmental sustainability," according to Article 2 of the cooperation agreement. Therefore, such immunity should be understood to be granted in accordance with the other applicable provisions of the VCDR and the CSM, in particular Articles 41.1¹⁸⁵ and 47.1¹⁸⁶ of the above-cited treaties, under which persons enjoying privileges and immunities are required to respect the laws and regulations of the receiving State.¹⁸⁷ The victims' representatives should argue that Maldini acted outside the limits of his authority and not within the scope of the official duties assigned to him. His actions should not be considered a legitimate exercise of power, but rather an abuse of power that violated international law; therefore, they are not protected by residual immunity, which would allow the authorities of the State of Aravania to investigate and eventually punish his criminal conduct, as the cessation of his immunity removes any obstacle to prosecution. The victims' representatives should argue that such an investigation should have been launched by the State on its own initiative, but that it failed to do so, merely closing the case on the grounds of diplomatic immunity while Maldini held his position with the mission. The victims' representatives should also argue that, once his official duties have ended, criminal proceedings for unofficial acts—that is, acts not covered by residual immunity—do not require authorization or waiver of immunity from Lusaria, the accrediting State.
159. The victims' representatives could also argue that the exploitation of A.A. and the other nine women was a commercial activity outside the scope of Maldini's official duties, so that even before his official duties ended, the State should have pursued alternative avenues of redress to protect the trafficking victims, given the limitations with regard to criminal proceedings. They are therefore expected to argue that an exception to diplomatic

¹⁸² This case concerns a diplomat and his wife who had misled their domestic employee into accompanying them to the United States with promises of good wages and decent working conditions. The plaintiff claimed that, after her arrival, the defendants took away her passport, forced her to work long hours, and completely isolated her from the outside world. "Because Al-Awadi's employment of Plaintiff as a personal domestic servant was not an official act performed in the exercise of his diplomatic functions for Kuwait, the district court correctly held that Al-Awadi is not entitled to residual diplomatic immunity from Plaintiff's claims." Brief for the United States of America as *Amicus Curiae* in Support of Affirmance at 3, *Swarna v. Al-Awadi*, 09-2525-cv (L), 09-3615-cv (XAP) (2d Cir., June 2, 2010).

¹⁸³ Article 39. 2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

¹⁸⁴ Article 43. 2. When the functions of a member of the special mission have come to an end, his privileges and immunities shall normally cease at the moment when he leaves the territory of the receiving State, or on the expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, in respect of acts performed by such a member in the exercise of his functions, immunity shall continue to subsist.

¹⁸⁵ Article 41.1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

¹⁸⁶ Article 47.1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying those privileges and immunities under the present Convention to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

¹⁸⁷ According to the facts presented, Article 145 of the Aravanian Criminal Code defines human trafficking as the recruitment, transportation, transfer, harboring, or receiving of persons through the use of force, threats, deception, or abuse of power, or taking advantage of a situation of vulnerability for the purpose of exploitation. Therefore, a systematic analysis of the applicable provisions would not allow for the conclusion that these activities fall under the exercise of official duties.

immunity should be applied, as provided for in Articles 31.1(c)¹⁸⁸ of the VCDR and 31.2(c)¹⁸⁹ of the CSM, and that Maldini therefore would not enjoy immunity from civil and administrative jurisdiction.

160. Although diplomatic agents enjoy immunity from the criminal jurisdiction of the receiving State under the applicable conventions, these treaties provide an exception for civil claims relating to “any professional or commercial activity exercised by the person concerned in the receiving State outside his official functions.” The victims’ representatives should therefore explore whether the work to which the alleged victims were subjected constitutes the “exercise” of a “commercial activity” within this exception.
161. As an initial point of analysis, it should be argued that Maldini’s participation benefited him personally in the practice of his profession, to the extent that he was appointed Special Attaché for Public and Commercial Relations of Lusaria for *Aerisflora*. Because the women performed care work that benefited Finca El Dorado economically—although the State could argue that domestic activities are not intended to generate commercial profit—the case of *Reyes v. Al-Malki et al.*¹⁹⁰ from the United Kingdom is useful because, under an analysis of the Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, it was determined that trafficking in persons for domestic work is considered an inherently commercial activity, since the element of commercial gain is satisfied by the financial advantage that the person obtains by paying less than the minimum wage or nothing at all. They could also cite the precedent of *Basfar v. Wong*,¹⁹¹ also from the United Kingdom, which is the first case in which a court of last resort has held that the exploitation of a domestic worker in conditions of modern slavery falls within the “commercial activity” exception to diplomatic immunity.
162. The victims’ representatives could also argue that, even though Maldini was covered by diplomatic immunity as a member of the mission, the State should have prosecuted and, if appropriate, punished him; the limits on diplomatic immunity exist to keep it from resulting in a disproportionate restriction of the alleged victims’ right of access to justice. While developments have been made in this regard, international consensus and Article 31 of the Vienna Convention establish that diplomatic agents “shall enjoy immunity from the criminal jurisdiction of the receiving State,” making exceptions only for civil and administrative matters, without reference to criminal matters. In this connection, the victims’ representatives should seek to strengthen their argument by considering international rule of law. Given the dynamics of the competition, the arguments that the victims’ representatives could use if they decided to submit immunity to a proportionality test, considering it a restriction on the alleged victims’ access to justice, are set out below.
163. To assess the compatibility of the diplomatic immunity provided for in Article 50.1 of the cooperation agreement with Articles 8 and 25, in conjunction with Articles 1.1 and 2 of the ACHR, the victims’ representatives could recall that in the case of *Barbosa de Souza et al. v. Brazil*, the Inter-American Court held that the decision on the application or waiver of immunity—in that case parliamentary immunity—must: (i) follow an expeditious procedure, provided for by law or in the rules of procedure of the legislative body, with clear rules and respecting the guarantees of due process; (ii) include a strict proportionality test, whereby the accusation made against the parliamentarian must be analyzed taking into account the impact on the right of access to justice of the persons who may be affected and the consequences of preventing the prosecution of a criminal act, and (iii) be substantiated and have reasons linked to the identification and justification of the existence or not of a *fumus persecutionis* in the exercise of the criminal action directed against the parliamentarian.¹⁹² Although this was a

¹⁸⁸ Article 31. 1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of: ... (c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

¹⁸⁹ Art. 31. Immunity from jurisdiction. 1. The representatives of the sending State in the special mission and the members of its diplomatic staff shall enjoy immunity from the criminal jurisdiction of the receiving State. 2. They shall also enjoy immunity from the civil and administrative jurisdiction of the receiving State, except in the case of: ... (c) an action relating to any professional or commercial activity exercised by the person concerned in the receiving State outside his official functions.

¹⁹⁰ This case concerns a Filipino national, Reyes, who was employed as a domestic worker between January 19 and March 14, 2011, by Mr. and Mrs. Al-Malki at their residence in London. During this period, Mr. Al-Malki was a member of the diplomatic staff of the Saudi Arabian Embassy in London. Ms. Reyes alleged mistreatment in the form of excessive working hours, failure to provide adequate accommodation, confiscation of her passport, and being prevented from leaving the house or communicating with others. She also claimed that she was not paid anything until after her employment ended, when she escaped on March 14. (United Kingdom. Supreme Court. *Reyes (Appellant/Cross-Respondent) v. Al-Malki and another (Respondents/Cross-Appellants)*. Judgment 18 October 2017).

¹⁹¹ This case concerns a domestic worker who claimed that she was confined at all times to Mr. Basfar’s home, except to take out the trash. She was held virtually incommunicado, and was only allowed to speak to her family twice a year using Mr. Basfar’s cell phone. They forced her to work from 7:00 a.m. until around 11:30 p.m. every day, with no days off or breaks. (United Kingdom. Supreme Court. *Basfar (Respondent) v. Wong (Appellant)*. Judgment 6 July 2022).

¹⁹² I/A Court H.R., *Case of Barbosa de Souza et al. v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2021. Series C No. 435, para. 111.

case of parliamentary immunity, the test could be applied by analogy, given that diplomatic immunity constitutes a restriction on access to justice, as in that case, although it would of course need to be given a different meaning in its examination.

164. In this specific case, with regard to the first point, although it appears from the facts that the proceedings were expeditious, neither the treaties providing for this type of immunity nor the bilateral agreement between the parties provide for a clear procedure or rules for requesting the waiver of immunity. This renders the victims defenseless and violates their right of access to justice and the duty to adopt domestic legal measures enshrined in Article 2 of the American Convention.¹⁹³

165. With regard to the second point to be reviewed, the victims' representatives should analyze whether the establishment and application of immunity in the case at hand, insofar as it represents a restriction on the right of access to justice, is compatible with human rights obligations. For purposes of determining whether a restriction on the exercise of a right is acceptable under the Convention, both the Commission and the Court have used a tiered proportionality test that includes the following elements: (i) legality of the restriction, i.e., whether it is provided for by law in a formal and material sense; (ii) the existence of a legitimate aim; (iii) suitability, i.e., determining whether there is a logical causal relationship between the distinction and the aim it pursues; (iv) necessity, that is, determining whether less restrictive and equally suitable alternatives exist; and (v) strict proportionality, i.e., the balancing of the interests at stake and the degree to which one is sacrificed in relation to the other.¹⁹⁴

166. The *legality of the restriction* could be considered proven, as these immunities are provided for in the VCDR and the CSM, as well as in the cooperation agreement to purchase and transplant *Aerisflora* in Aravania. The existence of a legitimate aim can be derived from the CSM, according to which "the purpose of privileges and immunities relating to special missions is not to benefit individuals but to ensure the efficient performance of the functions of special missions as missions representing the State." Such immunities are based on the principle of State sovereignty and respect for international relations, and are crucial to the proper functioning of diplomacy and foreign relations between countries. *Suitability* could be demonstrated by pointing out that the legitimate aim is achieved by granting immunity from jurisdiction, since this ensures that the persons enjoying immunity can perform their functions without interference from the receiving State. As for *necessity*, the victims' representatives could argue that less restrictive measures could be imposed on the right to effective judicial protection that would be equally suitable for achieving the same end. Thus, for example, as the IACHR found in its analysis of procedural immunities from prosecution for acts carried out by companies, which may be absolute or have certain exceptions that make them relative, "broad immunity, as in the scenario outlined above, would entail an absolute restriction on one of the essential components of the right to judicial protection, namely access to an effective remedy before competent courts or tribunals that protect victims (...) against acts that violated their fundamental rights."¹⁹⁵

167. The victims' representatives could argue that an interpretation of diplomatic immunity as absolute would considerably restrict the right of access to justice, recalling that the IACHR recognized in its Admissibility Report in the case of *Siti Aisah et al. v. United States of America* that the application of diplomatic immunity in a case of human trafficking may constitute a violation of Articles 8 and 25 of the ACHR.¹⁹⁶ They may also wish to note that in his *Second report on immunity of State officials from foreign criminal jurisdiction*, issued in 2025, Special Rapporteur Claudio Grossman suggested that the crimes of aggression, slavery, and the slave trade should be added to the list of crimes to which diplomatic immunity *ratione personae* does not apply, in line with recent developments and practices in some States.¹⁹⁷ Here, the victims' representatives could note that a review should be conducted to determine whether less harmful measures are available to achieve the same end as diplomatic immunities.

168. The victims' representatives might consider that providing for exceptional cases in which this category of immunity would not apply—in particular those related to the violation of norms of *jus cogens* or the commission

¹⁹³ I/A Court H.R., *Case of Barbosa de Souza et al. v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2021. Series C No. 435, para. 115.

¹⁹⁴ IACHR. Application to the Inter-American Court of Human Rights, Karen Atala and Daughters, September 17, 2010, para. 86; I/A Court H.R., *Case of Atala Riffo and daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 164.

¹⁹⁵ IACHR. Observations on request for an advisory opinion SOC-1-2022 "Las actividades de las empresas privadas de armas y sus efectos en los derechos humanos" (The activities of private firearms companies and their impact on human rights) (in Spanish only), para. 171.

¹⁹⁶ IACHR. Report No. 224/20. Petition 1481-07. Admissibility. *Siti Aisah et al. United States of America*. August 27, 2020.

¹⁹⁷ ILC. *Second report on immunity of State officials from foreign criminal jurisdiction* by Claudio Grossman Guiloff, Special Rapporteur. A/CN.4/780. 28 January 2025, para. 78.

of the most serious violations—could justify the need to harmonize the concept of immunity with the right of access to justice in this specific case, so that justice for those crimes that are the most serious does not depend on the discretionary will of the accrediting State. This was the position taken by then-judge Antonio Augusto Cançado Trindade in his dissenting opinion in the case of *Germany v. Italy* before the International Court of Justice (ICJ), in which he stated that immunities cannot apply to violations of a norm of *jus cogens*.¹⁹⁸

169. The victims' representatives could argue that the Office of the High Commissioner for Human Rights, in its *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, stated that the privileges and immunities granted to certain officials should not be used to protect them from punishment for serious crimes such as trafficking in persons and related offenses.¹⁹⁹ In the case of *Rantsev v. Cyprus and Russia*, it was recognized that human trafficking has come to be considered a modern form of slavery²⁰⁰ and that the Inter-American Court has interpreted, based on several treaties, that the prohibition of slavery is considered a peremptory norm of international law (*jus cogens*).²⁰¹ In this regard, it should be noted, as recognized by the Inter-American Court, that "several of the United Nations specialized agencies working in this area have referred to trafficking in persons as a form of slavery."²⁰²
170. Failure to meet the necessity requirement would not require a *strict proportionality analysis* of the restriction; nevertheless, the victims' representatives should proceed to argue this point, considering the difficulties they may have in the previous step of characterizing trafficking in this case as a norm of *jus cogens* or for purposes of illustrating the harm. The victims' representatives could put forward an analysis to determine whether the restriction resulting from the establishment of diplomatic immunities is strictly proportionate, such that the sacrifice inherent in that restriction is not excessive or disproportionate to the advantages gained by its application.²⁰³ This could occur, for example, if the application of the measure invalidates any of the rights and interests under consideration.²⁰⁴ To undertake this balancing test, they will assess: (i) the degree to which one of the interests at stake is impaired, determining the intensity—serious, moderate, or minor—of that impairment; (ii) the importance of satisfying the opposing interest; and (iii) whether satisfying that interest justifies restricting the other.²⁰⁵
171. The victims' representatives should emphasize that this is a case of alleged trafficking in women, which is considered a serious offense because it violates several fundamental human rights, specifically human dignity, humane treatment, personal liberty, and protection against slavery and exploitation, in addition to the labor rights that were infringed and the duty of strict due diligence in the investigation and punishment of acts of violence against women required under the Convention system.²⁰⁶ It is also particularly relevant that **the criminal offense of trafficking regulated in the State of Lusaria (Article 139 of the Criminal Code) is not compatible with the internationally recognized elements of the Palermo Protocol (*supra*, para. 63), as it is limited exclusively to the purposes of sexual exploitation.** Since this case concerns labor exploitation, that jurisdiction is not competent to investigate and, if applicable, punish the acts committed against the victims. Thus, applying diplomatic immunity in these cases on the premise that they can be investigated by Lusaria could ultimately allow the acts to go unpunished. In this case, the degree of intensity of the human rights impact cannot

¹⁹⁸ ICJ, *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*. Dissenting Opinion of Judge Cançado Trindade. Judgment of 3 February 2012, paras. 224 et seq.

¹⁹⁹ United Nations. Office of the High Commissioner for Human Rights. *Recommended Principles and Guidelines on Human Rights and Human Trafficking*. 2002.

²⁰⁰ ECtHR. *Case of Rantsev v. Cyprus and Russia*. Application no. 25965/04. Judgment 7 January 2010. Final 10/05/2010.

²⁰¹ I/A Court H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, para. 249.

²⁰² The Working Group on Contemporary Forms of Slavery declared that trafficking in women and girls for the purpose of exploitation is a contemporary form of slavery and that international treaties against slavery include trafficking (Report of the United Nations Working Group on Contemporary Forms of Slavery. Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution E/CN.4/Sub2/RES/1998/19, para. 2); The Special Rapporteur on Trafficking in Persons, Especially Women and Children, also considered human trafficking to be "modern-day slavery" on a massive scale (Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, UNDoc.A/HRC/10/16, 20 February 2009, p. 5); In the case of *Rantsev v. Cyprus and Russia*, the European Court ruled that "trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership" (ECtHR. *Case of Rantsev v. Cyprus and Russia*, para. 282), cited in I/A Court H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, paras. 286-287.

²⁰³ I/A Court H.R., *Case of Chaparro Álvarez and Lapo Ñiquez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 93.

²⁰⁴ I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008 Series C No. 177, para. 84.

²⁰⁵ I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008 Series C No. 177, para. 84.

²⁰⁶ I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 258; I/A Court H. R., *Case of Vicky Hernández et al. v. Honduras*. Merits, Reparations and Costs. Judgment of March 26, 2021. Series C No. 422, para. 134.

be justified by the need to preserve diplomatic relations and the sovereignty of the State, given that, as outlined above, there are alternatives that are less harmful to the rights involved.

172. However, as the Inter-American Court has recognized, the examination of *fumus persecutionis* involves a study of the seriousness, nature, and circumstances of the alleged acts, since the response to a request for waiver of immunity cannot be based on an arbitrary action that ignores the nature of the conflict and the need to protect the interests and rights at stake.²⁰⁷ As noted above, the prohibition of human trafficking is a compelling need that outweighs the abstract justification of “protecting diplomats and relations between States” provided by the State of Lusaria, without any prior explanation of why lifting immunity in this specific case would jeopardize relations between States or the free exercise of their diplomatic personnel’s functions.
173. In light of the above, the victims’ representatives could argue that the broad scope of diplomatic immunity agreed upon in the bilateral agreement arbitrarily impeded A.A.’s access to justice and the nine other victims, by failing to provide for exceptions to immunity or to ensure minimum guarantees, for instance by regulating the procedure for requesting a waiver of immunity and requiring the accrediting country to provide reasons for its decision. The State also failed to ensure that the crime of trafficking, as recognized under international law, was punishable in Lusaria.
174. Lastly, the victims’ representatives could assert that it was not enough to investigate Hugo Maldini’s conduct since, according to the facts presented, the premises were coordinated exclusively by Lusarian staff who were responsible for monitoring the entry and departure of all persons. Nevertheless, there was no indication that investigations had been opened into EcoUrban Solution or anyone other than Hugo Maldini.

ii. The State

175. The State should maintain that the immunity provided for in Article 50.1 of the cooperation agreement is immunity *ratione personae* covering acts carried out in an official capacity and on behalf of Lusaria.²⁰⁸ With this in mind, it should argue that the special mission under the cooperation agreement was closely linked to representatives of the State of Lusaria at the highest level and should be recognized as such by the receiving State.²⁰⁹ In this case, the cooperation agreement that conferred immunity was intended to address matters of national interest and international security of the States, with Maldini being the principal representative of Lusaria.
176. The State’s argument should be based on the fact that, from the moment he was appointed Special Attaché for Public and Commercial Relations of Lusaria for *Aerisflora*, Maldini no longer represented private interests under the cooperation agreement, but was carrying out activities for Lusaria. On this basis, the State could argue that, since the immunity in question relates to official acts, it is absolute and does not cease when the official ceases to perform his or her functions.²¹⁰ This follows from Article 31 of the VCDR, which—unlike for civil and administrative matters—provides no exception to immunity from criminal proceedings. The State should maintain that Maldini’s actions, in addition to being protected during the mission due to immunity, cannot be seen as a private act that could be exempt from residual immunity after the mission ended.
177. To fulfill its objective, the cooperation agreement provides that the Democratic State of Lusaria agrees to “hire, train, and relocate workers from its territory to the Republic of Aravania, where they will transplant the *Aerisflora*.”²¹¹ More specifically, the following implementation activities were included:

Article 3. Implementation activities

3.1 The Parties agree that the activities to be carried out under this Agreement include but are not limited to:

...

²⁰⁷ I/A Court H.R., *Case of Barbosa de Souza et al. v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2021. Series C No. 435, para. 108.

²⁰⁸ Dapo Akandee; Sangeeta Shah. Immunities of States Officials, International Crimes, and Foreign Domestic Courts. *EJIL*. Vol. 22. No. 4. 2011, p. 826.

²⁰⁹ ILC. Preliminary report on the immunity of State officials from foreign criminal jurisdiction, by Ms. Concepción Escobar Hernández, *Special Rapporteur*. A/CN.4/654. 31 May 2012. p. 54.

²¹⁰ Antonio Cassese. *International Criminal Law*. Oxford University Press, 2008, p. 304.

²¹¹ Bilateral Cooperation Agreement for the Transplantation of *Aerisflora*, art. 2. Purpose of the Agreement.

b. Staff Recruitment and Relocation: The Democratic State of Lusatia will select and hire workers to carry out the objective of this Agreement. These workers will be relocated to the Republic of Aravania for project implementation under the terms of this Agreement.

c. *Aerisflora* Planting, Cultivation, and Transplanting: Once the plant has been cultivated, the workers hired by the Democratic State of Lusaria will transplant the *Aerisflora* in the areas designated by the Republic of Aravania, ensuring that it is in optimal condition and with prior notice to the State of Aravania of the date of entry into the State.

178. It was precisely in the context of implementing this agreement that the State was called upon to investigate Maldini's conduct, so it cannot be argued that these actions were carried out outside the scope of his official duties. Along these lines, the State must admit that immunity does not mean that diplomatic agents are above the law of the receiving State, as established in Articles 41.1 of the VCDR and 47.1 of the CSM. The State could argue that when it found out about actions that might violate its domestic law, it immediately told the State of Lusaria, which is the only entity that can waive immunity. However, Lusaria rejected the request, which prevented it from continuing with the relevant investigations. As decided by the ICJ in *Democratic Republic of Congo v. Belgium*,²¹² the State should argue that the defendant's actions fall within the legitimate exercise of his duties as part of the mission and, therefore, since the accrediting State did not agree to waive his immunity, the State of Aravania had no other means of prosecuting him for the allegations made.²¹³ As recognized by the ICJ, even in a case involving alleged war crimes and crimes against humanity, failure to respect diplomatic immunity constitutes a violation of an international obligation, insofar as it infringes upon the inviolability conferred under international law.²¹⁴ Notwithstanding this refusal, the victims retain the right to seek justice in other national and international courts, as happened in this specific case; Lusaria was able to open an investigation against Hugo Maldini for the acts reported, and he was ultimately convicted in that State.

179. In response to the argument that Hugo Maldini's actions fall within the exceptions provided for civil and administrative jurisdiction, the State could begin by noting that it does not appear from the facts presented that the alleged victims attempted to pursue a remedy other than criminal proceedings in Aravania and that—unlike in the criminal sphere—there was no provision requiring the State to initiate civil proceedings on its own initiative, so it had no opportunity to review the possibility of applying any of those exceptions.

180. The State should also verify which of the alleged acts were actually carried out in its territory in order to disprove the assertion that any of them could be considered to fall within the exceptions to civil and administrative immunity. It should maintain the position that the exception is applicable only to acts carried out in the private sphere, which, as previously discussed, is not the case here. First, regarding the alleged professional benefit Maldini obtained from the dissemination of the videos, the State should argue that these events occurred prior to the granting of immunity and therefore should not be used to demonstrate financial gain in his professional activity. With regard to the allegations related to care work, it should note that the facts do not show that the women were forced to perform such activities in Aravania, as it is only stated that they enjoyed "similar working conditions" to those in Lusaria. It could even highlight that, according to the facts of the case, food was provided to them in Aravania by the company EcoUrban Solution.

181. Additionally, the State could cite the U.S. court ruling in *Tabion v. Mufti*,²¹⁵ which found that everyday services such as domestic help cannot be considered outside the official functions of a diplomat and that, because these

²¹² The Case concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium) It is an ICJ ruling issued in 2002, which concerns the immunity of diplomatic and high-ranking officials in relation to an arrest warrant issued by Belgium against a foreign minister of the Democratic Republic of Congo (DRC). The ICJ ruled in favor of the Democratic Republic of Congo, establishing that Belgium could not execute the arrest warrant against Yerodia while he was in office as minister of foreign affairs. The ICJ reaffirmed the principle of immunity of senior officials of sovereign states from foreign domestic courts, although it made clear that these officials are not exempt from being tried by competent international courts for crimes against humanity (ICJ. Case concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium). Judgment of 14 February 2002).

²¹³ ICJ. Case concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium). Judgment of 14 February 2002, para. 70.

²¹⁴ ICJ. Case concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium). Judgment of 14 February 2002, para. 70.

²¹⁵ The case of *Tabion v. Mufti*, decided in 1998 by the United States Court of Appeals for the Fourth Circuit, concerns diplomatic immunity and the commercial activity exception in relation to a diplomat accredited in the United States. Tabion, who had worked as a domestic employee, sued Mufti, a Pakistani government diplomat, for unpaid wages and abuse of his position. Tabion claimed that she had not been paid the wages she was owed and that she had been subjected to unfair working conditions while working as a domestic employee in Mufti's residence. Mufti, a diplomat, invoked diplomatic immunity as a defense, arguing that he should not be subject to trial in U.S. courts because of his status as an official representative of the Pakistani government, which conferred immunity from civil suits under the 1961 Vienna Convention on Diplomatic Relations. The court ruled in Mufti's favor, concluding that the activities he carried out at his residence (such as hiring domestic staff) did not constitute commercial activities within the context of the exception to diplomatic immunity. The court emphasized that domestic services (such as housekeeping) are part of the daily functions of a diplomat and therefore do not fall within the commercial activity exception (United States of America. U.S. District Court for the Eastern District of Virginia. *Tabion v. Mufti*, 877 F. Supp. 285 (E.D. Va. 1995). February 16, 1995).

services are incidental to daily life, diplomats should be immune from disputes arising from them.²¹⁶ Therefore, unless Maldini had established and operated a for-profit entity or conducted business for profit on his own behalf—which did not occur in this case—the commercial activity exception would not apply.

182. As for the compatibility of immunity with the ACHR, the State should refute any attempt to apply the case of *Barbosa de Souza et al. v. Brazil*, given that the immunity assessed in that case was “parliamentary immunity,”²¹⁷ which is not regulated by international law and does not constitute customary law, meaning that an analysis of the compatibility of immunity with this precedent is not relevant.
183. However, in order to provide a response to the victims, it could note that the concept of waiver of immunity is regulated in applicable international treaties and that such immunities have been recognized by various international legal bodies as rules of customary international law.²¹⁸
184. In examining *necessity* under the proportionality test, the State is expected to argue that immunity is a rule of customary law, and that any exception must be clearly established in a treaty or customary rule, which does not currently exist in international law. Furthermore, the State may point out that the ILC Special Rapporteur on the immunity of State officials from foreign criminal jurisdiction has recognized in his report this year (2025) certain crimes to which diplomatic immunity does not apply, and human trafficking is not among them.²¹⁹ In this regard, expanding the human rights violations included among such possible exceptions without them being international crimes or clearly recognized as *jus cogens* could vitiate their purpose.
185. The State should assert that the victims’ argument that Hugo Maldini’s immunity should be relativized because the matter concerns an alleged human rights violation lacks merit. As the ICJ held in *Democratic Republic of Congo v. Belgium* and *Germany v. Italy*, immunities, including diplomatic immunity, cannot be relativized.²²⁰ It may also challenge the argument of the victims’ representatives regarding the application of the dissenting opinion of Judge Cançado Trindade in the case of *Germany v. Italy*,²²¹ and argue that the dissent is not a source of international law and does not constitute case law of the ICJ within the meaning of Article 38.1.c of its Statute, and therefore has no binding force in this case. The State may also argue that the restriction does satisfy the necessity test, considering that there is no measure as suitable as immunity to prevent the misuse of the criminal law to interfere with the activities that diplomats must freely carry out on behalf of another State.
186. As for *strict proportionality*, the State should challenge the alleged victims’ argument that the application of immunity is intended to ensure impunity, since the ECtHR has held in cases such as *Cudak v. Lithuania*²²² and *Sabeh El Leil v. France*²²³ that the right of access to justice is not absolute and may be subject to limitations established by international law, such as immunities. In that regard, as determined by the ECtHR, immunities enshrined in international law cannot be interpreted as a restriction on access to justice, but rather as a limitation accepted and upheld by the international community.²²⁴
187. On this point, the State should demonstrate that immunities under international law are not an absolute bar to criminal prosecution, but allow for criminal acts to be investigated, prosecuted, and punished under certain circumstances. As the ICJ ruled in *Democratic Republic of the Congo v. Belgium*, there are certain conditions that limit immunity. These exceptions are, first, (i) that such persons do not enjoy criminal immunity under international law in their own countries and may therefore be tried by the courts of those countries in accordance with the relevant rules of domestic law. Second, (ii) they will cease to enjoy immunity from foreign jurisdiction if the State they represent or have represented decides to waive that immunity. Third, (iii) after a person ceases to hold office, he or she will no longer enjoy all the immunities granted by international law in other States. Whenever it has jurisdiction under international law, a State’s court may try a diplomat from

²¹⁶United States of America. U.S. District Court for the Eastern District of Virginia. *Tabion v. Mufti*, 877 F. Supp. 285 (E.D. Va. 1995). February 16, 1995, para. 539.

²¹⁷I/A Court H.R., *Case of Barbosa de Souza et al. v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2021. Series C No. 435, paras. 108, 110.

²¹⁸James Crawford. *Brownlie’s Principles of Public International Law*. 8th Edition. Oxford University Press, 2012, p. 414; Eileen Denza. *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations*. 4th Edition. Oxford University Press, 2016, [n.p].

²¹⁹ILC. Second report on immunity of State officials from foreign criminal jurisdiction by Claudio Grossman Guiloff, Special Rapporteur. A/CN.4/780. 28 January 2025, para. 78.

²²⁰ICJ. Case concerning the Arrest Warrant of 11 April 2000 (*Democratic Republic of Congo v. Belgium*). Judgment of 14 February 2002, para. 75; ICJ. *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*. Judgment of 3 February 2012, para. 99.

²²¹ECtHR. *Case of Rantsev v. Cyprus and Russia*. Application no. 25965/04. Judgment 7 January 2010. Final 10/05/2010.

²²²ECtHR. *Case of Cudak v. Lithuania*. Application No. 15869/02. Judgment 23 March 2010, para. 70.

²²³ECtHR. *Case of Sabeh El Leil v. France*. Application No. 34869/05. Judgment 29 June 2011, para. 54.

²²⁴ECtHR. *Case of Sabeh El Leil v. France*. Application No. 34869/05. Judgment 29 June 2011, para. 57.

another State for acts committed before or after his or her term of office, as well as for acts committed during that term in his or her private capacity. Fourth, (iv) for the most serious crimes, a diplomat may be subject to criminal proceedings in certain international criminal courts, when they have jurisdiction.²²⁵

188. Applying the above to the facts of the case, in relation to the first exception, (i) the State should demonstrate that immunity did not leave the alleged victims completely unprotected from Hugo Maldini's actions because he was investigated, prosecuted, and convicted in Lusaria. It should also point out that there is no international obligation that would allow the State of Aravania to use the limitations of the Lusarian Criminal Code to launch an investigation into a public official with personal immunity. With regard to the second exception, (ii) the State could note that it did in fact act in accordance with the applicable provisions of international law and informed the Lusarian Ministry of Foreign Affairs of what had happened, formally requesting that Hugo Maldini's immunity be waived so that he could be investigated, prosecuted, and, if necessary, punished for the acts reported by A.A. However, as we can infer from paragraph 50 of the facts of the case, the State of Lusaria did not waive immunity, and that decision must be respected by the receiving State under the principle of State sovereignty and respect for international relations, as it is crucial for the proper functioning of diplomacy and foreign relations between countries. Third, (iii) the State should insist that this is not an applicable exception, as Maldini acted in his official capacity rather than in a private capacity. Lastly, regarding the fourth exception, (iv) it is clear that the State lacked jurisdiction, as it is not an international court competent to hear the most serious and exceptional crimes occurring outside its jurisdiction. Furthermore, as the State has consistently maintained, the case concerns labor-related issues; the criminal offense of human trafficking—which is a serious and exceptional crime—has not been established.
189. The State may further argue that, as decided by the ICJ in *Djibouti v. France*, the State claiming immunity for one of its agents before a foreign court is also acknowledging responsibility for that act, if it is considered internationally wrongful, and therefore has an obligation to assume responsibility for those acts.²²⁶ Thus, when Lusaria refused to waive Hugo Maldini's immunity, it was solely the responsibility of the Lusarian State to investigate the facts and prove that it had fulfilled its duty to state the reasons for its decision, as required by the precedent set in *Barbosa de Souza et al. v. Brazil* (*supra*, para. 163). In any case, Lusaria did prosecute and ultimately punish Maldini for abuse of authority due to the arbitrary manner in which he acted to the detriment of the alleged victims. As noted earlier, no rule of international law exists that would enable Aravania to open an investigation against Maldini based on the limitations of the Lusarian Code to investigate trafficking, given that he was vested with personal immunity.
190. Lastly, the State may address the claim that there were other individuals involved in the network who did not enjoy immunity, against whom no investigation was opened. Here, the State should counterargue that it follows from the facts of the case that those individuals were established in Primelia and the only person they encountered was Maldini, who enjoyed immunity that the State of Lusaria—the only entity authorized to waive it under international law—refused to waive.

²²⁵ Examples include the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, established by Security Council resolutions under Chapter VII of the United Nations Charter, and the future International Criminal Court established by the 1998 Rome Convention. The Rome Statute expressly states, in Article 27, paragraph 2, that "[i]mmunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person (ICJ. Case concerning the Arrest Warrant of 11 April 2000 (*Democratic Republic of Congo v. Belgium*). Judgment of 14 February 2002, para. 61).

²²⁶ ICJ. Case concerning certain questions of mutual assistance in criminal matters. (*Djibouti v. France*). Judgment of 4 June 2008, para. 196.

Main arguments in relation to the duty to investigate, prosecute, and punish the acts committed in Aravania after the alleged victims returned from Lusaria

Victims	State
<ul style="list-style-type: none"> - The victims' representatives may present arguments seeking to demonstrate that (i) the State could have conducted an investigation at the end of the mission, as Maldini was not protected by residual immunity; while the mission was ongoing, it could have (ii) initiated civil proceedings as a means of facilitating access to justice, (iii) based on a proportionality test, considering that there was an exception to criminal immunity. - The acts attributed to Hugo Maldini are not covered by residual immunity, since they were not carried out within the scope of his official duties. In accordance with Article 39.2 of the VCDR and Article 43.1 of the CSM, residual immunity only covers acts performed in the exercise of official functions, ceasing for all other acts at the end of the mission. <p>According to the case of <i>Swarna v. Al-Awadi</i> (U.S.), once the mission has ended, it is for the courts to determine whether the acts performed constitute official acts protected by residual immunity.</p> <p>The conduct attributed to Maldini must be characterized as private unlawful conduct and not as an act of State, which excludes the application of residual immunity under the framework provided by the VCDR and the CSM, particularly Articles 41.1 and 47.1, which require diplomats to respect the laws of the receiving State.</p> <p>Maldini acted outside the scope of his diplomatic functions, whose official objective was the transplantation of <i>Aerisflora</i> under Article 2 of the cooperation agreement, and his actions constituted an abuse of power that cannot be protected by international law.</p> <p>As personal immunity ceased upon completion of the mission, and since these were not official acts, the authorities of the State of Aravania should have opened a criminal investigation on their own initiative, without requiring authorization from Lusaria, in accordance with the principle of legality and the obligation of due diligence in cases of serious human rights violations.</p> <ul style="list-style-type: none"> - Civil proceedings should have been initiated as a means of access to justice. The exploitation of A.A. and the other nine women constituted a commercial activity unrelated to diplomatic functions, triggering the exception provided for in Article 31.1(c) of the VCDR and Article 31.2(c) of the CSM, concerning civil claims arising from professional or commercial activities outside official functions. The State of Aravania could have offered alternative means to ensure redress for the victims in civil or administrative proceedings, even during the period of criminal immunity. Maldini personally benefited from these activities by being appointed Special 	<ul style="list-style-type: none"> - The acts committed by Maldini are covered by personal and residual immunity. Furthermore, there is no exception that would allow civil proceedings to be brought. And in criminal matters, personal immunity does not allow for a proportionality test, which in any case would be satisfied. - The immunity provided for in Article 50.1 of the cooperation agreement is immunity <i>ratione personae</i>, protecting official acts performed on behalf of Lusaria during the special mission, in accordance with the general principle of international law recognizing immunities for official representatives of a State. - Upon his appointment as Special Attaché for Public and Commercial Relations of Lusaria, Hugo Maldini ceased to act as a private individual and began to perform official functions on behalf of the State of Lusaria. As such, he was protected by the immunity from criminal prosecution provided for in Article 31 of the VCDR, which establishes absolute immunity from criminal prosecution for official acts. Residual immunity from criminal jurisdiction remains in force after the end of the mission in respect of acts performed in the exercise of official functions, in accordance with customary law and the consistent interpretation of Article 39.2 of the VCDR. The cooperation agreement confirms that the official mission included the selection, hiring, and transfer of workers to Aravania to carry out <i>Aerisflora</i> transplanting activities under Articles 3.1(b) and (c), proving that Maldini was acting within the scope of his duties and that, upon leaving his position, he was protected by residual immunity. - With regard to an exception to immunity in civil matters, the alleged victims did not initiate any civil proceedings in Aravania and the State has no obligation to bring civil proceedings on its own initiative. <p>In any case, under <i>Tabion v. Mufti</i> (U.S.), ordinary domestic services are incidental to the life of a diplomat and do not constitute private activities exempt from immunity. Only if Maldini had established a for-profit entity or conducted personal business could the commercial activity exception apply, which was not proven in this case.</p> <ul style="list-style-type: none"> - Personal immunity does not allow for a proportionality test in criminal matters. Article 31 of the VCDR provides no exception. Furthermore, the State should refute the application of <i>Barbosa de Souza et al. v. Brazil</i>, since that case concerned parliamentary immunity, not diplomatic immunity, which is recognized by customary law.

<p>Attaché for Public and Commercial Relations, and the work carried out by the victims at Finca El Dorado generated specific economic gains.</p> <p>According to the <i>Reyes v. Al-Malki and another</i> (United Kingdom) case, human trafficking for domestic work is an inherently commercial activity, so the exception to diplomatic immunity applies. Similarly, in <i>Basfar v. Wong</i> (United Kingdom), the court held that the exploitation of a domestic worker in conditions of modern slavery falls within the commercial activity exception, allowing civil claims against diplomats to proceed.</p> <p>– Personal criminal immunity is a disproportionate restriction on access to justice and should have exceptions for human trafficking. Although criminal immunity does not, in principle, admit exceptions, it could be subject to a proportionality test to ensure that it does not constitute a disproportionate restriction on the victims’ right of access to justice, in accordance with Articles 8 and 25 in conjunction with Articles 1.1 and 2 of the ACHR.</p> <p>Thus, for example, on parliamentary immunity, in <i>Barbosa de Souza et al. v. Brazil</i>, the Inter-American Court held that the lifting of immunities must: (i) be carried out through a clear procedure provided for by law; (ii) be subject to a strict proportionality test; and (iii) be founded on the absence of <i>fumus persecutionis</i>.</p> <p>In this case, the procedure for lifting immunity was not clearly regulated either in the treaties or in the bilateral agreement, leaving the victims without any means of defense. As for necessity, there are alternatives that are less harmful to the right to effective judicial protection, such as partial exceptions to immunity in cases of serious violations. In terms of proportionality, immunity seriously undermines the rights of victims. In this case, the acts would go unpunished because the regulation of trafficking for sexual purposes is limited in the Lusarian Criminal Code. Lusaria would therefore be unable to properly investigate the events that took place in Aravania.</p>	<p>Even if a proportionality test were applied, the State would meet it. The measure satisfies the requirement of necessity because no less harmful alternative exists that would also protect the free exercise of diplomatic functions, in line with the objective of immunity. Criminal immunity does not equate to impunity, as the facts can be investigated and punished in the State of Lusaria, as indeed happened. There is no rule in international law that would allow for Maldini to be investigated based on the limitations of the Criminal Code of Lusaria.</p> <p>– According to the report of the ILC Special Rapporteur (2025), only certain very serious international crimes are excluded from the application of criminal immunity; human trafficking (in all its forms) is not among them, and this list should be interpreted restrictively. Immunity cannot be relativized on the grounds that it allegedly violates human rights, as this would distort its meaning and jeopardize the proper functioning of diplomacy. According to the ECtHR, immunities should not be understood as a barrier to access to justice, but rather as a limitation accepted by the international community in favor of the stability of relations between States.</p>
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4. Access to justice from a gender and intersectional perspective

191. It is important that the parties discuss in their arguments whether the State adopted a gender and intersectional perspective when investigating the facts. In particular, they should acknowledge that the victims of the alleged acts of human trafficking were women, many of them heads of households, who were living in a rural area in poverty and without job opportunities. This has various implications that should be assessed in light of the enhanced obligation derived from Article 7 of the Belém do Pará Convention, a treaty that specifically recognizes trafficking as a form of violence against women.

192. In their arguments, **the victims’ representatives** are expected to identify, as a cross-cutting issue, how, after receiving the complaints in October 2012 and November 2013, the State failed to incorporate a gender and intersectional approach in light of the abovementioned characteristics. Specifically, they are expected to mention that, with regard to the first complaint, the State should have investigated the *notitia criminis* more thoroughly, particularly given its seriousness, as it alleged that women from Campo de Santana were being taken to Lusaria for the purpose of labor exploitation. There is no evidence that the State collected data on the role of gender in different forms of trafficking, intervened in areas where lack of services or employment made people more vulnerable to trafficking, or had specialized protocols in place. As a result of these failures, the complaints were dismissed.²²⁷ In fact, the State did not know whether the number of women crossing the border between Aravania and Lusaria was high, how these women were drawn to these jobs, what their characteristics were, or the extent of the activities they carried out; nor did it assess whether the poor working conditions were due to prejudice and historical roles assigned to women, such as the assignment of care work. With regard to this last point, as noted in the section on the duty of prevention, it is important to recognize caregiving tasks as work when identifying the labor exploitation experienced by the women, in order to determine its true significance. The State, even after learning of the allegations, did not go to Campo de Santana; nor did it interview the women to identify their protection and investigation needs.

193. **The State**, for its part, should argue that it has investigated the facts diligently with a gender and intersectional approach, for which it has appropriate policies in place. With regard to the first complaint of October 2012, it should reiterate that it reviewed the videos and found that they promoted the benefits of *Aerisflora* and showed women expressing their positive experiences as workers. The State could even characterize such messages as promoting women’s empowerment, pointing out that it could not know what they would ultimately lead to, but that this did not justify removing them from the digital sphere. Although the State is aware of the need to develop interventions in populations that are most exposed to trafficking, the videos themselves did not necessitate action in Campo de Santana. After learning of the November 2013 complaint, which consisted of a woman’s testimony that she had been subjected to “extreme conditions” in Lusaria, the State used the only appropriate mechanism available to it, which was to request reports under the cooperation agreement, even though the events in question did not occur within its jurisdiction.

194. The State is also expected to argue that when A.A. arrived at the Velora Police Station and was able to report what had happened, she was properly received and none of the State authorities engaged in gender stereotyping. They should argue that the standards of proof and due diligence adopted by the Inter-American Court were followed at all times, given that: (i) all the evidence was properly assessed. A.A. provided a reliable statement, Maldini’s social media accounts were searched, and the discovery of women’s clothing on the premises was considered in corroborating the allegations made by A.A.; (ii) proceedings were initiated immediately after the State became aware of the facts; (iii) the social media search adopted a gender perspective because it took into account that the videos were aimed at women in vulnerable situations and contained false promises, enabling the investigation and proceedings in Primelia; (v) No line of investigation was closed or ruled out due to the fact that the victims were women. On the contrary, all the facts reported by A.A. were duly investigated; (vi) A thorough investigation was conducted in Primelia, even though the premises were immune from jurisdiction according to the CSM, which proves that the State acted with due diligence.²²⁸

5. Additional legal issues that may arise during oral argument

5.1 Application of the principle of *ne bis in idem*

195. The parties may debate whether Maldini’s conviction in Lusaria for the events related to Finca El Dorado could affect the possibility of criminal prosecution in Aravania. The facts of the case show that on February 1, 2014, the Federal Prosecutor’s Office of Lusaria opened an investigation against Hugo Maldini for the crimes of abuse of authority and human trafficking, as defined in Articles 72 and 139 of the Criminal Code of Lusaria; on March 19, 2015, the Federal Court of Canindé, in Lusaria, sentenced Maldini to nine months in prison for the

²²⁷ These measures have been recommended by the Organization for Security and Cooperation in Europe. See OSCE, [Applying gender-sensitive approaches in combating trafficking in human beings](#), 2012.

²²⁸ IACHR. Report No. 153/18, Case 13.069. Merits. Manuela and Family. El Salvador. December 7, 2018, para. 144; IACHR. [Violence and Discrimination against Women, Girls: Best Practices and Challenges in Latin America and the Caribbean](#). OEA/Ser.L/V/II. Doc. 233. November 14, 2019, para. 28; I/A Court H.R., *Case of Gutiérrez Hernández et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 24, 2017. Series C No. 339, para. 173; I/A Court H.R., *Case of Digna Ochoa et al. v. México*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2021. Series C No. 447, para. 124.

crime of abuse of authority and barred him from holding public office for five years. However, it did not find sufficient evidence to convict him of the crime of trafficking in persons. The judgment became final on March 31, 2015.

196. **This argument in defense of the State is inadequate and should be overcome by the victims' representatives if they have sufficient knowledge of the facts and the case law.** Article 8.4 of the ACHR seeks to protect individuals from being tried again for the same acts for which they were previously prosecuted. Unlike other human rights treaties, such as the International Covenant on Civil and Political Rights, the ACHR protects individuals from being prosecuted twice "for the same cause," a notion that goes beyond the same "crimes." The Inter-American Court has held that: "In order to constitute a violation of Article 8(4) of the American Convention: (i) the accused must have been acquitted; (ii) the acquittal must be the result of a final judgment, and (iii) the new trial must be based on the same facts that were the grounds for the first trial."²²⁹

197. The victims' representatives should refute the State's argument that the principle of *ne bis in idem* would apply if Hugo Maldini were prosecuted for the crime of human trafficking. The representatives should therefore argue that the acts for which he would be prosecuted in Aravania are different from those for which he was tried in Lusaria, precisely because the Lusarian courts do not have jurisdiction to try acts that occurred in Aravania, which are subject to Aravania's jurisdiction. The victims' representatives must demonstrate that there is a distinction between the acts that could be prosecuted in each jurisdiction. The recruitment and transportation took place in Aravania, as did the exploitation in Primelia, and these are different from the acts prosecuted in Lusaria, which took place at El Dorado. The victims' representatives should explain that, although human trafficking has been recognized as a continuing crime in the sense that it involves a series or sequence of unlawful acts, each act is punishable on its own depending on the jurisdiction in which it took place.

198. The victims' representatives should also point out that Article 139 of the Criminal Code of Lusaria does not adequately define the crime of trafficking in persons according to the elements recognized under international law and reflected in the Palermo Protocol (*supra*, para. 64), since it only recognizes trafficking for the purpose of sexual exploitation. Beside the fact that the prosecutable acts took place in another jurisdiction, Maldini's acquittal in Lusaria does not cover the acts that occurred in the State of Aravania related to human trafficking for labor exploitation.²³⁰

5.2 The Special Arbitration Panel and its impact on access to justice and reparations

199. The hypothetical case states that on March 8, 2014, Aravania initiated arbitration proceedings against Lusaria for noncompliance with clause 23 of the bilateral agreement, as provided for in Article 71 of that agreement. On September 17, 2014, the Special Arbitration Panel ruled in favor of Aravania, ordering Lusaria to pay US\$250,000 in damages. As a result, Aravania granted US\$5,000 to A.A. for Lusaria's failure to ensure adequate working conditions. During oral argument, the question may arise as to whether this ruling has any impact on the investigation and punishment of the acts at issue in the case and on reparations to the alleged victims.

a. Arguments of the parties

i. Representatives of the alleged victims

200. The victims' representatives should argue that the State failed to ensure their access to justice and reparation through the Arbitration Panel. With regard to access to justice, the victims' representatives should reiterate that the State failed to conduct diligent criminal or civil investigations through the available mechanisms for investigating and, where appropriate, punishing the perpetrators; therefore, the actions taken by the Arbitration Panel are in no way a substitute for the fulfillment of those obligations, nor do they remedy the State's omissions. With regard to reparation, the Arbitration Panel is a means of dispute resolution between the parties to the cooperation agreement, i.e., the States of Aravania and Lusaria. The Arbitration Panel ruled for Aravania and ordered Lusaria to pay US\$250,000. In that case, the alleged victims' rights under the ACHR were not discussed,

²²⁹ I/A Court H.R., *Case of J. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 262.

²³⁰ Lastly, the victims' representatives can cite case law from the ECtHR where it has recognized that in cases of extraterritorial crimes or crimes that may trigger double jurisdiction, States have the power to exercise their criminal jurisdiction independently, and that even in cases of international legal cooperation in criminal matters, this does not mean that a country is required to waive its own jurisdiction over a particular act. (ECtHR. *Case of Janousek v. France and Spain*. Application No. 12747/87. Judgment 26 June 1992, para. 110).

the alleged victims did not participate in the proceedings, and the sum awarded was not intended to be reparations. Although the State awarded the amount of US\$5,000 to A.A., this money came from State resources obtained from the Arbitration Panel, at which point it became part of the State's assets. In other words, A.A. received it not as court-ordered reparation, but as an act of the State of Aravania aimed at recognizing "Lusaria's failure to ensure adequate working conditions in its territory." This means that the alleged victims did not voluntarily submit to arbitration;²³¹ it was not a sum awarded as compensation for the acts and human rights violations committed by Aravania, nor was it based on an assessment of the harm that considered her circumstances; therefore, it should in no way be considered reparation in this case.²³²

ii. The State

201. The State may argue that, given the impossibility of prosecuting Hugo Maldini due to immunity, it used the only other option available to satisfy the alleged victims' right to access to justice, which was to initiate the arbitration procedure provided for in the cooperation agreement. By doing this, it intended, first, to fulfill its obligation of due diligence in the prosecution and, second, to help ensure that the alleged victims could obtain redress for the events that occurred in Lusaria.
202. The State should argue that, under the circumstances of this case, arbitration is a measure that provides access to justice.²³³ In particular, it may argue that, in accordance with the Hague Rules on Business and Human Rights Arbitration, arbitration has become a remedy for those whose human rights are adversely affected by business activities.²³⁴ The Arbitration Panel offered appropriate guarantees, such as three arbitrators chosen by the parties, the means and measures for enforcing the decision, a clear procedure, and the unrestricted participation of the parties.²³⁵ This is all in line with Articles 10, 11, 18, and 19 of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration.²³⁶
203. With this, the State can affirm that the Arbitration Panel, given Hugo Maldini's immunity, was the only mechanism through which the case could be heard by a tribunal²³⁷ and for compensation to be obtained and used to provide reparations to the victims. The State may therefore ask the Court to consider the steps it took, diligently and on its own initiative, to achieve the only possible penalty, which was imposed on the State of Lusaria. The State may say that although the alleged victims were not parties to the case, the proceedings were about the employment-related harm they experienced. The panel effectively protected their rights by finding that those rights had been violated because of the working conditions to which they were subjected as a result

²³¹ "Voluntary arbitration" (or "optional arbitration") occurs when, in the event of a dispute or controversy, the parties freely express their willingness to submit to arbitration by means of an arbitration agreement; According to the ECtHR, in this type of procedure, the parties freely, lawfully, and unequivocally waive their intention to submit the dispute to the domestic courts in order to submit it to an arbitral tribunal, and this may be compatible with international human rights law (ECtHR. *Case of Noureddine Tabbane v. Switzerland*. Application no. 41069/12. Judgment 3 January, 2016, para. 34; ECtHR. *Case of Mutu and Pechstein v. Switzerland*. Applications nos. 40575/10 and 67474/10/ Judgment 2 October 2018. Final 04 February 2019, para. 96). At the same time, "voluntary arbitration" (or "compulsory arbitration") has been recognized by the ICJ as authorizing the unilateral initiation of arbitration proceedings when a dispute arises (ICJ. Applicability of the obligation to arbitrate under section 12 of the United Nations Headquarters Agreement of 26 June 1947. Advisory Opinion of 26 April 1988, paras. 12, 57). For its part, the ECtHR defines it as that which is provided for by law and does not derive from the free, lawful, and unequivocal will of the parties to submit their disputes to arbitration or to waive the possibility of bringing proceedings in the domestic courts (ECtHR. *Case of Mutu and Pechstein v. Switzerland*. Applications nos. 40575/10 and 67474/10/ Judgment 2 October 2018. Final 04 February 2019, paras. 96, 113; ECtHR. *Case of Suda v. Czech Republic*. Application no. 1643/06. Judgment 28 October 2010. Final on 28 January 2011, paras. 50-51)

²³² The victims' representatives can rely on the ECtHR's decision in the case of *Noureddine Tabbane v. Switzerland* to assert that the arbitration proceedings did not provide guarantees commensurate with the seriousness of the alleged violations. ECtHR. *Case of Noureddine Tabbane v. Switzerland*. Application no. 41069/12. Judgment of 3 January 2016, para. 27.

²³³ The organs of the inter-American system have held that the ACHR does not impose a specific procedural system, but rather grants States the ability to protect and satisfy the rights contained in the Convention in different ways. IACHR. Report No. 172/10. Caso 12.561. César Alberto Mendoza et al. Merits. Argentina. November 2, 2010, para. 190; IACHR. Report No. 33/14. Case 12.820. Manfred Amrhein et al. Costa Rica. April 4, 2014, para. 193; IACHR. Report No. 326/20. Case 13.045. Merits. Saulo Arboleda Gómez. Colombia. November 19, 2020, para. 37; I/A Court H.R., *Case of Fermín Ramírez v. Guatemala*. Merits, Reparations and Costs. Judgment of June 20, 2005. Series C No. 126, para. 66; I/A Court H.R., *Case of V.R.P., V.P.C. et al. v. Nicaragua*. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 8, 2018. Series C No. 350, para. 219.

²³⁴ Center for International Legal Cooperation. [The Hague Rules On Business and Human Rights Arbitration](#). December 2019, Preamble.

²³⁵ ECtHR. *Case of BEG S.P.A. v. Italy*. Application no. 5312/11. Judgment 20 May 2021. Final 20/08/2021, para. 126.

²³⁶ According to the UNCITRAL Model Law, the parties may agree on the number and method of appointment of arbitrators; failing such agreement, the number of arbitrators shall be three, and their appointment shall follow supplementary rules (arts. 10 and 11). The procedure must respect the equality of the parties and allow them to fully exercise their rights (art. 18), with freedom to determine the procedural rules, which are left to the court as a supplementary measure (art. 19). (UNCITRAL [UNCITRAL Model Law on International Commercial Arbitration \(1985\) with amendments as adopted in 2006](#)).

²³⁷ The State could argue that, based on the ECtHR decision in the case of *BEG SpA v. Italy*, a "tribunal" within the meaning of the European Convention can be a body "set up to determine a limited number of specific issues," provided that it offers "appropriate guarantees." (ECtHR. *Case of BEG S.P.A. v. Italy*. Application No. 5312/11. Judgment 20 May 2021. Final 20/08/2021, para. 126).

of Maldini's actions; furthermore, the State provided compensation of US\$5,000 to A.A. The State may assert that it will pay the rest of the alleged victims similar amounts once they are identified.

V. Reparations

1. Considerations regarding the duty to provide reparations

204. From the first case it decided, the Inter-American Court has emphasized that it is a principle of international law—and even a general concept of law—that any violation of an international obligation that has caused harm carries with it the duty to provide adequate reparation.²³⁸ There is also broad consensus that reparation for harm caused by a breach of an international obligation requires full restitution (*restitutio in integrum*), whenever possible,²³⁹ so that the previous situation is restored and the effects of the violation are eliminated.²⁴⁰ As in most cases of human rights violations, since full restitution is not possible, the Court has ordered measures to ensure the rights that were violated and to remedy the consequences of the violations.²⁴¹
205. The Court has therefore considered the need to grant various measures of reparation in order to provide full redress for the harm caused. In addition to monetary compensation, measures of restitution, rehabilitation, satisfaction, and guarantees of non-repetition are particularly relevant given the harm caused.²⁴² This is provided that they have a causal link to the facts of the case, the violations declared in a judgment determining the international responsibility of the State, the harm proven, and the measures requested to redress the respective harm.²⁴³ These types of measures have taken different forms in order to respond appropriately to the issue.
206. When the nature of the harm caused is irreversible, the Court has held that the payment of “just compensation” is required in terms sufficiently broad to compensate, to the extent possible, the loss suffered (*measures of compensation*).²⁴⁴
207. **Pecuniary damages** refers to the loss of income suffered by victims,²⁴⁵ that is, the financial consequences that have a causal link to the violations declared by the Inter-American Court,²⁴⁶ and includes both actual damages and lost earnings. **Nonpecuniary damages** have been awarded on the grounds that it is inherent in the nature of human beings that any person whose human rights have been violated experiences suffering, and so nonpecuniary damages are self-evident.²⁴⁷ And although the principle of equity has been used to quantify pecuniary and non-pecuniary damages, it is incumbent upon the parties to clearly establish proof of the harm suffered, as well as the specific relationship between the pecuniary claim, the facts of the case, and the violations alleged.²⁴⁸

²³⁸ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 25.

²³⁹ UN. Resolution adopted by the General Assembly [on the report of the Sixth Committee (A/56/589 and Corr.1)] 56/83. [Responsibility of States for internationally wrongful acts](#). Art. 1, Responsibility of States for internationally wrongful acts.

²⁴⁰ I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 450.

²⁴¹ I/A Court H.R., *Case of Acosta et al. v. Nicaragua*. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 25, 2017. Series C No. 334 (only in Spanish), para. 210; I/A Court H.R., *Case of Lagos del Campo v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 340 (only in Spanish), para. 193.

²⁴² I/A Court H.R., *Case of Ortiz Hernández et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 22, 2017. Series C No. 338 (only in Spanish), para. 184. I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, paras. 220-221.

²⁴³ I/A Court H.R., *Case of Loayza Tamayo v. Peru*. Reparations and Costs. Judgment of November 27, 1998. Series C No. 42, para. 85; I/A Court H.R., *Case of Ramírez Escobar et al. v. Guatemala*. Merits, Reparations and Costs. Judgment of March 9, 2018. Series C No. 351, para. 372.

²⁴⁴ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Reparations and Costs. Judgment of July 21, 1989. Series C No. 7, para. 27.

²⁴⁵ I/A Court H.R., *Case of Díaz Peña v. Venezuela*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 26, 2012. Series C No. 244, para. 157; I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala*. Reparations and Costs. Judgment of February 22, 2002. Series C No. 91, para. 43.

²⁴⁶ I/A Court H.R., *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 328, para. 267.

²⁴⁷ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 30, 2009. Series C No. 197, para. 176; I/A Court H.R., *Case of Maldonado Ordóñez v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 3, 2016. Series C No. 311 (only in Spanish), para. 149; I/A Court H.R., *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 328, para. 324.

²⁴⁸ I/A Court H.R., *Case of Quispialaya Vilcapoma v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2015. Series C No. 308 (Only in Spanish), para. 303.

208. **Measures of rehabilitation** have focused on repairing the physical and psychological harm resulting from the declared rights violations.²⁴⁹ **Measures of satisfaction**²⁵⁰ are those aimed at restoring honor to victims and are granted regardless of the payment of fair compensation,²⁵¹ while **guarantees of non-repetition** are granted in order to bring an end to the violations committed,²⁵² so that similar events do not happen again.²⁵³
209. The Court has also ordered, as a measure of reparation, the investigation and punishment of acts that gave rise to the violations it found in various cases. The obligation to investigate (as an obligation of guarantee) is separate and distinct from the obligation to repair. This is because the State's obligation to investigate the facts and punish the perpetrators does not necessarily erase the consequences of the unlawful act for the victim, but rather requires each State party to ensure in its own legal system the rights and freedoms enshrined in the Convention.²⁵⁴ A State that fails to punish human rights violations also fails to comply with its duty to ensure the free and full exercise of the rights of persons subject to its jurisdiction.²⁵⁵
210. Reimbursement of **costs and expenses** has also been requested when the victims have incurred expenses to obtain justice, both domestically and internationally. When the State is found in a judgment to be internationally responsible, the State should be ordered to reimburse those costs and expenses.²⁵⁶
211. With regard to persons entitled to reparation, the Court has considered that the injured parties are those persons who have been declared victims of violations of rights recognized in the ACHR.²⁵⁷ In this specific case, the alleged victims identified in the report are A.A. and nine other women.

2. Arguments of the parties

a. Representatives of the alleged victims

212. Although the judgment itself is a form of reparation, the victims' representatives should argue that the Court should order other measures of reparation to help mitigate the effects of the violations found. In order for reparations to have a causal link with the alleged violations, the teams are expected to explain the different reparations measures that will be sought from the Court.
213. In addition to pecuniary damages, the victims' representatives should argue that the alleged victims suffered nonpecuniary damages due to the abusive working conditions, violence, and coercion to which they were subjected. The compensation should reflect this suffering, taking into account international standards applicable to cases of human trafficking.
214. With regard to compensation, it will be important for the participants to emphasize that, although it is on record that Aravania paid A.A. the sum of US\$5,000, this payment is not causally linked to the violations committed by Aravania; according to the facts of the case, it was paid because of the poor working conditions in Lusaria.
215. To address the psychological consequences of human trafficking, the teams may argue that the State should provide specialized physical and mental health programs for victims of trafficking and labor exploitation, including psychological therapy. This should be coupled with job support programs so the alleged victims can obtain decent work after their experience of exploitation.

²⁴⁹ I/A Court H.R., *Case of the 19 Merchants v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, para. 278.

²⁵⁰ UN. Resolution adopted by the General Assembly [on the report of the Sixth Committee (A/56/589 and Corr.1)] 56/83. Responsibility of States for internationally wrongful acts. Art. 37.2, Satisfaction.

²⁵¹ UN. Resolution adopted by the General Assembly [on the report of the Sixth Committee (A/56/589 and Corr.1)] 56/83. Responsibility of States for internationally wrongful acts. Art. 37.1, Satisfaction.

²⁵² Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Resolution 60/147 adopted by the General Assembly on 16 December 2005, para. 22.

²⁵³ I/A Court H.R., *Case of Gangaram Panday v. Suriname*. Preliminary Objections. Judgment of December 4, 1991. Series C No. 12, para. 50.

²⁵⁴ I/A Court H.R., *Case of Garrido and Baigorria v. Argentina*. Reparations and Costs. Judgment of August 27, 1998. Series C No. 39, para. 72.

²⁵⁵ I/A Court H.R., *Case of Trujillo Oroza v. Bolivia*. Reparations and Costs. Judgment of February 27, 2002. Series C No. 92, para. 101.

²⁵⁶ I/A Court H.R., *Case of Abrill Alosilla et al. v. Peru*. Merits, Reparations and Costs. Judgment of March 4, 2011 Series C No. 223, para. 133. See also Art. 63.1 ACHR; 40, 41, 42, 65, 66 of the Rules of Procedure of the Inter-American Court of Human Rights.

²⁵⁷ I/A Court H.R., *Case of Ramírez Escobar et al. v. Guatemala*. Merits, Reparations and Costs. Judgment of March 9, 2018. Series C No. 351, para. 372.

216. As a measure of satisfaction, the teams may request a public apology and acknowledgment of State responsibility due to the conditions under which the cooperation agreement was implemented and the failure to establish protection mechanisms.
217. It is important that the petitioner provide an explanation of how all of the victims could be compensated and participate in the reparation process. With regard to the victims who have not yet been located, the victims' representatives could propose that the Court, as it did in the case of *Acosta Calderón v. Ecuador*,²⁵⁸ order that the compensation be deposited in a bank account for a specified period of time, and that the funds be returned to the State if they are not claimed within that period. To this end, the victims' representatives should propose minimum identification criteria for the Court to consider when establishing a mechanism for identifying the remaining victims.
218. The teams are also expected to argue that the perpetrators of human trafficking in Aravania should be investigated and punished, and that this does not violate the principle of *ne bis in idem*, as alleged (*supra*, paras. 198-199).
219. Guarantees of non-repetition may be requested to address various issues observed in the case under analysis. More rigorous mechanisms need to be established to monitor labor cooperation programs, ensuring that employment conditions are fair and dignified. On this point, the teams are expected to argue that Resolution 2020 of the Ministry of Foreign Affairs should be strengthened to establish that crimes violating norms of jus cogens, such as human trafficking, are not covered by diplomatic immunity, and that the State is obliged to act on its own initiative to seek justice in such cases through other means, such as civil or administrative proceedings. They may also request the adoption and dissemination of protocols to identify and prevent cases of trafficking with a gender and intersectional approach, particularly in cases like the cooperation agreement between Aravania and Lusaria.
220. Furthermore, the State should consider implementing comprehensive measures to ensure the inclusion and development of the women from Campo de Santana, given that the vulnerable conditions in which they lived (and which were known to the State) made them susceptible to human trafficking. Government employees should be trained to identify victims of trafficking and referral mechanisms should be established to ensure that such incidents do not happen again in the future. The State should also establish training assessment mechanisms to measure its impact (effectiveness).
221. Lastly, a request should be filed for reimbursement of properly documented costs and expenses incurred by the victims in seeking justice at both the national and international levels.

b. The State

222. As stated in the facts of the case, the State requested that Aravania not be held internationally responsible for the acts described above. Given that the inter-American case law has developed to establish that reparation measures must have a causal link to the violations found in the judgment, it would not be appropriate for the Court to award reparations in this case.
223. However, without it implying any international responsibility on its part, the State may recall that the inclusion of alleged victims who were not fully identified is being questioned, and that it therefore considers that they should not be declared victims and that it is not appropriate to determine compensation. Here, the State should reiterate that, in the absence of any information on the other nine victims' interest in participating in the international proceedings and of any means of providing them with compensation, the Court cannot consider them parties to the case. With regard to A.A., the State could argue that the sum of US\$5,000 had already been awarded at the domestic level, which should be considered fair compensation for the inadequate working conditions she experienced as a result of Maldini's actions. Accordingly, the State may ask the Court to take that sum into consideration, without the need to order additional measures, should it find that the State incurred international responsibility.
224. The State can also report that it has made progress in adopting general measures to prevent the recurrence of incidents such as those brought before the Inter-American Court. In particular, the Ministry of Foreign Affairs of Aravania issued Resolution 2020, which seeks to ensure, in the context of any commercial relationship or

²⁵⁸ I/A Court H.R., *Case of Acosta Calderón v. Ecuador*. Merits, Reparations and Costs. Judgment of June 24, 2005. Series C No. 129, para. 170.

transfer of goods or services, that the other State recognizes labor rights in line with International Labor Organization standards, and that effective mechanisms are in place for filing work-related complaints. It should also be noted that the State already has laws consistent with international standards that would allow it to take action in possible cases of human trafficking.