

Indirect Beneficiaries of State Capture: Human Trafficking & Ecuador's Furukawa *Plantaciones, C.A.*

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The Furukawa Plantaciones case on labor trafficking in Ecuador has been lauded for holding both a corporation and the State accountable for human rights violations.¹ A closer examination of the outcome of the case, however, begs the question: what practices have actually changed? Beyond the court-ordered fines against Furukawa, what policies and practices, at both the governmental and corporate levels, have changed to ensure the non-recurrence of similar harms against similarly situated plaintiffs?

Despite growing literature on state capture and the seemingly obvious connection between corrupt practices and human trafficking, there is a gap in current research examining the connection between state capture and human trafficking. Scholars have also overlooked how indirect beneficiaries of state capture profit from the larger capture projects. This paper uses the Furukawa Plantaciones case in Ecuador to examine (1) how indirect beneficiaries of state capture tie into the rhizomic capture network and (2) how state capture acts as an enabling factor for human trafficking. In doing so, it becomes clear that state capture practices allow both corporate and state actors to evade accountability for human trafficking, despite the promulgation of laws and cases that allegedly crack down on traffickers. By understanding the link between state capture and trafficking, practitioners will be better able to address clients' harms and seek remedies that strike at the roots of the human rights violations associated with trafficking.

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1. See, e.g., *Constitutional Court Issues Landmark Ruling for Victims of Modern Slavery*, INTERNATIONAL IDEA (Dec. 2024), <https://www.idea.int/democracytracker/report/ecuador/december-2024> [<https://perma.cc/87VP-XYQC>]; *Ecuador: Constitutional Court Rules Furukawa's Staff Employed in "Slave-Like" Setting, Orders Compensation to Victims and Public Apology*, Business and Human Rights Centre (Dec. 10, 2024), <https://www.business-humanrights.org/en/latest-news/Ecuador-Constitutional-court-rules-Furukawas-staff-employed-in-slave-like-setting-orders-compensation-to-victims-public-apology/> [<https://perma.cc/6T6M-ARTV>]; *Ecuador Apologizes to Farm Workers Deemed to Live Like Slaves*, France24 (May 31, 2025), <https://www.france24.com/en/live-news/20250531-ecuador-apologizes-to-farm-workers-deemed-to-live-like-slaves> [<https://perma.cc/W2AX-UCY9>].

INTRODUCTION

For nearly sixty years, workers on the Furukawa Plantaciones in Ecuador were subjected to labor trafficking analogous to slavery.² Workers were born, worked, and even died on the plantations, intentionally held in a position of vulnerability by Furukawa.³ They were forced to start working at around eight years old.⁴ Workers would engage in laborious agricultural activities (growing, harvesting, drying, and sorting abaca fibers) for long hours with no PPE and low pay.⁵ Workers were also isolated from the world. For example, the nearest hospital and school were a several-hour walk away from the plantations.⁶ Workers were also forced to live in substandard housing that lacked potable water and basic hygiene facilities.⁷ These conditions have existed since 1963.

On November 21, 2024, the Constitutional Court of Ecuador issued a landmark judgment for human trafficking in *Esclavitud moderna en Furukawa* (“*Furukawa*”). For the first time, a national court held a state responsible for failing in its duty to prevent human trafficking and attendant human rights violations.⁸ Although regional courts such as the Inter-American Court of Human Rights had previously attributed state responsibility for failing to prevent trafficking,⁹ no national court had yet found a state liable in a labor trafficking case.¹⁰

Although *Furukawa* should be celebrated for its recognition of states’ duties to prevent human rights violations, specifically human trafficking, the case leaves several questions unanswered. The Court painstakingly details how labor trafficking conditions analogous to slavery persisted on the Furukawa plantations for nearly sixty.¹¹ While recognizing that various state agencies should have intervened to prevent this trafficking, the Court does not go so far to ask why the agencies failed to undertake inspections, sanction Furukawa, or take other steps that would have remedied the trafficking during that sixty-year span. Furthermore, neither the Court nor the plaintiffs contextualizes the occurrences on the Furukawa plantations within the larger context of state

2. Corte Constitucional del Ecuador [Constitutional Court of Ecuador] Nov. 21, 2024, Sentencia 1072-21-JP/24 (Ecuador) [hereinafter *Furukawa*] at ¶ 1(1.12).

3. See, e.g., Unidad Judicial Contra la Violencia a la Mujer o Miembros del Núcleo Familiar del Cantón Santo Domingo [Judicial Units for Violence Against Women and Family Members], No. 23571-2019-01605, Acción de Protección, 44–45.

4. Veronica Smink, Furukawa, el caso de esclavitud moderna por el que una empresa japonesa y el gobierno de Ecuador fueron obligados a pedir disculpas, BBC (May 7, 2021), <https://www.bbc.com/mundo/noticias-america-latina-57003652> [<https://perma.cc/QG8T-KLCP>].

5. *Furukawa*, *supra* note 2, at ¶¶ 75–77.

6. *Id.*, at ¶¶ 69, 71.2, n. 105, 111.4, n. 211.

7. *Id.* at ¶¶ 7.5, 108.

8. *Id.* at ¶¶ 187–228.

9. *Hacienda Brasil Verde v. Brazil*, Judgment, Inter-Am. Ct. H.R.317, (ser. C) No. 318 (Oct. 20, 2016).

10. See HUMAN TRAFFICKING LEGAL CENTER, GLOBAL JUSTICE: USING STRATEGIC LITIGATION TO COMBAT FORCED LABOR (Mar. 2023), 15 (noting the complexities of bringing suits against states for human trafficking and outlining the regional cases where states have been found liable for failing in their duty to prevent trafficking).

11. *Furukawa*, *supra* note 2, at ¶¶ H15-H27.

capture occurring within Ecuador and concomitant policies and regulations that benefit corporations to the exclusion of civilians, particularly minoritized communities such as those working on the Furukawa plantations.

In recent years, state capture has begun to enter the public knowledge via prominent cases (e.g., Odebrecht,¹² former President Jacob Zuma in South Africa,¹³ and the Rajapaksa family in Sri Lanka¹⁴). State capture is a distinct form of corruption that fundamentally and permanently alters the rules of the game to the captor's benefit.¹⁵ This set of practices contrasts with traditional forms of corruption, which merely seek the advantageous implementation of existing norms. Instead, state capture involves parties controlling the articulation of rules and norms in permanent ways that progressively secure the captor

12. Odebrecht is a Brazilian case that centered around the state-owned, multinational petroleum company (Petrobras) and a construction company (Odebrecht). Odebrecht was deeply involved in state capture, and became enmeshed with members of the legislature (especially the *Centrão* coalition) and the executive branch. The president allowed *Centrão* to appoint key ministries, state agencies, and SOEs in return for the coalition's support. The coalition, in turn, granted overpriced state contracts to Odebrecht. Fergus Shiel and Sasha Chavkin, *Bribery Division: What is Odebrecht? Who is Involved?*, INTERNATIONAL CONSORTIUM OF INVESTIGATIVE JOURNALISTS (June 25, 2019), <https://www.icij.org/investigations/bribery-division/bribery-division-what-is-odebrecht-who-is-involved/> [<https://perma.cc/V5PM-TJJT>]; John Paul Rathbone, *Odebrecht in Colombia: State Capture?*, FINANCIAL TIMES (Dec. 7, 2018), <https://www.ft.com/content/c6b34048-fa09-11e8-af46-2022a0b02a6c> [<https://perma.cc/63AN-5ERR>]; ELIZABETH DAVID-BARRETT, STATE CAPTURE AND INEQUALITY 6 (2021), https://cic.nyu.edu/wp-content/uploads/1662/65/cic_pathfinders_state_capture_inequality-2021.pdf [<https://perma.cc/2D9D-KBZ4>].

13. During the presidency of Jacob Zuma, the Gupta family and their associates gained control over key government decision-making processes by placing "pliant" individuals in key positions across SOEs and within law enforcement. The capture network allowed the Guptas and President Zuma to manipulate procurement processes and direct public funds toward private interests while also weakening oversight mechanisms and criminal justice processes to ensure impunity for capture project members. E.g., Ismail Momoni, *How and Why did State Capture and Massive Corruption Occur in South Africa?*, INTERNATIONAL MONETARY FUND (Apr. 10, 2023), <https://blog-pfm.imf.org/en/pfmblog/2023/04/how-and-why-did-state-capture-and-massive-corruption-occur-in-south-africa> [<https://perma.cc/ENA5-6CCS>]; Neil Arun, *State Capture: Zuma, the Guptas, and the Sale of South Africa*, (July 14, 2019), <https://www.bbc.com/news/world-africa-48980964> [<https://perma.cc/435N-MEFK>]; Alexander Winning, *South African Inquiry Points to Systemic Corruption During Zuma Era*, REUTERS (Jan. 5, 2022), <https://www.reuters.com/world/africa/south-african-inquiry-finds-state-capture-during-zuma-era-2022-01-04/> [<https://perma.cc/E5RG-2G6A>]; Shola Lawal, *Jacob Zuma's Nine Lives: How South Africa's Ex-President Keeps Coming Back*, AL JAZEERA (Apr. 18, 2024), <https://www.aljazeera.com/news/2024/4/18/jacob-zumas-nine-lives-how-south-africas-ex-president-keeps-coming-back> [<https://perma.cc/5G73-KPC5>]. For an academic overview, see IVOR CHIPKIN, ET AL. *SHADOW STATE: THE POLITICS OF STATE CAPTURE* (2018).

14. The Rajapaksa family centralized political power through constitutional amendments (e.g., the 20th Amendment, which dismantled Sri Lanka's system of checks and balances, centralizing power in the presidency) and by installing family members in virtually all key government and financial positions. By controlling the legislature and the budget, the Rajapaksa family and their cronies were able to bypass institutional oversight to redirect public funds towards massive, debt-fueled infrastructure projects that benefited capture party interests. Hannah Ellis Peteresen, *"The Family Took Over": How a Feuding Ruling Dynasty Drove Sri Lanka to Ruin*, THE GUARDIAN (July 7, 2022), <https://www.theguardian.com/world/2022/jul/07/the-family-took-over-how-a-feuding-ruling-dynasty-drove-sri-lanka-to-ruin> [<https://perma.cc/UCP3-8QST>]; *Dynastic Politics: Rajapaksa Family Control of the State Budget*, SRI LANKA CAMPAIGN (Mar. 3, 2021), <https://srilankacampaign.org/dynastic-politics-rajapaksa-family-control-of-the-state-budget/> [<https://perma.cc/5J8E-R7SA>]; DAVID-BARRETT, *supra* note 13, at 10.

15. Joel Hellman & Daniel Kaufmann, *Confronting the Challenge of State Capture in Transition Economies*, 38(3) IMF FIN. & DEV. (2001), <https://www.imf.org/external/pubs/ft/fandd/2001/09/hellman.htm> [<https://perma.cc/53W9-8B3D>]; Pablo de Greiff and Meghan Knapp, *State Capture as an Enabling Condition for Human Rights Violations*, viii, 10, <https://app.box.com/s/5bkw68ckzode4bg6l6dosml2kcy7qlsm> [<https://perma.cc/8SAY-EE9L>].

parties unchecked power.¹⁶ State capture not only results in weakened state institutions, but also the enabling of human rights violations¹⁷ such as those related to human trafficking.

This Article argues that state capture is an enabling factor for human trafficking and that scholars and practitioners should situate human trafficking experiences within the larger context of state capture to fully understand the harms, relevant actors, and potential remedies. Furthermore, by conceptualizing state capture as an enabling factor of other human rights violations (including human trafficking), scholars and practitioners can better understand how third parties not directly involved in capture projects may still benefit from capture methods and modalities. This will help scholars better understand the full scope of capture networks and beneficiaries. In a world filled with daily news articles on capture practices in states around the globe,¹⁸ understanding the full scope of capture networks and beneficiaries is of the utmost relevance to human rights defenders and scholars.

This Article builds off the work of state capture and human trafficking literature in defining its terms and scope. Neither group of scholars has yet linked state capture and human trafficking despite the obvious overlap of the two concepts. This Article conceptualizes the link between the two while also complicating scholars' understanding of capture networks through the inclusion of indirect beneficiaries.

To make this argument, the Article begins by providing a foundational understanding of state capture in Part I. The Article provides a brief historiography of the field and its developments. This includes a working definition of state capture and a description of its rhizomic nature. The rhizomic nature of state capture allows for the inclusion of indirect beneficiaries, who have been largely ignored until now. Part I also includes an overview of state capture as it exists in Ecuador, with specific examples of capture projects as well as legislative and policy actions relevant to the *Furukawa* case. To provide further illumination on how state capture acts as an enabler of human trafficking, the

16. Pablo de Greiff and Meghan Knapp, *State Capture as an Enabling Condition for Human Rights Violations*, viii, 10, <https://app.box.com/s/5bkw68ckzode4bg6l6dosm12kcy7qlsm> [<https://perma.cc/8SAY-EE9L>].

17. *Id.*

18. See, e.g., Elizabeth David-Barrett, *The Economic Consequences of State Capture: Oligarchs Are Warping Markets and Corrupting Economies Around the World*, FOREIGN AFFAIRS (Apr. 4, 2025), <https://www.foreignaffairs.com/world/economic-consequences-state-capture> [<https://perma.cc/H7C9-APZJ>]; *State Capture is a Growing Threat. Reversing it is Hard*, THE ECONOMIST (Apr. 3, 2025), <https://www.economist.com/international/2025/04/03/state-capture-is-a-growing-threat-reversing-it-is-hard> [<https://perma.cc/X3RQ-EJ23>]; Robert Benson, *How State Capture and Corruption Harms Citizens: Lessons From Abroad*, CENTER FOR AMERICAN PROGRESS (Apr. 15, 2025), <https://www.americanprogress.org/article/how-state-capture-and-corruption-harms-citizens-lessons-from-abroad/> [<https://perma.cc/4F8Q-MRNV>]; Richard Poplak, *Same Same — How State Capture has Become SA's Greatest Export*, DAILY MAVERICK (June 2, 2025), <https://www.dailymaverick.co.za/article/2025-06-02-same-same-how-state-capture-has-become-sa-s-greatest-export/> [<https://perma.cc/G29C-EFCV>]; Richard Messick, *Fighting Grand Corruption: Naomi Roht-Arriaza's Indispensable Guide to Combatting the Scourge*, GLOBAL ANTICORRUPTION BLOG (May 28, 2025), <https://globalanticorruptionblog.com/2025/05/28/fighting-grand-corruption-naomi-roht-arriaza-s-indispensable-guide-to-combatting-its-scourge/> [<https://perma.cc/9U2R-MNXS>].

Article also delves into the current literature linking human trafficking and corruption in general.

Part II provides an overview of human trafficking at the Furukawa Plantaciones. I describe the context of abaca farming; discuss worker vulnerabilities, focusing on their marginalization and minoritization; and include a detailed section on the *Furukawa* case. As there has not been much written on the *Furukawa* case in English, nor a general legal analysis, the Article provides a detailed analysis of the case's procedural history, claims, findings, and enforcement of the judgment up until the publication of this Article.

In Part III, the Article reanalyzes *Furukawa* through the lens of state capture. In doing so, three lines of inquiry emerge. First, the Article addresses what duties states have regarding prevention and non-recurrence both generally and as it specifically relates to human trafficking. Second, the Article establishes the link between state capture and human trafficking, paying particular attention to the role of indirect beneficiaries of state capture in the process. Because of the public vulnerabilities created by state capture and the opportunities for impunity generated by it, actors need not be directly involved in capture to benefit from it as it relates to human trafficking. For this reason, state capture's existence in a state creates an environment in which human trafficking can flourish. The final line of inquiry on the linkage between state capture and human trafficking yields five key implications for the field, which can be exemplified via application to the *Furukawa* case.

I. CORRUPTION AND STATE CAPTURE IN ECUADOR

A. *What is State Capture?*

The concept of “state capture” has existed for decades. Joel Hellman and Daniel Kaufmann coined the phrase as part of their analysis of former Soviet states that underwent economic transition.¹⁹ Hellman and Kaufmann noted that the former Soviet states were experiencing a different type of corruption than they had previously observed.²⁰ Instead of individuals or firms offering bribes to public employees in exchange for the favorable implementation of existing regulations, individuals and firms were acting with state officials to shape the regulations.²¹ In other words, this new type of corruption sought to fundamentally alter the rules of the game to its advantage.²²

19. Joel S. Hellman, Geraint Jones, & Daniel Kaufmann, “*Seize the State, Seize the Day*”: *State Capture, Corruption, and Influence in Transition*, Policy Research Working Paper No. 2444, WORLD BANK (Sept. 2000), https://openknowledge.worldbank.org/bitstream/handle/10986/19784/multi_page.pdf?sequence=1&isAllowed=y [https://perma.cc/S292-ZTC6].

20. *Id.*; accord Joel Hellman and Daniel Kaufmann, *State Capture in Transition* (submission to the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, South Africa, presented September 19, 2018), 2, <https://resourcegovernance.org/sites/default/files/documents/state-capture-in-transition.pdf> [https://perma.cc/8H7Q-GXQF].

21. Hellman et al., *supra* note 20; Hellman & Kaufmann, *supra* note 16.

22. Hellman & Kaufmann, *supra* note 16.

Over time, the concept of state capture began to morph to fit a wider variety of contexts. As more researchers began using state capture to explain patterns in different states, several important distinctions began to arise in the conceptualization of state capture. First, scholars and practitioners broadened the set of actors behind capture from merely private firms to include families, criminal organizations, subversive groups and cartels, political parties, and state-owned enterprises.²³ Second, scholars have expanded the roles played by state and non-state actors in the capture process. Whereas early research on state capture assumed that non-state actors were the captors and that state actors played more passive roles, recent literature recognizes the active role that many state actors play in the capture process.²⁴ Third, researchers and practitioners have expanded the possible methods of state capture. Capture can occur through legal and illicit, coercive and noncoercive means.²⁵ The key is that there must be an asymmetry of power that allows a group to exert undue influence and capture state institutions, regardless of whether they are operating inside the bounds of the law.²⁶ Fourth, the underlying aim of captors in a given capture project has expanded to include more than mere pecuniary gains; “state actors may also be motivated by political, legal, or social aims distinct from economic interests (e.g., staying in power, securing impunity, or the legitimization of an ideological regime).”²⁷ Finally, scholars’ understanding of the effects of state capture has expanded. Because state capture is not a one-off transaction, it has wider and longer-lasting impacts including distrust in institutions, increases in inequalities, undermining democratic values, and voiding politics of meaning.²⁸

As scholars have expanded their views and uses of the term, the definition of state capture has transformed. Although there is no agreed-upon definition of state capture, it refers to the “end result of a range of practices (not all of them necessarily illegal) by means of which either individuals or particular groups take control of public institutions and public policy processes for their own benefit to the exclusion of other parts of the public in whose interest the public institutions are supposed to serve.”²⁹ These practices aim to permanently alter the rules of the game to secure the captor parties’ increasingly and

23. Ronald C. Kramer, Raymond Michalowski, and David Kauzlarich, *The Origins and Development of the Concept and Theory of State-Corporate Crime*, 48(2) CRIME & DELINQUENCY 263 (2002).

24. Alan S. Bruce and Paul J. Becker, *State-Corporate Crime and the Paducah Gaseous Diffusion Plant*, 8(2) WESTERN CRIM. R. 29 (2007).

25. LUIS JORGE GARAY SALAMANCA, ET AL., LA CAPTURA Y RECONFIGURACIÓN COOPTADA DEL ESTADO EN COLOMBIA 52 (2008); Maurice O. Dassah, *Co-Opted State Reconfiguration: The New Face/Phase of State Capture in Latin America*, 31(2) LOYOLA J. SOC. SCI. (2017).

26. Daniel Kaufmann and Pedro C. Vicente, *Legal Corruption*, 23 ECON. POL. 197, (2011).

27. de Greiff & Knapp, *supra* note 17, at 9.

28. See, Elizabeth Dávid-Barret, *State Capture and Development: A Conceptual Framework*, 26 J. Int'l Rel. Dev. (2023).

29. De Greiff and Knapp, *supra* note 17, at 10.

progressively unchecked power.³⁰ By extension, state capture involves attendant weakening or misuse of independent oversight mechanisms and institutions.³¹

While this definition of state capture may appear overly broad to lawyers at first glance, there are several key points to remember. First, there are no treaties, laws, or regulations explicitly prohibiting state capture. Instead, the individual actions of captors that feed into the capture project are the actions that are prohibited by law (e.g., money laundering, bribery, political persecution, violations of freedom of speech, etc.). State capture and its definition provide a framework for practitioners and scholars to interpret interconnected actions (both legal and illegal).

Second, while this broad definition of state capture may seem to be too all encompassing, state capture occurs across a spectrum.³² The notion of capture occurring along a spectrum highlights that capture is a process that occurs over time and that capture is not unidirectional.³³ States can progress and regress along this spectrum as captors incrementally engage in capture projects.³⁴ The exact tenor of the capture project is highly context-dependent and there is no singular uniform pathway to the capture of a state.³⁵ Thus, while it is true that virtually every state is experiencing some level of state capture,³⁶ the individual capture projects in each state is unique and everchanging. Recognizing the state capture and how various actions feed into the capture project allows scholars and practitioners to recognize compounded and intersectional harms and it provides a metalevel examination of corruption into which various actions feed.

B. *State Capture in Ecuador*

State capture scholars have long documented that capture and corruption are pervasive in Latin America, regardless of government style.³⁷ Many scholars argue that state capture is able to flourish in Latin America due to a neoliberal development agenda that promotes deregulation and flexibility in the labor market.³⁸ Not only does this weaken the rule of law in reducing public and private predatory behavior, but it also reconfigures labor and production values

30. *Id.*; see also Julio Carrión & James Korman, *Populism and State Capture: Evidence from Latin America*, 116 E. REV. LAT. AM. & CARIB. STUDIES 1, 4 (2023).

31. De Greiff and Knapp, *supra* note 17, at 10; see also Gerardo Rodríguez Sánchez Lara, Andrea Valdés Hernández, *La Captura del Estado en México: una revisión teórica e histórica*, 7(1) REVISTA DE ESTUDIOS EN SEGURIDAD INTERNACIONAL 105, xxx (2021), <https://seguridadinternacional.es/resi/html/state-capture-in-mexico-a-theoretical-and-historical-review/> [<https://perma.cc/7674-M5PF>].

32. De Greiff & Knapp, *supra* note 17, at 33; Daniel Kauffman, *State Capture Matters: Considerations and Empirics Toward a Worldwide Measure*, Results for Development (2024), <https://r4d.org/resources/state-capture-index/> [<https://perma.cc/DTZ7-J5ZN>].

33. De Greiff & Knapp, *supra* note 17, at 2.

34. *Id.* at 33.

35. *Id.* at viii.

36. See Kaufmann, *State Capture Matters*, *supra* note 33.

37. See, e.g., Carrión & Korman, *supra* note 31, at 6.

38. *Id.* at 7; MARÍA AMELIA VITERI, GENDER AND EMBODIED GEOGRAPHIES IN LATIN AMERICAN BORDERS 83–84 (2022).

so that maximizing profits comes at the expense of employment conditions.³⁹ However, it is worth reiterating that state capture can occur in any type of political regime and in any economy.⁴⁰

Looking specifically at Ecuador, scholars have pointed to key practices under Presidents Rafael Correa (Jan. 2007-May 2017), Lenín Moreno (May 2017-May 2021), Guillermo Lasso (May 2021-Nov. 2023), and Daniel Noboa (Nov. 2023-present) that have augmented state capture.⁴¹ There is an opportunity for future scholars to examine how state capture has functioned in Ecuador historically. For the purposes of this paper, however, I will only consider how state capture under Presidents Correa, Moreno, Lasso, and Noboa benefited Furukawa and enabled human trafficking.

The government of President Moreno implemented austerity measures and cut taxes for large businesses to the detriment of the general population.⁴² The austerity policy and institutional reforms simultaneously reduced the state's capacity to combat crime, thereby allowing collusion and corruption to flourish.⁴³ During President Moreno's time in office, elites "actively developed new networks and strategies to create the appropriate social environment not only for their businesses to thrive but also to develop new capacities to pressure society and the state."⁴⁴ In this way, the elites were able to build an "infrastructure of dissent" that would allow them to gain key roles in government regardless of the outcome of elections.⁴⁵ The business class not only mobilized critical

39. Carrión & Korman, *supra* note 31, at 7; VITERI, *supra* note 39, at 83–84.

40. See, e.g., Daniel Kaufmann, *State Capture Index*, GOVERNANCE ACTION HUB, <https://governance-actionhub.org/explorations/local-global-coordination-for-impact/state-capture-index/> [https://perma.cc/N3HU-JFQX].

41. See Soledad Stoessel, *Crisis estatal en Ecuador: del Estado posneoliberal al Estado predatorio*, 29 PAPEL POLÍTICO (2024), [https://revistas.javeriana.edu.co/files-articulos/PaPo/29\(2024\)/6812641007/index.html](https://revistas.javeriana.edu.co/files-articulos/PaPo/29(2024)/6812641007/index.html) [https://perma.cc/VW3Y-CSNU] (describing the effects of each presidency on state capture in the State).

42. See, e.g., Ley Orgánica Para El Fomento Productivo, Atracción De Inversiones, Generación De Empleo, Y Estabilidad Y Equilibrio Fiscal [Organic Law for the Promotion of Production, Attraction of Investments, Generation of Employment, and Fiscal Stability and Balance] (Aug. 21, 2018) (Ecuador), <https://www.cosedec.gob.ec/wp-content/uploads/2018/08/Ley-Orgánica-para-el-Fomento-Productivo-Atracción-de-Inversiones-Generación-de-Empleo-y-Estabilidad-y-Equilibrio-Fiscal.pdf> [https://perma.cc/WP5C-2L4E]; Thomas Chiasson-LeBel, *Neoliberalism in Ecuador after Correa: A Surprise Turn or According to Economic Elites' Plans?* 108 Eur. R. of Lat. Am. & Caribbean Stud. 153, 154 (2019); Stoessel, *supra* note 42; Elena Dressler and Jonas Wolff, *From Political Instability to "Internal Armed Conflict": Ecuador's Multiple Crises*, *Revista de Ciencia Política* 14; Ryan Berg and Rubi Bledsoe, *In the Eye of the Storm: Ecuador's Compounding Crises*, Center for Strategic and International Studies (CSIS) (Apr. 24, 2024), <https://www.csis.org/analysis/eye-storm-ecuadors-compounding-crises> [https://perma.cc/MAT9-V8PQ]. But see, Kauffman, *State Capture Index*, *supra* note 41; Kauffman, *State Capture Matters*, *supra* note 33. Although the index shows that state capture was lesser under President Correa than during any other administration between 1996–2022, the raw numbers do not show mechanisms that were happening to strengthen capture, only outcomes of the capture processes (e.g., outcomes of legislative corruption, election vote buying, lack of regulatory quality, etc.). Importantly, the data does show that throughout the entire period examined by Kauffman (1996–2022), Ecuador had a high level of capture and that it has increased in recent years.

43. Dressler & Wolff, *supra* note 43 at 15; Berg & Bledsoe, *supra* note 43 ("Austerity measures and budget cuts . . . have been credited as one of the drivers of massive corruption . . ."); Mark L. Schneider, *A Diagnostic on Corruption in Ecuador: The Way Forward*, CSIS (Oct. 13, 2020), <https://www.csis.org/analysis/diagnostic-corruption-ecuador-way-forward> [https://perma.cc/RSN9-VZK4].

44. Chiasson-LeBel, *supra* note 43, at 154.

45. *Id.*

political moments but also put forth qualified candidates to fill key vacancies and obtain strategic contracts.⁴⁶ This includes Richard Martínez Alvarado—one of the main leaders of the business class—joining Moreno’s cabinet as Minister of Economy and Finance (an appointment that did not require popular vote but was determined solely by President Moreno).⁴⁷ With this position, Martínez was able to advocate aggressively for the neoliberal turn that the State took.⁴⁸

Neoliberalism and strong business interests in state actions have continued under President Noboa. Although President Noboa has only been in office during the litigation and decision-implementation phases of *Furukawa*, understanding how state capture currently exists in Ecuador is crucial to understanding decision implementation methods as well as state action (or inaction) post *Furukawa*.

President Noboa, a banana tycoon, has been able to further his own and his economic group’s interests through his charity (Fundación Cruzada Nueva Humanidad; Crusade for a New Humanity) and his magazine (*La Verdad*).⁴⁹ *La Verdad* in particular is a medium used to spread President Noboa’s views, promote his political candidates, and advertise products produced by members of his economic group under the guise of a general interest magazine.⁵⁰ In addition to his magazine and charity, businesses aligned with President Noboa have developed a network of foundations and NGOs that not only facilitate the growth of their businesses but also allow the business elite to push their policies and strengthen links between state officials and economic group leaders.⁵¹ In this way, the business elite are able to subvert the public domain for their private interests.⁵²

46. *Id.* at 163; Michelle Estefanía Barros Herdoiza, *La captura y reconfiguración cooptada del estado ecuatoriano*, 21 (2023) (unpublished Master’s Thesis, University Adnina Simón Bolívar, Sede Ecuador) (on file with UASB library), <https://repositorio.uasb.edu.ec/bitstream/10644/9646/1/T4221-MDCPC-Barros-La%20captura.pdf> [https://perma.cc/UMH2-TZE8]; see also Schneider, *supra* note 44 (discussing lack of transparency in elections and the filling of seats).

47. Constitución de la República del Ecuador [CRE] [Constitution] Sept. 28, 2008, art. 147, no. 9 (Ecuador).

48. Chiasson-LeBel, *supra* note 43, at 163; Stoessel, *supra* note 42.

49. FUNDACIÓN CRUZADA NUEVA HUMANIDAD, <https://www.cruzadanuevahumanidad.org/fundacion/> [https://perma.cc/3MNV-DXTT]; LA VERDAD, <https://www.revista-laverdad.com/> [https://perma.cc/9T6K-LL59]; see Chiasson-LeBel, *supra* note 43, at 164 (commenting on the use of both the charity and magazine by President Noboa to further his and his associates’ interests).

50. Chiasson-LeBel, *supra* note 43, at 164.

51. *Id.* at 165.

52. *Id.*; Barros Herdoiza, *supra* note 46, at 21; *La captura del Estado y el aumento de la desigualdad en Latinoamérica y el Caribe*, OXFAM INTERNATIONAL (Nov. 16, 2018), <https://www.oxfam.org/es/la-captura-del-estado-y-el-aumento-de-la-desigualdad-en-latinoamerica-y-el-caribe> [https://perma.cc/J26K-J2H9]; See generally, e.g., Jimena Reyes, *State Capture Through Corruption: How Can Human Rights Help?*, HUM. RTS. PROGRAM HARV. L. SCH. (2019), https://hrp.law.harvard.edu/wp-content/uploads/2019/07/JimenaReyes_HRP_19_002.pdf [https://perma.cc/5RE7-PUNP]; MARTINE BOERSMA, *CORRUPTION: A VIOLATION OF HUMAN RIGHTS AND A CRIME UNDER INTERNATIONAL LAW* (2012); CLAUDIO NASH ROJAS, *CORRUPCIÓN Y DERECHOS HUMANOS: UNA MIRADA DESDE LA JURISPRUDENCIA DE LA CORTE INTERAMERICANA DE DERECHOS HUMANOS* (2014); John Mukum Mbaku, *Rule of Law, State Capture, and Human Development in Africa*, 33 AM. U. INT’L L. REV. 771 (2018); De Greiff & Knapp, *supra* note 17, at 9.

At the same time that the private sector and business elites have been able to increase their influence over the state through coercive means, they have also secured impunity. A key feature of strong capture networks is the ability of captors to remain free from detection, investigation, or prosecution.⁵³ The captors in Ecuador have achieved such impunity by lobbying, strategically financing campaign elections, and taking advantage of the revolving door between private and public.⁵⁴ The captors do this through means as discussed in Part I(a); they operate in gray zones, moving through legal and illegal, licit and illicit actions.⁵⁵ For example, in one of the most public examples of state capture in Ecuador, the Chinese company Sinohydro received a \$2.4 billion contract to build the largest dam in the state (Coca Codo Sinclair). There were irregularities in the contract process, including a lack of technical and environmental studies, overpricing, and poor construction quality.⁵⁶ Despite these irregularities and problems, the contract between Ecuador and Sinohydro contained a diplomatic immunity clause that effectively impeded suits or investigations against the company.⁵⁷ In another publicly known case of state capture in Ecuador, journalists revealed the existence of a bribe network whereby foreign businesses were obtaining public contracts and other benefits from government officials.⁵⁸ There is also evidence that transnational criminal organizations have infiltrated state institutions, undermining the functioning of democratic institutions to further their own agendas.⁵⁹

These examples illustrate the existence and mechanisms of capture networks in Ecuador. They also highlight corruption and collusion practices

53. See generally De Greiff & Knapp, *supra* note 17, at 27.

54. Francisco Durand, *The Odebrecht Tsunami: The Odebrecht Scandal Highlights the Phenomenon of Corporate Capture of the State in Brazil and Peru. Yet New Investigative Tools Show Promise in Detecting and Responding to Multinational Graft*, 51(2) NACLA REPORT ON THE AMERICAS 146, 149 (2019); Massimiliano Castellani et al., *Governance and Efficiency with and without Government*, RIMINI CENTRE FOR ECONOMIC ANALYSIS; Stoessel, *supra* note 43; Will Freeman, *Can Ecuador Avoid Becoming a Narco-State*, COUNCIL ON FOREIGN RELATIONS (Feb. 14, 2024), <https://www.cfr.org/blog/can-ecuador-avoid-becoming-narco-state> [<https://perma.cc/HN6B-7J7R>]; Barros Herdoiza, *supra* note 48, at 14; LUIS JORGE GARAY SALAMANCA, *LA CAPTURA Y RECONFIGURACIÓN DEL ESTADO*, 14 (2008).

55. Barros Herdoiza, *supra* note 48, at 24 (2023); Janine Wedel, *Clans, Cliques, and Captured States: Rethinking "Transition" in Central and Eastern Europe and the Former Soviet Union*, United Nations University, Discussion paper No. 2001/58 (Aug. 2001) 6–7; Janine R. Wedel, *State and Private: Up Against the Organizational Realities of Central and Eastern Europe and the Former Soviet Union*, 7 TRENDS ORG. CRIME 6, 17, 24 (2001); De Greiff & Knapp, *supra* note 17, at 2, 7–9; Daniel Kaufmann & Aart Kraay, *Growth without Governance*, 3(1) ECONOMÍA 211 (2002).

56. *Coca Codo Sinclair: los problemas de la multimillonaria represa que China construyó en Ecuador*, BBC NEWS MUNDO, <https://www.bbc.com/mundo/noticias-america-latina-47144338> [<https://perma.cc/8P3B-PALR>]; Barros Herdoiza, *supra* note 48, at 26.

57. *Coca Codo Sinclair*, *supra* note 58; Barros Herdoiza, *supra* note 48, at 26.

58. Barros Herdoiza, *supra* note 48, at 51; see also Valeria Coronel et al., *Captura y descorporativización estatal de las élites financieras en Ecuador*, 100 COLOMBIA INT'L 147, 153–54 (2019) (describing the capture of key financial institutions in Ecuador by JM through the use of funding and support by the IMF).

59. See Dressler & Wolff, *supra* note 44, at 17; Berg & Bledsoe, *supra* note 44 (noting various examples of TOC and state cooptation, including the use of fishermen to provide logistical assistance to drug traffickers resulting in approximately 72% of government subsidized gasoline aimed at artisanal fishers being used by criminal networks); Freeman, *supra* note 56 (noting collusion between the police, armed forces, and judiciary with TOC); see generally VITERI, *supra* note 40, at 105–06.

that are known to the public. This, in turn, has weakened public trust in the government.⁶⁰

C. *Scholarship on Corruption, State Capture, and Human Trafficking*

Although there is a growing body of literature on state capture, its effects on human rights, and state capture in both Latin America and Ecuador specifically, there is a lack of research regarding the link between state capture and human trafficking. This piece seeks to address that gap and acknowledges existing research linking corrupt practices and human trafficking.

Human trafficking is a global phenomenon and one of the most lucrative illegal activities.⁶¹ Human trafficking is defined as the recruitment, transportation, transfer, harboring, or receipt of persons, by means of (1) the threat or use of force, (2) other forms of coercion, abduction, fraud, deception, abuse of power, or a position of vulnerability, or (3) the giving or receiving of payments or benefits to achieve the consent of a person having control over another.⁶²

Trafficking is done for the purpose of exploitation, including sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs.⁶³ Victims of trafficking typically come from vulnerable groups of persons. Vulnerability includes gender, ethnicity, social class, migration, and other elements.⁶⁴ Their vulnerability opens them up to sexual, labor, and other forms of exploitation.⁶⁵ The promise of gaining employment, attractive living conditions, demand for unskilled labor, poverty and unemployment rates, and war and political instability all function as push-pull factors that increase the risk of human trafficking.⁶⁶

Scholars have increasingly cited corruption as a key reason for the proliferation of trafficking and low prosecution rates of traffickers.⁶⁷ These scholars note that destabilizing democracies, weakening the rule of law, and stymying development facilitates trafficking.⁶⁸ Bribery has been noted as a key feature of trafficking. Traffickers bribe consular staff, law enforcement, and criminal justice officers to both assist in trafficking and to seek immunity from

60. See Dressler & Wolff, *supra* note 44, at 18-19.

61. Jorge Manuel Marías Bermúdez et al., *Profiles of Human Trafficking Violence in Regions of Ecuador*, 37 NEUTROSOPHIC SETS AND SYSTEMS 1, 1 (2020).

62. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Nov. 15, 2000, 2237 U.N.T.S. 319 [hereinafter "Palermo Protocol"].

63. *Id.*

64. *About Human Trafficking*, FREEDOM NETWORK, <https://freedomnetworkusa.org/the-issue/> [<https://perma.cc/M4FU-4HE3>]; *Vulnerabilities & Recruitment*, POLARIS PROJECT, <https://polarisproject.org/vulnerabilities-and-recruitment/> [<https://perma.cc/J8XW-PYCT>]; Manuel Dammert Guardia et al., *La Trata de Personas en los Andes: Dinámicas socio-espaciales en las fronteras de Perú*, 24(3) ICONOS 117, 119-20 (2020), <https://www.redalyc.org/journal/509/50964360007/html/> [<https://perma.cc/6LB7-PKKB>]; VITERI, *supra* note 40, at 110.

65. *About Human Trafficking*, *supra* note 66; *Vulnerabilities & Recruitment*, *supra* note 66; Dammert Guardia, *supra* note 66, at 119.

66. Transparency International, *Corruption and Human Trafficking*, Working Paper 03/2011 (2); see generally VITERI, *supra* note 23, at 106-107.

67. Transparency International, *Corruption and Human Trafficking*, Working Paper 03/2011 (1).

68. *Id.*

arrest, prosecution, and sentencing.⁶⁹ In this way, “[b]uying protection from the State [has become] a necessary condition for the sustainability” of human trafficking.⁷⁰ By stimulating impunity and facilitating victimization, corruption undoes the very institutional safeguards designed to prevent and combat trafficking.⁷¹

II. FURUKAWA PLANTACIONES AS A CASE STUDY

A. Background

Furukawa Plantaciones S.A. (“Furukawa”) opened in Ecuador in 1963 to grow and harvest abaca.⁷² The Japanese company is owned by Mavenz Inc. through a subsidiary registered in Ecuador.⁷³ Furukawa currently has twenty-three plantations spanning more than two thousand three hundred hectares in the provinces of Esmeraldas, Santo Domingo de los Tsáchilas, and Los Ríos.⁷⁴ Across these tracts of land, the company has built fifty-two camps that house 1,422 people.⁷⁵ Many of those people were born, worked, and will die in the Furukawa Plantaciones camps.⁷⁶

1. Abaca Farming

Furukawa developed the plantations to produce abaca, an environmentally-friendly fiber valued for its strength, durability, and resistance to salt-water damage.⁷⁷ Ecuador is the second largest exporter of abaca globally, and

69. Jan Van Dijk & Fanny Klerx-Van Mierlo, *Indicators of Corruption: Further Explorations of the Link Between Corruption and Implementation Failure in Anti-Trafficking Policies*, LA STRADA INTERNATIONAL 17–18 (2010).

70. *Id.* at 18.

71. See Transparency International, *supra* note 68.

72. Gina Benavides Llerena, *La Indigna Situación de Familias que Viven Dentro de las Haciendas de Abacá de la Empresa Japonesa Furukawa Plantaciones C.A. del Ecuador* (“The Indignant Situation of Families Living at the Abaca Haciendas of the Japanese Company Furukawa Plantaciones C.A. of Ecuador”) (Feb. 18, 2019) 6; *Quiénes Somos* (“Who We Are”), FURUKAWA PLANTACIONES C.A. DEL ECUADOR, <https://web.archive.org/web/20181019020837/http://www.furukawaplantaciones.com/quienes-somos/> [<https://perma.cc/W8SD-FUTY>].

73. *Forced Labor in Ecuador*, EVIDENCITY (Feb 2024), <https://www.evidencity.com/forced-labor-in-ecuador> [<https://perma.cc/XHN4-U6DT>].

74. *Forced Labor in Ecuador: Mapping the Global Abaca Supply Chain from the Dirt to the Consumer*, EVIDENCITY (Mar. 2024) [hereinafter Mapping the Global Abaca Supply Chain from the Dirt to the Consumer]; see Benavides, *supra* note 74.

75. *Mapping the Global Abaca Supply Chain from the Dirt to the Consumer*, *supra* note 76, at 12.

76. See, e.g., Unidad Judicial Contra la Violencia a la Mujer o Miembros del Núcleo Familiar del Cantón Santo Domingo [Judicial Units for Violence Against Women and Family Members], No. 23571-2019-01605, Acción de Protección, 44 (Testimony of María Guadalupe Preciado Quiñonez, “When did you start working at the Furukawa Plantations? A: I was born in Furukawa . . . Q: Where were your children born? A: At the plantation . . . All of my children were born at the plantation.”); 45 (Testimony of Deni Nila Hurtado Preciado at 45 “Q: Where were your children born? A: On the plantations.”) [hereinafter Acción de Protección].

77. *Mapping the Global Abaca Supply Chain from the Dirt to the Consumer*, *supra* note 76, at 3; *Forced Labor in Ecuador*, *supra* note 75 (noting that because of abaca’s durability, it can be used to manufacture rope, twine, cordage, paper, tea bags, handicrafts, face masks, and textiles. It is also being used as an alternative to fiberglass for cars and as the filling material for car bolster and interior trim parts).

Furukawa has been the main exporter of abaca in Ecuador since it was established in 1963.⁷⁸ Abaca is thus an important export for Ecuador and the backbone of Furukawa's plantations.

Although abaca crops are economically beneficial to Ecuador and Furukawa, the process of growing and harvesting the crop is arduous, requiring trained workers to manually produce the crop.⁷⁹ The abaca plants must be hand-planted and manually weeded and fertilized.⁸⁰ When the plant has reached maturity, it is harvested using machetes and large knives.⁸¹ The abaca is then stripped to extract the valuable fibers from the veins of the leaves.⁸² To avoid damaging the fibers, stripping must be done manually by experienced workers.⁸³ Extraction involves scraping or decorticating the fibrous material from the nonfibrous parts of the plant with a sharp, tined tool.⁸⁴ The decorticating process is finished by using a dangerous diesel machine that emits fumes and requires a great deal of force to use.⁸⁵ The fibers are then arranged to dry. At this point, the fibers are also sorted and graded based on their quality.⁸⁶ When the fibers are dried, they are bundled and packaged by hand.⁸⁷ The fibers are then ready for sale on the national and international markets.

In addition to the labor-intensive and manual nature of abaca production, it is a seasonal crop that requires workers to work in extreme heat, rain, and high humidity.⁸⁸ The seasonality of the work means that it is also largely informal and unregulated. There are often no labor contracts or other work arrangements between the abaca companies and their employees,⁸⁹ making it difficult to monitor the industry in general and increasing workers' vulnerability to exploitation and forced labor practices.⁹⁰ Workers are often paid below minimum wage and incur various wage deductions as a result.⁹¹ Because the

78. *Forced Labor in Ecuador*, *supra* note 75; *Mapping the Global Abaca Supply Chain from the Dirt to the Consumer*, *supra* note 76, at 3; Unidad Judicial Contra la Violencia a la Mujer o Miembros del Núcleo Familiar del Cantón Santo Domingo [Judicial Units for Violence Against Women and Family Members], No. 23571201901605 (Apr. 19, 2021) 6 (Ecuador) [hereinafter Court of First Instance Decision].

79. *Forced Labor in Ecuador*, *supra* note 75; *Mapping the Global Abaca Supply Chain from the Dirt to the Consumer*, *supra* note 76, at 9.

80. *Mapping the Global Abaca Supply Chain from the Dirt to the Consumer*, *supra* note 76, at 9.

81. *Id.*; Court of First Instance Decision, *supra* note 80, at 4.

82. *Acción de Protección*, *supra* note 78, at 14; Court of First Instance Decision, *supra* note 80, at 4; *Furukawa*, *supra* note 2, at 4.

83. *Mapping the Global Abaca Supply Chain from the Dirt to the Consumer*, *supra* note 76, at 9; *Forced Labor in Ecuador*, *supra* note 75.

84. *Furukawa*, *supra* note 2, at 4–5; *Mapping the Global Abaca Supply Chain from the Dirt to the Consumer*, *supra* note 76, at 9.

85. Court of First Instance Decision, *supra* note 80, at 4 (noting that young men usually operate the machine due to the amount of force required as well as the risk of accident).

86. Court of First Instance Decision, *supra* note 80, at 4–5; *Mapping the Global Abaca Supply Chain from the Dirt to the Consumer*, *supra* note 76, at 9; *Forced Labor in Ecuador*, *supra* note 75.

87. *Mapping the Global Abaca Supply Chain from the Dirt to the Consumer*, *supra* note 76, at 9.

88. *Id.*

89. *Acción de Protección*, *supra* note 78, at 41 (Testimony of Ordoñez Balberde Segundo Arquimides, "Q: Did you sign work contracts with Furukawa? A: No.").

90. *Forced Labor in Ecuador*, *supra* note 75; *Mapping the Global Abaca Supply Chain from the Dirt to the Consumer*, *supra* note 76, at 9–10.

91. *Mapping the Global Abaca Supply Chain from the Dirt to the Consumer*, *supra* note 76, at 10.

industry is largely unregulated and informal, companies typically do not adopt adequate safety standards, including providing personal protective equipment (“PPE”) for workers using sharp tools or providing medical access for injured workers.⁹² Finally, because the industry is not regulated, there are no collective bargaining rights for people who work with abaca (“abacaleros”).⁹³

2. Worker Vulnerabilities: Marginalized and Minoritized

Starting at its formation in 1963, Furukawa contracted bonded labor with individuals and families.⁹⁴ These families were largely of Afroecuato-riano descent,⁹⁵ and thus faced inequalities and racial discrimination.⁹⁶ By contracting bonded labor with families, Furukawa Plantaciones ensured that families would live on the plantations for generations, starting work at young ages, marrying other workers, and eventually dying on the same land where they were born.⁹⁷ Over time, the initial bonds turned into a “leasing system” whereby workers worked for tenants on the Furukawa plantation.⁹⁸ These tenants were intermediaries who lived on the plantations.⁹⁹ The leasing system helped Furukawa contract out its labor, attempting to remove the company from labor law compliance via intermediaries.¹⁰⁰ Debts incurred as part of the initial bond transferred from Furukawa to the “tenants,” and the debts

92. See *Furukawa*, *supra* note 2, at ¶¶ 71–71.3; *Mapping the Global Abaca Supply Chain from the Dirt to the Consumer*, *supra* note 76, at 10.

93. *Mapping the Global Abaca Supply Chain from the Dirt to the Consumer*, *supra* note 76, at 10.

94. *Id.* at 14.

95. *Furukawa*, *supra* note 3, at ¶¶ 7.4(H.20), 93–106; *Mapping the Global Abaca Supply Chain from the Dirt to the Consumer*, *supra* note 76, at 11. Regarding the perpetuation of slavery in racial capitalism, see CEDRIC J. ROBINSON, *BLACK MARXISM: THEM MAKING OF THE BLACK RADICAL TRADITION* 10, 67, 184 (2000) (discussing the ways in which capitalism and racism evolved to produce the current system of racial capitalism that is dependent on slavery, violence, imperialism, and genocide); SYLVIA TAMALE, *DECOLONIZATION AND AFRO-FEMINISM* 6–7 (2020) (“[T]he process of capitalist exploitation cannot be separated from racial and gender hierarchization. The dominance and pervasiveness of coloniality in the modern world is so fundamental it has shaped the way the world perceived us and most of us have in turn internalized its constructions of who we are.”); Adelle Blackett, *Racial Capitalism and the Contemporary International Law on Slavery: (Re)membering Hacienda Brasil Verde*, 25(2) J. INT’L ECON. L. 334 (2022) (discussing racial capitalism in the context of Afro-Brazilians and the *Hacienda Brasil Verde* case).

96. *Assessment for Blacks in Ecuador*, MINORITIES AT RISK, <http://www.mar.umd.edu/assessment.asp?groupId=13001> [<https://perma.cc/A4MU-5QVL>]; Press Release, Office of the High Commissioner of Human Rights, Ecuador: Discrimination and Environmental Racism Against People of African Descent Must End, Say U.N. Experts (Dec. 23, 2019); *Afro-Ecuadorians in Ecuador*, MINORITY RIGHTS GROUP, <https://minorityrights.org/communities/afro-ecuadorians/> [<https://perma.cc/BB87-R8Z4>].

97. *Acción de Protección*, *supra* note 78, at 44–45. See Noor Mahtani, *El juicio de esclavitud moderna de Ecuador contra Furukawa, visto para sentencia: “Necesitamos justicia,”* EL PAIS (Apr. 10, 2024), <https://elpais.com/americas-futura/2024-04-10/el-juicio-de-los-esclavos-modernos-de-ecuador-contra-furukawa-visto-para-sentencia-necesitamos-justicia.html> [<https://perma.cc/B4AH-DRD8>]; *Ecuador: Justicia y responsabilidad corporativa en el caso de esclavitud moderna contra Furukawa C.A.*, FEDERACION INTERNACIONAL POR LOS DERECHOS HUMANOS (FIDH) (Apr. 9, 2024), <https://www.fidh.org/es/region/americas/ecuador/ecuador-justicia-y-responsabilidad-corporativa-en-el-caso-de> [<https://perma.cc/46SD-XQEH>].

98. *Furukawa*, *supra* note 2, at ¶¶ 107–12; Mahtani, *supra* note 99.

99. OECD, *OECD RESPONSIBLE BUSINESS CONDUCT POLICY REVIEWS: ECUADOR* (2022), at 36.

100. *Id.*

continued to increase.¹⁰¹ Therefore, the debts were virtually impossible to repay, despite abacaleros often working more than ten hours a day.¹⁰²

The Furukawa plantations are in isolated parts of Ecuador.¹⁰³ While agricultural endeavors like abaca farming typically occur in rural areas, Furukawa took advantage of workers' physical isolation to intentionally keep them in a position of vulnerability in three main ways: denying them education, keeping them from medical access, and eliminating the possibility of other forms of employment.¹⁰⁴

First, workers and their children are denied access to education. There are no schools on the plantations, and children have no way of reaching schools in neighboring villages.¹⁰⁵ The plantations are gated and only the supervisors have access to vehicles.¹⁰⁶ Assuming that the children could exit the plantation camp, they would have a several-hour walk to the nearest school.¹⁰⁷ For this reason, less than twenty percent of those living on the Furukawa plantations know how to read or write or both.¹⁰⁸ The majority of workers and their families are illiterate or functionally illiterate.¹⁰⁹ Without access to education, workers are thus kept in positions of vulnerability. Illiteracy reduces workers' potential job pool and lack of access to education reduces the realization of potential jobs that workers and their children could have as an alternative to life on the Furukawa Plantations.

Second, the isolation of the Furukawa plantations reduces workers' access to medicine and health resources. This has several obvious implications. Two of the most egregious instances where individuals are denied access to health care on Furukawa plantations are when workers are injured and when women and girls are pregnant. Growing and harvesting abaca is laborious work that involves the use of sharp tools.¹¹⁰ There are common and predictable workplace injuries in the industry, some of which are avoidable through the use of proper safety equipment.¹¹¹ Furukawa Plantaciones did not provide safety equipment

101. *Furukawa*, *supra* note 2, at ¶¶ 107–12; Sala Multicompetente de la Corte Provincial de Santo Domingo de los Tsachilas [Multicompetent Judicial Unit of the Provincial Court of Santo Domingo de los Tsachilas], No. 23571201901605, Segunda Instancia (Oct. 15, 2021) 22 (Ecuador) [hereinafter Court of Second Instance Decision]; Court of First Instance Decision, at 6–8, 12, 34; Mahtani, *supra* note 96.

102. *Furukawa*, *supra* note 2, at ¶ 75.3 (quoting testimony of María Guadalupe Preciado); Court of First Instance Decision, at 57–58, 72, 74; Mahtani, *supra* note 96.

103. *Furukawa*, *supra* note 2, at ¶ 7.5; Mahtani, *supra* note 96.

104. See *Furukawa*, *supra* note 2, at ¶¶ 97–101.

105. *Id.* at ¶ 69 (quoting the testimony of Luis Armando Guerrero who stated that they “never had access to education,” and noting that to ensure that her children received an education, his mother forced him and his siblings to walk approximately 1.5 hours to the nearest school).

106. See, e.g., *Furukawa*, *supra* note 2, at ¶ 64.3.

107. See, e.g., *Furukawa*, *supra* note 2, at ¶ 69, n. 96.

108. Mahtani, *supra* note 96; see *Furukawa*, *supra* note 2, at ¶¶ 7.4(H16), 69 n. 92, 124.4, 133; Court of First Instance Decision, at 124–25.

109. *Furukawa*, *supra* note 2, at ¶¶ 7.4(H16), 69 n. 92, 124.4, 133; Court of Second Instance Decision, at 30, 46, 64; Court of First Instance Decision, at 124–25.

110. Mapping the Global Abaca Supply Chain from the Dirt to the Consumer, *supra* note 78, at 9; Court of First Instance Decision, at 4.

111. See *Furukawa*, *supra* note 2, at ¶ 71, n. 102.

to their employees.¹¹² Employees were thus subjected to increased rates of injuries. When workers had an injury, they were carried by their fellow workers in hammocks to the nearest medical center.¹¹³ For example, when one employee suffered an injury resulting in paralysis, they were carried in a hammock for nearly an hour to the nearest hospital.¹¹⁴ Workers have sustained severe injuries, including deep cuts, burns, amputations, and other mutilations.¹¹⁵ The lack of medical access worsens the outcomes of these injuries.

In addition to workplace accidents and other injuries, women face additional health risks because of the plantations' isolation. Although recent data shows the vast majority of women in Ecuador receive antenatal and hospital care that has resulted in low maternal mortality rates,¹¹⁶ the data shows that this care is not equal. Women in rural and indigenous communities face greater obstacles than others, resulting in the highest national rates of mortality.¹¹⁷ As the women working in the rural Furukawa plantations are largely Afroecuatorianas, they are hit twice as hard.¹¹⁸ When women and girls become pregnant, they cannot attend regular doctor appointments throughout their pregnancies.¹¹⁹ Lack of prenatal care is associated with increased risks to both mother and child during labor.¹²⁰ Women without prenatal care have higher frequencies of preterm births, lower rates of live births, and both baby and mother may need to be hospitalized for extended periods after labor.¹²¹ When

112. Ecuador Ministry of Labor, Informe sobre las acciones realizadas a la empresa Furukawa y registros de siniestralidad reportadas al sistema de registro del SGRT, (Aug. 21, 2023) (finding that Furukawa, amongst other things, failed to provide employees with PPE).

113. *Furukawa*, *supra* note 2, at ¶¶ 7.5(H26), 71.2, 111.2.

114. *Id.* at ¶ 71.2, n. 105.

115. *See, e.g., Furukawa*, *supra* note 2, at ¶ 72.1.

116. *State of the World's Children*, UNITED NATIONS INTERNATIONAL CHILDREN'S EMERGENCY FUND [UNICEF], <https://data.worldbank.org/indicator/SH.STA.ANVC.ZS?locations=EC> [<https://perma.cc/D9JR-KPZK>]; World Health Organization [WHO], UNICEF, United Nations Population Fund [UNFPA], World Bank Group, and United Nations Department of Economic and Social Affairs [UN-DESA]/Population Division, Trends in Maternal Mortality 2000-2020, WORLD BANK GROUP (2025), <https://data.worldbank.org/indicator/SH.STA.MMRT?locations=EC> [<https://perma.cc/R7LN-4RFY>]; *see also Maternal Mortality*, WORLD HEALTH ORGANIZATION [WHO] (2024), <https://www.who.int/news-room/fact-sheets/detail/maternal-mortality> [<https://perma.cc/LL8L-YVB5>] (noting that the global aim should be to have a maternal mortality rate of less than 70 per 100,000).

117. Nervo Verdezoto, et al., Indigenous Women Managing Pregnancy Complications in Rural Ecuador, NORDICHI (2020); Daniel Lopez-Cevallos and Chi Chunhui, Inequity in Health Care Utilization in Ecuador: An Analysis of Current Issues and Potential Solutions, 11 INT'L J. EQUITY IN HEALTH 26 (2012).

118. *See, e.g., Olena Hankivsky, et al., Exploring the Promises of Intersectionality for Advancing Women's Health Research*, 9(5) Int'l J. Equity Health (2010) (providing an overview of how indigeneity, poverty, gender, and other factors influence health outcomes and strategies as part of a larger argument on creating a unified intersectional methodology for women's health research).

119. *See Furukawa*, *supra* note 2, at ¶¶ 71.2, n 105 (quoting María Guadalupe Preciado's testimony on the lack of available medical centers), 111.4 (citing testimony of Santa Sabina Angulo, Deni Nila Hurtado, and María Alexandra Guerrero regarding the conditions of their pregnancies).

120. Denisse Holcomb, et al., Geographic Barriers to Prenatal Care Access and Their Consequences, 3(5) Am. J. Obstet. Gyn. (2021) 1, 2-5; Maureen Heaman, et al., The Association of Inadequate and Intensive Prenatal Care with Maternal, Fetal, and Infant Outcomes: A Population-Based Study in Manitoba, Canada, 41(7) J. OBSTETRIC GYNECOLOGY CAN. (2019), 947.

121. Holcomb, *supra* note 121, at 3; Committee to Study the Prevention of Low Birthweight, *Preventing Low Birthweight* (1985) 150.

women and girls on the plantations go into labor, they seldom are taken to the hospital.¹²² Instead, the majority of women and girls give birth on the haciendas.¹²³ Other women from the plantation act as ad hoc midwives and assist in the births.¹²⁴ In the instances where women did go to the hospital to give birth, they were carried to it by their fellow workers in a hammock.¹²⁵ This lack of access to health care results in instances of maternal and fetal mortality.¹²⁶

Third, the isolation of the Furukawa plantations has contributed to rampant poverty among the workers. Moving beyond the unfair wages and debt bondage employed by Furukawa,¹²⁷ the extreme isolation of the plantations has exacerbated conditions. Although nationally there are higher rates of income¹²⁸ and multidimensional poverty for rural communities,¹²⁹ these rates are even higher among Afroecuatorianos.¹³⁰ With these statistics in mind, it is no surprise that the remote location of the Furukawa plantations creates ideal conditions for poverty. This is strengthened further by studies and research that have consistently shown that poverty is linked with exploitation and human trafficking.¹³¹

122. *Furukawa*, *supra* note 2, at ¶ 111.4.

123. *Id.*

124. *Id.* (quoting workers' testimony related to childbirth), n. 211 (Testimony of Manuel José Torres describing how his wife gave birth with the help of her female coworkers rather than travel two hours via hammock to the nearest hospital); Acción de Protección, at 44 (Testimony of María Guadalupe Preciado Quiñonez "Q: How did you give birth? A: With a midwife. Q: Who was the midwife? A: We help each other, my mom and my other friends."), 45 (Testimony of Deni Nila Hurtado Preciado "Q: Was there any maternal care [on the plantation]? A: No. Q: And how did you give birth? A: When we women go into labor, we are resigned to give birth in the fields because we don't have any medical assistance. . . . because no will help us.").

125. *Furukawa*, *supra* note 2, at ¶ 71.2, n. 105 (Testimony of María Guadalupe Preciado, "To give birth, we have to go in a hammock to the nearest health center."); *see also* Testimony of Delia Alejandrina Sánchez (describing how she had to travel a long distance on foot with the birth of his first child. Her son almost died during delivery as a result of the distance and arduous walk Delia was forced to endure to get to a medical center).

126. *Furukawa*, *supra* note 2, at ¶¶ 147–49 (specifically noting the rates of spontaneous abortions, miscarriages, and stillbirths); Acción de Protección, 44 (Testimony of María Guadalupe Preciado who noted that she almost died during a pregnancy when she was dumped at Kilometer 32 of the road to Esmeraldas. When she asked the administrator of the plantation for help, she was told to go and drink some water because "blacks don't feel and we can't do anything for you.").

127. *Furukawa*, *supra* note 2, at ¶¶ 74–77.

128. Special Rapporteur on Extreme Poverty and Human Rights (Olivier de Schutter), End of Mission Statement, Visit to Ecuador (2023), 4, <https://www.ohchr.org/sites/default/files/documents/issues/poverty/sr/statements/20230908-eom-ecuadore-sr-poverty.pdf> [<https://perma.cc/QJY3-QB4W>] (noting that 46.4% of the rural population lives in poverty and 22.6% of the rural population lives in conditions of extreme poverty).

129. *Id.* (defining multidimensional poverty as a comparison of monetary poverty, educational poverty, and lack of access to basic infrastructure services, and further noting that 70.1% of rural Ecuadorians experienced multidimensional poverty whilst 41.3% experienced extreme multidimensional poverty).

130. *Id.* at 4, 7; *see also* *Fewer People Living in Poverty*, BUNDESMINISTERIUM FÜR WIRTSCHAFTLICHE ZUSAMMENARBEIT UND ENTWICKLUNG, <https://www.bmz.de/en/countries/ecuador/social-situation-51988> [<https://perma.cc/4HS6-HADZ>].

131. *See, e.g.*, Jorge Manuel Marcías Bermúdez, et al., *Profiles of Human Trafficking Violence in Regions of Ecuador*, 37 NEUTROSOPHIC SETS AND SYSTEMS 1, 1 (2020) (noting that poverty in Ecuador leads to exploitation and trafficking, including in rural areas in agricultural industries).

The isolation of the Furukawa plantations increased the workers' risk of poverty in several key ways. First, the area lacks opportunities for other forms of employment, training, or advanced education.¹³² Workers do not have the ability to try to access careers in a different industry or field.¹³³ Second, workers are trained from a young age to be abacaleros. Their mindset is thus that they have one skill and can only ever be abacaleros.¹³⁴ The isolation of the plantations removes outside influence that could show the workers other possible career options or allow them to believe that they have more than one skill. Third, if the workers decide to venture out of the Furukawa plantations and gain employment elsewhere, they are almost always forcefully evicted from the plantations.¹³⁵ Leaving the place where their families have lived for generations is too difficult for many workers.

Another core element of the workers' vulnerability profile is the age at which they start working. As mentioned above, workers are often born and die on the Furukawa plantations.¹³⁶ In between birth and death, the majority of the Furukawa workers' lives will be filled with work. Work begins at a young age.¹³⁷ Some children begin working as young as eight or nine, whereas others start working when they are preteens.¹³⁸ The exact tenor of the work often changes as the children age.¹³⁹ For example, one worker noted that she began working with her parents in the abaca fields at age eight. As she aged and was "freed" from her parents, she continued working in the fields but also began drying the abaca fibers and preparing meals for other abacaleros.¹⁴⁰

132. See generally, *Furukawa*, *supra* note 2, at ¶ 74.

133. *Id.*

134. Acción de Protección, at 41 (Testimony of Ordoñez Balberde Segundo Aruimides "Q: Why, after describing everything Furukawa did, why didn't you leave? A: We don't know how to do any other work."), 84 (Testimony of anthropologist María Alexandra Guerrero Cantos noting that children on the Furukawa plantations have one option regarding future careers and that this is a cultural process passing from one generation to the next of persons who are born and die on the plantations).

135. Furukawa Nunca Más, *El Caso Furukawa* (video), <https://www.furukawanuncamas.org/> [<https://perma.cc/734Q-HD5L>].

136. Acción de Protección, at 44–45.

137. *Furukawa*, *supra* note 2, at ¶ 67.

138. Smink, *supra* note 5; *Furukawa*, *supra* note 2, at ¶ 67 (citing the testimony of Susana Quiñónez Estacio, María Guadalupe Preciado Quiñónez, Próspero Daniel Guerrero Cantos, Manuel José Torres Cabezas, Rosa Janeth Klinger Bone, Santa Sabina Angulo Castellón, Luis Eduardo Arce Minda, Mario Torres Cabezas, Walter Klinger Ordóñez, and Luis Armando Guerrero).

139. See, e.g., *Furukawa*, *supra* note 2, at ¶ 67. The Court describes multiple examples of shifting roles on the plantations. For example, Próspero Daniel Guerrero Cantos worked as a burrero, tucsero (fiber extraction), maquinero, and tallerero during his time on the plantations. Manuel José Torres Cabezas worked as a machinist, tucsero, chapiaro (cleaning the fields), and sowing the abaca. Luis Armando Guerrero similarly notes a process of learning how to tucsear (remove the abaca fibers), chapiar (clean the fields), and sow the abaca with age.

140. *Id.* See also Acción de Protección (Testimony of María Guadalupe Preciado who began work as a day laborer removing the fibers from the machines for classification and drying. She then began working in the kitchen with the other women; this was in addition to her other work on the plantations as a chapearo).

B. *The Case*

For over sixty years, Furukawa Plantaciones committed various human rights violations against its workers. Despite ample evidence of human trafficking, the company was awarded a labor merit award in 2005 for its initiatives to “strengthen and dynamize the cultivation and industrialization of abaca as well as the establishment and operation of . . . [agri-industries] . . . creating sources of work and contributing positively to the productive development of the country.”¹⁴¹ Gradually, workers began to make their work and living conditions public. As a result, the government began to take action against Furukawa in 2017.¹⁴² Between 2017 and 2020, the government fined Furukawa one hundred fifty thousand USD for poor working conditions and child labor.¹⁴³ As more attention began to be drawn to the working conditions on the Furukawa plantations and as more former workers began to speak out, the Specialized Prosecutor’s Office of Organized Transnational and International Crime of Santo Domingo de los Tsáchilas opened a preliminary investigation against Furukawa.¹⁴⁴ On December 12, 2019, 123 workers from Furukawa Plantaciones filed suit against their employer for labor trafficking and human slavery in the Santo Domingo Judicial Units for Violence Against Women and Family Members (“court of first instance”).¹⁴⁵ In response to these claims, Furukawa denied wrongdoing and created a social media initiative (“Yo soy Furukawa”) to demonstrate employee satisfaction.¹⁴⁶

141. Republica del Ecuador Ministerio de Trabajo y Empleo, Acuerdo No. 00246 (Sept. 8, 2005), https://planv.com.ec/wp-content/uploads/2019/02/condecoracion_furukawa.pdf [<https://perma.cc/QMB3-BXZ3>].

142. *E.g.*, Court of First Instance, at 71–85. The court quotes the testimony of various workers. For example, Jenny Jessica Enriquez Santana described the termination of her work and eviction from the Furukawa property in 2017 when workers began to fight for their rights. Jose Alberto Ramos Estrada described Furukawa’s attempted forced evictions and layoffs and resulting demands for justice and restitution by the workers.

143. Ministerio del Trabajo, Dirección Regional del Trabajo y Servicio Público de Manta República del Ecuador, Resolución MDT-DRTSP3-2019-0001-C-BB (Feb. 18, 2019); Ministerio del Trabajo, Contestación a la Solicitud de Certificación de Información, No. MDT-DRTSPP-2019-0416-M (Mar. 12, 2019); Ministerio del Trabajo, Dirección Regional del Trabajo y Servicio Público de Ibarra, No. MDT-DRTSP1-2019-1176-R4-I-KM (Mar. 6, 2019); *Mapping the Global Abaca Supply Chain from the Dirt to the Consumer*, *supra* note 75, at 12.

144. Benavides Llerena, *supra* note 73; *Mapping the Global Abaca Supply Chain from the Dirt to the Consumer*, *supra* note 75, at 12–13; Mahtani, *supra* note 98.

145. *Furukawa*, *supra* note 2, at ¶ 1.1 (outlining the procedural history).

146. Yo Soy Furukawa (@yosoyfurukawa), INSTAGRAM, <https://www.instagram.com/yosoyfurukawa/?hl=en> [<https://perma.cc/Z5DD-CGV8>] (last visited DATE) (posting that they “watch over the human rights of the workers and families of Furukawa Plantaciones C.A. del Ecuador.”); Yo Soy Furukawa, FACEBOOK, <https://www.facebook.com/yosoyfurukawa/> [<https://perma.cc/U3EZ-SUH5>]; Yo Soy Furukawa, *Inspección de las Viviendas de los Empleados de Furukawa*, YOUTUBE (May 8, 2019), <https://www.youtube.com/watch?v=OF8rhGeCuNY> [<https://perma.cc/9237-ZE7M>] (touring stylized living quarters with electricity, highlighting the existence of potable water, etc.); Yo Soy Furukawa, *Testimonios de los Trabajadores de Furukawa sin Ninguna Queja por el Trabajo en la Empresa*, YOUTUBE (May 6, 2019), <https://www.youtube.com/watch?v=pjp4rlf4R0> [<https://perma.cc/9ZQL-HDZC>].

Plaintiffs claimed that:

1. Furukawa took advantage of the extreme vulnerability and social exclusion of the abacaleros and tenants on their plantation (including poverty, illiteracy, and Afroecuatoriano descent) to impose a system of abaca production that subjected them to human trafficking in violation of the prohibition against slavery;
2. The living and working conditions on the Furukawa plantations were incompatible with the right to human dignity and kept the workers in a condition of extreme vulnerability to keep them tied to the land without the possibility of accessing other sources of sustenance; and
3. State entities omitted their duties to prevent trafficking on the Furukawa plantations and to protect affected persons.¹⁴⁷

The above claims were alleged to be violations of the right to equality and nondiscrimination,¹⁴⁸ the right to a decent life,¹⁴⁹ the right to work,¹⁵⁰ the right to health,¹⁵¹ the right to education,¹⁵² the right to water,¹⁵³ the right to food,¹⁵⁴ the right to social security,¹⁵⁵ the right to adequate living,¹⁵⁶ the right to identity,¹⁵⁷ and the prohibition on slavery and servitude,¹⁵⁸ as well as omissions by the State as outlined in the job duties of the Ministries of the Interior and of Labor.¹⁵⁹ The court of first instance found for the plaintiffs on all counts,¹⁶⁰ recognizing for the first time that the conditions of workers at the Furukawa Plantaciones constituted violations of the right to equality, non-discrimination, and the prohibition against serfdom, as well as violations of the rights to health, housing, and education by both Furukawa Plantaciones and the State.¹⁶¹ Although the Provincial Court of Justice of Santo Domingo

147. Court of First Instance; Court of Second Instance; *Furukawa*.

148. Court of First Instance, at 242; Constitución de la República del Ecuador [CRE] [Constitution] Sept. 28, 2008, art. 11, no. 2, ¶ 2, art. 66, no. 4 [Ecuador].

149. Court of First Instance, at 242; CRE, at art. 66, no. 2; *see also* American Convention on Human Rights "Pact of San Jose, Costa Rica", art. 26, Nov. 22, 1969 1144 U.N.T.S.123, O.A.S.T.S. No. 36, 9 I.L.M. 99 (1970); *Case of the "Street Children" (Villagran-Morales, et al.) v. Guatemala*, Judgment, (Nov. 19, 1999).

150. Court of First Instance, at 242; CRE, at art. 33, 46, no. 2

151. Court of First Instance, at 242; CRE, at Art. 32.

152. Court of First Instance, at 242; CRE, at Art. 26.

153. Court of First Instance, at 242; CRE, at Art. 12.

154. Court of First Instance, at 242; CRE, at Art. 13.

155. Court of First Instance, at 242; CRE, at Art. 34.

156. Court of First Instance, at 242; CRE, at Art. 30, Art. 375.

157. Court of First Instance, at 242; CRE, at Art. 66, no. 28.

158. Court of First Instance, at 242; CRE, at Art. 66, no. 29(b); Convention on Slavery 1926 of Art. 66.29, Art. 1, of the U.N. Convention on the Abolition of Slavery, entered into force on 29, March 1960; case at page 4, III3.1.b(a);

159. case at page 4, III3.1.b(a) LIST OUT SPECIFIC LAWS

160. Court of First Instance, at 241–46.

161. *Id.*; Press Release, Office of the High Commissioner of Human Rights, Ecuador: Victims of Modern Slavery must have Remedy and Reparation in Ongoing Lawsuits, UN Experts Say (Apr. 29,

de los Tsáchilas exonerated Ecuador for its role in the trafficking scheme,¹⁶² the Constitutional Court of Ecuador reversed this finding and held that the State was liable.¹⁶³

1. *Harms Committed Against Workers and Counts*

Delving further into the exact counts against Furukawa and Ecuador, workers argued harms along several lines: monetary, health, housing, education, and work. This Section briefly describes each of those violations.

a. *Monetary Harms*

Workers on the Furukawa plantations faced severe monetary harm as a result of their trafficking. As previously stated, many of the workers' families began working at Furukawa via debt bondage and thus owed sums to the company.¹⁶⁴ While being paid low wages, Furukawa Plantaciones deducted fees from the workers' salaries as repayment for their debt.¹⁶⁵ For example, one worker testified that they got up very early in the morning to make one hundred bundles of abaca for about eighteen to twenty dollars.¹⁶⁶ From this twenty dollars, Furukawa deducted a series of fees for using tools, food, necessities, and more.¹⁶⁷ Workers were thus kept in a permanent state of indebtedness and earned virtually nothing for their work.¹⁶⁸ Workers argued they were entitled to monetary reparations based on this financial harm.

b. *Violations of Health-Related Rights*

Workers on the Furukawa plantations also faced chronic health problems. In addition to obvious injuries stemming from the work itself, workers faced several other primary health problems, including respiratory illnesses,¹⁶⁹ skin

2024), <https://www.ohchr.org/en/press-releases/2024/04/ecuador-victims-modern-slavery-must-have-remedy-and-reparation-ongoing> [<https://perma.cc/X5TD-EHBZ>].

162. Court of Second Instance; Victims of Modern Slavery must have Remedy and Reparation in Ongoing Lawsuits, *supra* note 144.

163. *Furukawa*, *supra* note 2, at ¶¶ 112–15.

164. *Id.* ¶¶ 74–77.

165. *Id.* ¶ 75.1; Court of First Instance, at 47.

166. *Furukawa*, *supra* note 2, at ¶ 75.1; Court of First Instance, at 47 (Testimony of Arison Guabi Briones Salvatierra).

167. *Furukawa*, *supra* note 2, at ¶ 75.1; Court of First Instance, at 47 (Testimony of Arison Guabi Briones Salvatierra).

168. *Furukawa*, *supra* note 2, at ¶ 75.2 (quoting testimony of Arison Briones, which stated that he worked from 10:00pm until around 6:00pm the next day to earn \$20 from which Furukawa deducted fees for food); Court of First Instance, at 57 (Testimony of Maria Guadalupe Preciado noting that she earned about \$130 monthly); 43–44 (Testimony of Susana Eufemia Quiñonez Estacio noting that she was told “blacks don’t have a right to anything” and “blacks don’t have a right to money”).

169. Court of First Instance, at 37, 234 (citing testimony of Denny Nila Hurtado Preciado whose son had lung problems associated with the pulverized abaca fibers); FIDH, *supra* note 98; Smink, *supra* note 5.

infections,¹⁷⁰ risks related to pregnancy and childbirth,¹⁷¹ and other respiratory issues and burns from the kerosene lights used for night work.¹⁷² Workers thus demanded reparations for harms suffered related to their health.

c. Violation of the Right to Housing

Workers also complained about a variety of violations of their right to housing. Workers alleged that the worker camps lacked basic sanitation facilities, including potable water,¹⁷³ camp housing lacked light¹⁷⁴ and electricity,¹⁷⁵ there was inadequate ventilation,¹⁷⁶ and waste treatment was inefficient or nonexistent.¹⁷⁷ Housing was also overcrowded, with seven or more people living in one room.¹⁷⁸ Workers were forced to sleep on small beds that did not even have mattresses.¹⁷⁹ The camp itself was remote, with the access points leading away from the camp kept padlocked shut.¹⁸⁰

For all these reasons, workers alleged that their right to housing had been violated by Furukawa Plantaciones.

d. Violation of the Right to Education

Tied to the workers' allegations regarding the right to housing, workers also alleged that Furukawa violated their right to education. These allegations were based on the remote location of the plantations, which required children to walk one to two hours to the nearest school.¹⁸¹ Furukawa was put on notice by the Ministry of Education that this lack of access was violating workers' right to education and that the company must either establish schools

170. Court of First Instance, at 75, 78, 80, 82, 85, 95, 103–04, 118–119 (including medical expert reports on the following workers with skin problems associated with working/living conditions: Yanislen Rodriguez Baute, Mayra Consuelo Valdes Calero, Maria Guadalupe Preciado Quiñones, Petronilo Monaga Quintero Medina, Preciado Quiñonez Milton Segundo, Limber Miguel Quiñonez Estacio, Leonildo Angulo Angulo, Eli Amado Coroso Montaña, Cesar Eugenio Perez Barreto, and Esau Ramon Garcia); *see also*, Smink, *supra* note 5.

171. *Furukawa*, *supra* note 2, at ¶ 111.4.

172. Court of First Instance, at 127; Smink, *supra* note 5.

173. *Furukawa*, *supra* note 2, at ¶ 7.5 (H21), 108; Court of First Instance, at 6, 20, 23, 30; Secretaría Nacional de Gestión de la Política [National Secretariat for Policy Management], Ser. 3, No. 1072-21-JP (Nov. 21, 2018) (“Lack of drinking water. The workers consume water from the estuary and from a well that, according to them, is hardly cleaned by the company and, after personal corroboration, gives off bad odors.”).

174. *Furukawa*, *supra* note 2, at ¶ 7.5 (H21), 108;

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

at the camps or provide transportation to neighboring schools.¹⁸² Furukawa did not implement the Ministry of Education's recommendations.¹⁸³ Furthermore, children were expected to begin working between the ages of eight and twelve.¹⁸⁴ Workers alleged that hiring children to work on the plantations also interfered with their right to education, as they could not attend school and work at the same time.¹⁸⁵ For all these reasons, workers alleged that Furukawa Plantaciones denied them access to education.

e. Violation of the Right to Work

The core of the workers' argument was a violation of their right to work, and that Furukawa Plantaciones maintained a system of human trafficking analogous to slavery.¹⁸⁶ Through this system, Furukawa imposed an exploitative labor system where workers were forced to sell their abaca to Furukawa for an inadequate amount.¹⁸⁷ In addition to the monetary harms sustained by workers as outlined above, they lacked decent working hours,¹⁸⁸ were not registered for social security,¹⁸⁹ and were not protected from arbitrary dismissal.¹⁹⁰ Workers also alleged that they were not guaranteed safe working conditions as they were not supplied with PPE, safety measures were not implemented, and there was virtually no medical access.¹⁹¹ Finally, workers were not able to freely change their living or working conditions.¹⁹²

f. Claims Against the State

In addition to the above claims filed against Furukawa Plantaciones, workers filed claims against the State based on its failure to prevent trafficking. This included negligence and omissions in fulfilling its constitutional and legal duties to protect the rights of citizens; a failure to adequately inspect,

182. Ministerio de Educación, Informe de visita a Furukawa Plantaciones C.A. del Ecuador (Nov. 22, 2018).

183. *Furukawa*, *supra* note 2, at ¶ 111.7–111.8.

184. *Furukawa*, *supra* note 2, at ¶ 67 (citing the testimony of Susana Quiñónez Estacio, María Guadalupe Preciado Quiñónez, Próspero Daniel Guerrero Cantos, Manuel José Torres Cabezas, Rosa Janeth Klinger Bone, Santa Sabina Angulo Castellón, Luis Eduardo Arce Minda, Mario Torres Cabezas, Walter Klinger Ordóñez, and Luis Armando Guerrero); Smink, *supra* note 5.

185. *Furukawa*, *supra* note 2, at ¶ 67, 69.

186. *Furukawa*, *supra* note 2, at ¶ 1(1.12).

187. *Id.* ¶¶ 7.3, 84–89.

188. *Id.* ¶¶ 75–77.

189. *Id.* ¶¶ 137–39.

190. *Id.* ¶¶ 75.1 (quoting Arison Briones, “Q: What happened if you didn't comply? A: They would fire us or lower the price . . .”), 75.2 (quoting Segundo Ordóñez “You asked why we don't tell the company we're earning little income; we can't tell them because they'll fire us . . .”). See also *id.* at ¶ 30 (noting that Furukawa's contention that a formal labor relationship did not exist with the workers, thus implying that there were no employment contracts to provide the workers with protection).

191. Acción de Protección, at Santa Sabina Angulo; see also testimony of Walter Klinger Ordóñez; José Clemente Chávez; *Furukawa*, *supra* note 2, at ¶¶ 71.2, n 105 (quoting María Guadalupe Preciado's testimony on the lack of available medical centers), 111.4, n. 211.

192. *Furukawa*, *supra* note 2, at ¶¶ 2, 67, 75.

investigate, sanction, and provide reparations for human rights violations committed against the workers; and a lack of supervision of Furukawa's labor practices.¹⁹³ In addition to these general allegations that the State failed to ensure that the rights of workers were protected, the workers specifically targeted government agencies, as outlined in Table 1.

Government Agency	Allegations
Ministry of Labor	Failure to intervene, conduct inspections, or enforce labor laws to prevent trafficking and child labor ¹⁹⁴
Ministry of Health	Failure to ensure access to health care or safe conditions in the workplace ¹⁹⁵
Ministry of Social Inclusion (MIES)	Failure to provide adequate support to vulnerable peoples, including registration for social security ¹⁹⁶
Ministry of Education	Failure to ensure access to education on the plantations. Following government inspection and recommendations, failure to ensure that Furukawa followed through with its recommendations regarding access to education (i.e., creating schools on the plantations or providing transportation to the nearest schools) ¹⁹⁷
Ministry of the Interior	Failure to generally ensure the protection of fundamental rights for workers on the Furukawa plantations ¹⁹⁸

2. Findings Against Furukawa Plantaciones

Related to the claims described above, the Court found that Furukawa Plantaciones had been committing human trafficking akin to slavery for almost sixty years.¹⁹⁹ The Court further found that by forcing the workers to live on the plantations and harvest abaca for Furukawa's benefit, the company exploited highly vulnerable workers.²⁰⁰ From the time of its formation, Furukawa had been predominantly employing people in poverty or extreme poverty and almost exclusively Afroecuatorianos.²⁰¹ The Court found that Furukawa failed to demonstrate that the vulnerability and ethnicity of the workers were not

193. Court of First Instance.

194. Court of First Instance, at 13, 16–18.

195. *Id.*, at 16–17.

196. *Id.* at 13, 16–18.

197. *Id.* at 16, 18.

198. *Id.* at 13, 16–18.

199. *Furukawa*, *supra* note 2, at ¶¶ 137–39.

200. *Id.* ¶ 137.

201. *Id.* ¶ 140.

factors in hiring and thus concluded that Furukawa committed discriminatory acts.²⁰² This discrimination, combined with the forced labor, constituted violations of the prohibition on slavery.²⁰³

Regarding other human rights violations, the Court found that the living conditions were incompatible with human dignity,²⁰⁴ kept the workers in a position of vulnerability,²⁰⁵ and tied workers to the land.²⁰⁶ The Court also found that Furukawa failed to implement preventive measures to mitigate risks associated with abaca cultivation.²⁰⁷ Relatedly, the Court found that Furukawa failed to take responsibility for the accidents and illnesses of its workers and that equipment provided by, and practices determined by, Furukawa resulted in severe health injuries (e.g., sharp tools causing amputations, dried abaca causing pulmonary issues, kerosene and diesel lamps releasing fumes, etc.).²⁰⁸

Based on these findings, the Court ordered Furukawa to pay forty thousand USD as non-pecuniary damages and eighty thousand dollars in material damages to all named abacaleros.²⁰⁹ Children, women, the elderly, and those who had suffered mutilations were to receive an additional five thousand dollars in immaterial damages.²¹⁰ To ensure that Furukawa paid reparations, the Court ordered a prohibition on the alienation of Furukawa's property and the sale of company shares until there was evidence of payment to named abacaleros.²¹¹ Furukawa was also ordered to issue a public apology.²¹²

3. *Findings Against Ecuador*

For the first time ever, a state court found that the State was responsible for failing to prevent and protect workers in its territory from human trafficking. For this reason, *Furukawa Plantaciones* has been lauded as a landmark case.²¹³ The Court found that Ecuador did not adopt sufficient measures, investigate, or issue sanctions to prevent the trafficking of workers at the Furukawa plantations.

202. *Id.*; see also *id.* at ¶¶ 141–51 (noting the disproportionate effect on women and children).

203. *Id.* ¶ 152.

204. *Id.* ¶ H21–H26.

205. *Id.* ¶ 90.

206. *Id.*

207. *Id.* ¶¶ H6, H26, 111.5–111.6.

208. *Id.* ¶¶ 111.5–111.6.

209. *Id.* ¶¶ 198.1–198.2, § 12 (Decisión), ¶ 4.

210. *Id.* ¶¶ 198.3–198.6, § 12 (Decisión), ¶ 4.

211. *Id.* ¶ 202.

212. *Id.* § 12 (Decisión), ¶ 4.

213. See, e.g., Gabrielle Barzallo, *Ecuador: 'Modern-day Slaves' Seek Justice in Landmark Trial*, AL JAZEERA (Mar. 24, 2023), <https://www.aljazeera.com/news/2023/3/24/ecuador-modern-day-slaves-seek-justice-in-landmark-trial> [https://perma.cc/4PTS-V5WJ]; *Modern Slavery Survivors Stand Up to Plantation Owners in Ecuador*, FREEDOM UNITED (Mar. 24, 2023), <https://www.freedomunited.org/news/survivors-landmark-case-in-ecuador/> [https://perma.cc/KDV5-WKX8]; THE HUMAN TRAFFICKING LEGAL CENTER, GLOBAL JUSTICE: USING STRATEGIC LITIGATION TO COMBAT FORCED LABOR 19 (2023), https://htlegalcenter.org/wp-content/uploads/Global-Justice_Using-Strategic-Litigation-To-Combat-Forced-Labor-2023.pdf [https://perma.cc/X8MU-8PC5].

Turning to specific government agencies, the Court considered (a) what actions the agencies took before investigations began in 2018 and (b) what actions were taken by the agencies after 2018. Thus, 2018 functions as a turning point, when certain agencies knew or should have known that human trafficking conditions existed, thereby triggering their duties and responsibilities.

In making its determination, the Court relied heavily upon the Inter-American Court's decision in *Hacienda Brasil Verde v. Brasil*,²¹⁴ a landmark case from the Inter-American Court of Human Rights. In *Hacienda Brasil Verde*, the Inter-American Court found that states have a duty to prevent slavery and to establish comprehensive prevention strategies, including addressing risk factors for trafficking, strengthening anti-trafficking institutions, taking measures for the inspection and detection of trafficking practices, and investigating and punishing traffickers.²¹⁵ Asking whether Ecuadorian government agencies fulfilled their duties as outlined in *Hacienda Brasil Verde*, the Court made the following findings:

a. Ministry of Labor

Considering the duties and obligations of the Ministry of Labor to conduct regular inspections and control the activities of businesses under national²¹⁶ and international law,²¹⁷ the Court found that the Ministry of Labor was liable for failing to conduct a single investigation of, or take any action against, Furukawa before 2018.²¹⁸ The Court was particularly perturbed by the Labor Merit award given to Furukawa Plantaciones by the Ministry of Labor in 2005.²¹⁹

On the other hand, the Court recognized that the Ministry of Labor conducted multiple investigations in 2018 and 2019, during which the Ministry detected child labor, labor intermediation and outsourcing, and working conditions that violated human dignity on the Furukawa plantations.²²⁰ The Ministry sanctioned Furukawa, including closing plantations and suspending work.²²¹ However, the Ministry nullified these sanctions when Furukawa and its workers had a “social dialogue” in April 2019 and created a work plan whereby Furukawa was to fulfill its labor obligations.²²² The Court found that the Ministry should have investigated the nature of the “social dialogue,” the

214. *Id.* ¶ 155–58.

215. *Hacienda Brasil Verde v. Brasil*, Judgment, Inter-Am. Ct. H.R.317, (ser. C) No. 318 ¶¶ 319–20 (Oct. 20, 2016).

216. *Furukawa*, *supra* note 2, at ¶ 161 (citing to Constitución de 1852 del Ecuador [Constitution of 1852] Sept. 6, 1852, Tit. XI, Art. 107 (Ecuador); Código del Trabajo de 1938 [Labor Code of 1938] art. 84–87, 428 (Ecuador); Código del Trabajo de 2005 [Labor Code of 2005], art. 151, 412, 435–36 (Ecuador)).

217. *Furukawa*, *supra* note 2, at ¶¶ 161.2–161.4 (referencing convenings of the International Labor Organization [ILO] and reports by the U.N. Human Rights Commission).

218. *Id.* ¶ 162.

219. *Id.*

220. *Id.* ¶ 170.

221. *Id.*

222. *Id.*

pressures put on workers, and whether Furukawa implemented changes.²²³ For these reasons, the Court held that the Ministry's actions were insufficient and did not fulfill its obligations.²²⁴

b. Ministry of Health

The Court first noted that the Ministry of Health has obligations related to occupational health and safety, requiring business inspections and monitoring.²²⁵ Because of these obligations, the Ministry should have been aware of the situation on the Furukawa Plantaciones. The Ministry did not conduct any inspections pre-2018, and the Court thus found that the Ministry neglected its duties.²²⁶

Once conditions at the Furukawa Plantaciones became public knowledge in 2018, however, the Ministry ensured that medical attention was provided to workers inside the haciendas and at the health centers closest to the plantations.²²⁷ Because the Ministry of Health was making efforts to ensure access to health services, the Court held that the Ministry of Health had fulfilled its duties post-2018 and was not liable for failing to prevent trafficking after 2018.²²⁸

c. Ministry of Social Inclusion ("MIES")

Before workers made Furukawa's human trafficking practices public in 2018, MIES had a general obligation to protect vulnerable groups, but it had no specific obligation to the abacaleros.²²⁹ Because there was no evidence that MIES should have been aware of the trafficking on the Furukawa plantations prior to 2018, it had no duty to the abacaleros.²³⁰

After the workers made their conditions public in 2018, MIES did nothing until the Project of Integral Attention in the Furukawa Case ordered it to take action preparing social registers for access to aid.²³¹ These registers and the distribution of aid were not provided for over a year, and MIES could not provide any reason for this delay.²³² Only thirty-two abacaleros had access to aid, and MIES ultimately transferred this responsibility to the Social Registry (Registro Social).²³³ Based on these actions, the Court found that there was a lack of coordination to guarantee social inclusion of affected persons and that

223. *Id.*

224. *Id.* ¶ 170.

225. LEY ORGÁNICA DE SALUD VIGENTE [HEALTH ACT] (Dec. 22, 2006) art. 6, no. 16 (Ecuador).

226. *Furukawa*, *supra* note 2, at ¶ 163.

227. *Id.* ¶ 171.

228. *Id.*

229. *Id.* ¶ 164.

230. *Id.*

231. *Id.* ¶ 172.

232. *Id.*

233. *Id.*

MIES did not fulfill its obligations post-2018.²³⁴ MIES's failure to fulfill its duties and obligations contributed to the State's failure to prevent trafficking.

d. Ministry of Education

The Court first considered the Ministry of Education's duties before abacaleros made their situation public in 2018. The Court found that although the Ministry had a general obligation to protect vulnerable groups, it did not have a specific obligation as it was not aware of the situation on the Furukawa plantations prior to 2018.²³⁵

The Court then considered the actions taken by the Ministry after 2018 when the Ministry was made aware of the workers' conditions. In 2018, the Ministry created educational programs and literacy courses for the workers.²³⁶ The Court noted that although the Ministry found that 267 people had no access to education in 2018, the Ministry only maintained contact with the twenty-eight adolescents who regularly attended classes.²³⁷ The Court found that, given the extreme vulnerability of the abacaleros and the circumstances, the mere creation of educational programs was not enough to guarantee their access to education.²³⁸ For this reason, the Ministry did not fulfill its obligations post-2018 and contributed to the State's failure to prevent trafficking.²³⁹

e. Ministry of the Interior

Finally, the Court considered the obligations of the Ministry of the Interior. Before 2018, the Ministry was not aware of the situation on the Furukawa Plantations and thus had no specific obligations to the workers.²⁴⁰ Following publication of the workers' conditions in 2018, the Ministry sought to promote dialogue between Furukawa and affected persons.²⁴¹ This lasted until the end of May 2019.²⁴² From June through August of 2019, Furukawa attempted to force its workers to sign agreements renouncing their rights.²⁴³ There is no evidence that the National Secretariat of Policy Management responded to Furukawa's actions in this regard nor is there evidence that the Ministry sought to promote dialogue between workers and Furukawa or took the extreme vulnerability of the abacaleros' situation into consideration in negotiations with Furukawa.²⁴⁴ For these reasons, the Court found that the Ministry did not

234. *Id.*

235. *Id.* ¶ 164.

236. *Id.* ¶ 171.

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.* ¶ 165.

241. *Id.* ¶ 173.

242. *Id.*

243. *Id.*

244. *Id.*

fulfill its obligations post-2018 and thus contributed to the State's failure to prevent trafficking.²⁴⁵

Based on these findings, the Court ordered the creation of an inter-institutional public policy aimed at addressing and overcoming structural causes of human trafficking.²⁴⁶ This policy would be led by MIES and the Ministry of Labor.²⁴⁷ Among other things, under this policy, the Ministry of Labor would be required to take specific actions regarding (1) the creation of a regularly updated registry of legal entities operating in industries prone to trafficking and (2) increasing labor inspections, especially of companies in the registry.²⁴⁸ The State was also ordered to make a public apology.²⁴⁹ The State was ordered to reform existing laws to prevent corporate impunity and to reform laws on the elimination of trafficking and slavery, particularly in the agriculture sector.²⁵⁰ The Court also considered the preservation of memory by ordering the State to fund the creation of a documentary on the human trafficking of abaca workers and the installation of art to memorialize the case and facts.²⁵¹ Finally, the Court ordered that there will be a day of commemoration for the victims of Furukawa.²⁵²

4. *Enforcement of Judgment*

Despite the findings, conditions on the Furukawa plantations have not changed. Furukawa has had to pay some fines and was forced to close for ninety days per an order by the Ministry of Labor,²⁵³ but there is no evidence that Furukawa has begun to provide health care, education, PPE, adequate housing conditions, potable water, or increased salaries as of yet.²⁵⁴ There is also no evidence that child labor has ceased. Meanwhile, workers are being harassed and face other retaliatory acts as a result of the lawsuit.²⁵⁵ There is also evidence of Furukawa Plantaciones buying its own shares to “strengthen

245. *Id.*

246. *Id.* ¶ 207. The Constitutional Court of Ecuador has the power to submit bills and order the alteration of laws under the Constitution. Constitución de la República del Ecuador [CRE] [Constitution] Sept. 28, 2008, art. 134, no. 4; art. 436 [Ecuador].

247. *Furukawa*, at § 12 (Decisión), ¶ 5(a). *See also* § 11.2.1 (outlining the structure and objectives of the interinstitutional policy).

248. *Id.* ¶ 213.

249. *Id.* ¶¶ 216–17, § 12 (Decisión), ¶ 5(b); *see also id.* ¶¶ 219–28 (symbolic reparations, guarantees of nonrepetition, and dissemination of the judgment to the public).

250. *Id.* ¶¶ 209, 213.2, 223, § 12 (Decisión), ¶ 5(f).

251. *Id.* § 12 (Decisión), ¶5(c)–(d).

252. *Id.* § 12 (Decisión), ¶5(e).

253. *Smink*, *supra* note 5.

254. Ana Cristina Basantes & Noor Mahtani, *Ecuador Pide Perdón a los Afrodescendientes Víctimas de Esclavitud Moderna de Furukawa*, *El País* (June 1, 2025), <https://elpais.com/america-futura/2025-06-01/ecuador-pide-perdon-a-los-afrodescendientes-victimas-de-esclavitud-moderna-de-furukawa.html> [https://perma.cc/XQ5H-VEF2] (last visited Mar. 8, 2026) (describing Furukawa's insistence that it cannot pay the ordered reparations and that the living conditions of workers remain the same as before); Mullu. tv, *Furukawa y la lucha contra la esclavitud moderna en Ecuador*, TikTok, <https://www.tiktok.com/@mullu.tv/video/7528518607064567096> [https://perma.cc/NU7W-A6XQ] (last visited Mar. 8, 2026) (video by abacaleros who note that their conditions have not changed since the judgment).

255. Victims of Modern Slavery must have Remedy and Reparation in Ongoing Lawsuits, *supra* note 144; FIDH, *supra* note 98.

the company's market position and potentially increase shareholder value."²⁵⁶ Furukawa has remained silent on whether buying up shares will allow the company to pay the named parties damages as ordered by the Constitutional Court.²⁵⁷ Overall, the lawsuit appears to be nothing more than a fine for Furukawa, with business continuing as usual.

As briefly discussed above, there is evidence that different government agencies have begun to take some action after 2018. In particular, the Ministry of Labor has begun to conduct monthly inspections of the company.²⁵⁸ Ecuador also issued a formal apology on May 31, 2025, to a group of three hundred abacaleros from the Furukawa plantations.²⁵⁹ As of the date of writing this Article, however, the inter-institutional public policy has not been created, nor has the Ministry of Labor created a registry of all companies in industries prone to trafficking. There is also no evidence of reforms to existing laws to prevent corporate impunity in similar scenarios or to reform trafficking laws, particularly as they relate to the agricultural industry.

III. IMPLICATIONS: RE-ANALYZING FURUKAWA THROUGH THE LENS OF STATE CAPTURE

Although the judgment in *Furukawa Plantaciones* was resolute in its demand that human rights be respected and should be commended, nothing has changed yet. Similar patterns can be seen globally. Judges and international legal bodies attempt to remedy human rights violations by issuing strong judgments. However, companies and states often only fulfill the minimum requirements without addressing the underlying issues. In this case, fulfilling only the minimum requirements meant not addressing trafficking, education resources, health resources, housing, gender discrimination, and racial discrimination, as outlined in the complaint. In addition to filling these gaps, This Article argues that state capture practices must also be addressed. By viewing the harms in Furukawa as a byproduct of a larger state capture issue, lawyers and policymakers can better address the issues and work toward non-recurrence. In turn, this strengthens public and, more importantly, victims' views on justice and accountability efforts.

A. *Prevention and Non-Recurrence – Duties*

It is well understood that human rights treaties not only create rights but also create duties for States.²⁶⁰ As duty-holders, States have an obligation to

256. Alexandra Harrell, *Ecuador Apologizes to Abused Abacaleros, Plantation Remains Silent*, Yahoo News (June 27, 2025), <https://www.yahoo.com/news/ecuador-apologizes-abused-abacaleros-plantation-153407296.html> [https://perma.cc/9KQK-9SSK] (last visited Mar. 8, 2026).

257. *See id.*

258. Smink, *supra* note 5.

259. Harrell, *supra* note 257.

260. *E.g.*, Dinah Shelton & Ariel Gould, *Positive and Negative Obligations*, in THE OXFORD HANDBOOK OF INTERNATIONAL HUMAN RIGHTS LAW. (Dinah Shelton ed., 2013), 562–84.

prevent human rights violations.²⁶¹ It is also acknowledged that there are positive and negative obligations, meaning that the state has “a duty to abstain from interfering with the exercise of the right, but also to protect the right from infringement by third parties.”²⁶² Beyond this, though, the contours of that obligation are subject to debate. For example, according to the Inter-American Court of Human Rights (“IACtHR”):

An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because *it is the act of a private person* or because the person responsible has not been identified) can lead to international responsibility of the State . . . because of the lack of due diligence to prevent the violation²⁶³

The IACtHR thus makes clear that, regardless of who the actor is, there is an obligation on the State to prevent human rights violations from occurring. This duty is in line with General Comments from the Human Rights Committee.²⁶⁴ For example, in General Comment No. 31, the Human Rights Committee outlines the general legal obligation imposed on States by the International Covenant on Civil and Political Rights.²⁶⁵ The Comment specifically notes that individuals are the beneficiaries of the rights recognized by the Covenant and that States have an obligation to ensure that anyone within their territory enjoys those benefits.²⁶⁶

The IACtHR has further held that the Convention imposes a duty to respect, protect, ensure, and promote the human rights outlined in the Convention.²⁶⁷ This duty includes using legal, political, administrative, and cultural prevention methods, as well as ensuring that violations are treated as unlawful and lead to the punishment of those responsible.²⁶⁸ Treating the acts as unlawful and punishing those responsible includes investigation and prosecution.²⁶⁹

Turning to human trafficking specifically, under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“Palermo Protocol”), there is a general obligation for states to prevent human trafficking.²⁷⁰ This means that states must enact laws to implement the

261. *Id.*

262. *Id.*

263. *Velásquez-Rodríguez v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4 ¶ 172 (July 29, 1988) (emphasis added).

264. U.N. Human Rights Committee, General Comment No. 31, ¶ 9, CCPR/C/21/Rev.1/Add.13 (May 26, 2004).

265. *Id.*

266. *Id.* ¶¶ 9–10.

267. Inter-American Commission on Human Rights, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II, ¶ 35 (Dec. 31, 2009).

268. *Id.* ¶¶ 174–75; see also Andrew Clapham & Mariano Garcia Rubio, *The Obligations of States with Regard to Non-State Actor in the Context of the Right to Health*, Health and Human Rights Working Paper Series No. 3, at 8 (2002), http://www.who.int/hhr/Series3%20Non-State_Actors_Clapham_Rubio.pdf.

269. Shelton & Gould, *supra* note 261.

270. Palermo Protocol, *supra* note 63, art. 2 (stating that the first enumerated purposes of the Protocol is “to prevent and combat trafficking in persons . . .”).

purpose of the protocol, create oversight mechanisms with the aim of combating and preventing human trafficking, investigate and prosecute those who commit human trafficking, and address underlying problems that fuel human trafficking.²⁷¹ The IACtHR found that States must “adopt all appropriate measures to end [trafficking] practices and prevent the violation of the right not to be subjected to such conditions pursuant to the obligation to ensure the full and free exercise of the rights of every person subject to their jurisdiction.”²⁷² The IACtHR thus recognizes and reaffirms the duties and obligations outlined in the Palermo Protocol. As a member of the Organization of Interamerican States and a signatory to the American Convention on Human Rights,²⁷³ Ecuador must recognize the IACtHR’s ruling regarding the duty of states to prevent trafficking.

There is also soft international law²⁷⁴ germane to Ecuador’s obligation to prevent the human rights violations committed by Furukawa Plantaciones. The Committee on the Rights of the Child stated that state parties will “assume their responsibilities towards children not only at the national level, but also at the provincial and municipal levels. These special obligations are due diligence and the obligation to prevent violence or violations of human rights”²⁷⁵ The Committee on the Rights of the Child clearly notes that States have a duty to protect children throughout the entirety of the State and that States have an obligation to prevent human rights violations against children regardless of the form.²⁷⁶

Because states have a duty to prevent human rights violations, the question becomes, what is prevention? There are both direct and indirect forms of prevention. When human rights were first conceived, they were imagined as problem-solving mechanisms with both *ex post* and *ex ante* roles.²⁷⁷ Prevention thus has both redress and protective dimensions.²⁷⁸ Indirect prevention happens after a human rights violation has taken place, with the goal of

271. *Id.*

272. *Hacienda Brasil Verde v. Brazil*, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 318 ¶ 317 (Oct. 20, 2016).

273. *Frequently Asked Questions*, Inter-American Commission on Human Rights, <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/usersupport/faq.asp> [<https://perma.cc/7ZF5-PJAB>] (last visited Mar. 8, 2026).

274. Soft law refers to non-binding principles, guidelines, resolutions, and declarations that guide state behavior. Hard law (e.g., treaties), on the other hand, creates a binding obligation. Soft law helps fill the gap between mere political aspirations and treaties regarding legal rules. CURTIS F.J. DOEBBLER, *DICTIONARY OF PUBLIC INTERNATIONAL LAW*, “Soft Law” (2018); RESEARCH HANDBOOK ON SOFT LAW (ed. Mariolina Eliantonio et al. eds., 2023). For more on how soft law supplements hard law, see JOHN KIRTON, *HARD CHOICES, SOFT LAW: VOLUNTARY STANDARDS IN GLOBAL TRADE, ENVIRONMENT, AND SOCIAL GOVERNANCE* (2017).

275. Committee on the Rights of the Child, General Comment No. 13, *The Right of the Child to Freedom from All Forms of Violence*, ¶ 5, U.N. Doc. CRC/C/GC/13 (Apr. 18, 2011).

276. *Id.*

277. See Pablo de Greiff, *Human Rights, Prevention, and Peace*, Open Global Rights (Aug. 30, 2024), <https://www.openglobalrights.org/human-rights-prevention-and-peace/?lang=English> [<https://perma.cc/GW3E-5CCD>] (last visited Mar. 8, 2026).

278. Pablo de Greiff, *A Framework Approach to Making Prevention a Reality*, FRAMEWORK REPORT 5 (Mar. 2024), <https://app.box.com/s/9p9oildfxgk3fsd3gxsbzoo16zq466q> [<https://perma.cc/F3GF-UR55>].

preventing the violation from happening again.²⁷⁹ Indirect prevention therefore looks backwards. Direct prevention, on the other hand, looks to the future and aims to prevent violations from ever occurring. Direct prevention methods “anticipat[e] and regulat[e] situations where human rights violations may occur.”²⁸⁰ This includes examining a range of factors that may lead to human rights violations and acting strategically through policy and other implementation methods to prevent the violations from occurring.

Regardless of the type of prevention being employed, “[p]revention is not merely a matter of making changes in texts; prevention calls for changes in practice.”²⁸¹ For prevention to be effective, it requires interventions in both the institutional and cultural spheres.²⁸² Without this prevention, rights such as those associated with economic and racial exclusion can not only encourage the entrenchment of abusive government powers but also subvert democratic processes.²⁸³ When States fail to prevent violations linked to these rights, core principles of political equality and institutional trust begun to erode. When specific groups are systematically marginalized, democratic structures fail to be truly representative; instead, they become mechanisms that concentrate power on a few key groups and institutionalize inequality. For this reason, prevention efforts fighting against persistent and durable inequalities are imperative and States have a duty to prevent human rights violations by addressing underlying systemic issues.

B. *State Capture and Link to Human Trafficking*

Considering there is a duty to prevent human trafficking, states and civil society must consider both direct and indirect means. Human trafficking does not occur in a silo. Traditionally, civil society and states, to varying extents, have considered factors such as race, ethnicity, gender, socioeconomics, and education level, as well as isolation and marginalization, when considering how to prevent human trafficking.²⁸⁴ What has been less considered, however,

279. U.N. Office of the High Commissioner for Human Rights, *The Role of Prevention in the Promotion and the Protection of Human Rights*, ¶ 10, U.N. Doc. A/HRC/30/20 (July 16, 2015).

280. Sigrun Skogly, *Prevention is Better than a Cure: The Obligation to Prevent Human Rights Violations*, 46 *HUM. RTS. Q.* 330, 347 (May 2024) (quoting Isobel Renzulli, *A Critical Reflection on the Conceptual and Legal Foundations of the Duty to Prevent Torture*, 20 *INT’L J. HUM. RTS.* 1244, 1245 (2016)).

281. Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-Recurrence, U.N. Doc. A/HRC/30/42 ¶ 77 (Sept. 7, 2015).

282. *Id.* at ¶ 32; Secretary-General, *Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence*, U.N. Doc. A/72/523 ¶¶ 75-80 (Oct. 12, 2017).

283. Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-Recurrence, *supra* note 282, at ¶¶ 35–36; Promotion of Truth, Justice, Reparation, and Guarantees of Non-Recurrence, *Transitional Justice Measures and Addressing the Legacy of Gross Violations of Human Rights and International Humanitarian Law Committed in Colonial Contexts*, U.N. Doc A/76/180 ¶ 84 (July 19, 2021) (noting that reforms “must reach all public procedures, practices, and infrastructure” to cure deficits associated with racial harms and the enjoyment of human rights).

284. *About Human Trafficking*, Freedom Network, <https://freedomnetworkusa.org/the-issue/> [<https://perma.cc/NA4Q-GNSF>] (last visited Mar. 8, 2026); *Vulnerabilities & Recruitment*, Polaris Project, <https://polarisproject.org/vulnerabilities-and-recruitment/> [<https://perma.cc/5JJK-8P6P>] (last visited

is the impact of corruption and, more specifically, state capture on human trafficking. Because of the public vulnerabilities created by state capture and the opportunities for impunity generated by it, actors need not be directly involved in capture to benefit from it as it relates to human trafficking. State capture's existence in a state creates an environment in which human trafficking can flourish.

As defined in Part I above, state capture creates an environment in which captor networks are able to alter the rules of the game to their benefit (i.e., they are able to subvert the interests of public institutions and processes to benefit the capture party rather than the public in whose interest the institutions and policies should be serving).²⁸⁵ Businesses are thus able to work with government agents within their network to ensure that laws will not affect them and immunize themselves against future accountability for violations of law. This creates an environment where the rights, interests, and privileges of some are prioritized above others.²⁸⁶ The interests of businesses supersede those of the people whose interests the laws were designed.²⁸⁷ This is especially true for minoritized communities.²⁸⁸

Mar. 8, 2026); Manuel Dammert Guardia et al., *La Trata de Personas en los Andes: Dinámicas socio-espaciales en las fronteras de Perú*, 24 *Iconos* 117, 119–20 (2020), <https://www.proquest.com/docview/2487473143/fulltextPDF/B479BED49ED9472APQ/1> [<https://perma.cc/HDQ4-576T>] (last visited Mar. 8, 2026); Viteri, *supra* note 39, at 110.

285. See Hellman & Kaufman, *Confronting the Challenge of State Capture in Transition Economies*, *supra* note 16; De Greiff and Knapp, *supra* note 18, at 10.

286. De Greiff & Knapp, *supra* note 17, at 10.

287. *Id.*

288. See, e.g., *Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362 (S.D.N.Y. 2014) (holding that the Ecuadorian judgment against Chevron could not be enforced and finding that the U.S. attorney who represented local communities and indigenous people in the Ecuadorian case violated the Racketeer Influenced and Corrupt Organizations Act (RICO), committed extortion, was guilty of money laundering, wire fraud, Foreign Corrupt Practices Act violations, witness tampering, and obstruction of justice in obtaining the Ecuadorian judgment and in trying to cover up his and his associates' alleged crimes); *Archaeology: Latest Ploy for Grabbing Tamil Lands in North Sri Lanka*, *Journalists for Democracy in Sri Lanka* (Mar. 2021), <http://www.jdslanka.org/index.php/news-features/politics-a-current-affairs/1001-archaeology-latest-plot-for-grabbing-tamil-lands-in-north-sri-lanka> [<https://perma.cc/VM26-ANEV>] (last visited Mar. 8, 2026); *Archaeological Sites in the Eastern Province Have a Shared Heritage of the Sinhala and Tamil Speaking People*, *Sri Lanka Brief* (Dec. 6, 2020), <https://srilankabrief.org/the-archaeological-sites-in-the-eastern-province-have-a-shared-heritage-of-the-sinhala-and-tamil-speaking-people-dr-nirmala-chandrasahana/> [<https://perma.cc/V7AH-8P9V>] (last visited Mar. 8, 2026) (describing how captor groups in Sri Lanka promote their own cultures and rights to land over minority cultures and their claims to heritage sites); Sinhala-Buddhist community members sought to preserve Tamil archaeological sites as Buddhist heritage sites); Ben Davis, *How a Pipeline Is Threatening Native American Culture in North Dakota*, *ArtNet* (Sept. 9, 2016), <https://news.artnet.com/art-world/standing-rock-cultural-desecration-640799> [<https://perma.cc/4BPM-AX35>] (last visited Mar. 8, 2026); *The Dakota Access Pipeline (DAPL)*, Harvard Law School Environmental and Energy Law Program (Jan. 28, 2025), <https://eelp.law.harvard.edu/tracker/dakota-access-pipeline/> [<https://perma.cc/6NPP-SQRA>] (last visited Mar. 8, 2026); Robinson Meyer, *The Legal Case for Blocking the Dakota Access Pipeline*, *The Atlantic* (Sept. 9, 2016), <https://www.theatlantic.com/technology/archive/2016/09/dapl-dakota-sitting-rock-sioux/499178/> [<https://perma.cc/52HY-MTSR>] (last visited Mar. 8, 2026) (describing how corporations attempted to exert influence over U.S. government agencies, alter the rules of the game, and cause irreparable cultural harm to the Dakota in the case of DAPL); George Nicholas, *Threats to Bear Ears and Other Indigenous Sacred Sites Are a Violation of Human Rights*, *The Conversation* (Dec. 17, 2017), <https://theconversation.com/threats-to-bears-ears-and-other-indigenous-sacred-sites-are-a-violation-of-human-rights-87609> [<https://perma.cc/8898-YACP>] (last visited Mar. 8, 2026) (noting that the reduction in the size of Bear Ears and Grand Staircase-Escalante

In the case of Ecuador and Furukawa Plantaciones, captor networks existed in Ecuador that promoted the interests of businesses. An example of this is the previously discussed Ley Organica de Eficiencia Economica y Generacion de Empleo (2024),²⁸⁹ which incentivized the hiring of young and marginalized workers in agricultural industries.²⁹⁰ There is evidence of state capture involved in this legislation specifically and in the agricultural industry in general.²⁹¹ This law feeds into the state capture project in Ecuador, creating an environment in which businesses are incentivized to hire minorities and youths, including in highly deregulated and unmonitored employment areas in the agricultural industry. The government is not only failing to implement laws that protect at-risk workers from exploitation and prevent human trafficking, but also it is creating laws that will further fuel vicious cycles of exploitation, human rights violations, and minoritization.

Meanwhile, Furukawa Plantaciones specifically hired and continues to hire minoritized peoples (Afroecuatorianos) to work on their plantations.²⁹² As outlined above, Furukawa kept the workers in a position of vulnerability by isolating them from medical, educational, and other resources. Furukawa's labor trafficking and intentional marginalization, minoritization, and isolation of workers continued for sixty years without reprimand²⁹³ because of the capture environment in which it existed. If practices are in place at the national level that promote the interests of businesses over the interests of people, it creates an environment where captor businesses are able to immunize themselves against claims. It creates an environment in which captor networks insulate themselves even without making explicit bribes or altering laws. Because strong and intensive captor networks exist and promote business interests in various capacities, an environment is created in which the rights of the people have been so subverted to those of businesses that government oversight is minimized and made defunct.²⁹⁴ Captors in Ecuador are promoting the very policies and practices that drove the abuses in *Furukawa*, creating no incentive for Furukawa Plantaciones to change its ways despite a court order.

National Parks in Utah would open the door for mining, logging, and other corporations to destroy sites of historical and spiritual importance for the Hopi, Navajo, Ute, and Zuni peoples).

289. Ley Organica de Eficiencia Economica y Generacion de Empleo [Organic Law on Economic Efficiency and the Generation of Employment] (2024) (Ecuador), https://www.gob.ec/sites/default/files/regulations/2024-02/eclex_pro-laboral-ley_organica_de_eficiencia_economica_y_generacion_de_empleo.pdf [<https://perma.cc/2793-2E7J>].

290. *Id.*, at art. 6.

291. See, e.g., Tapia, *supra* note 251; Alexandra Valencia, *Environmental, Indigenous Groups in Ecuador Threaten Action over Amazon Oilfield*, Reuters (Jan. 25, 2024), <https://www.reuters.com/sustainability/climate-energy/environmental-indigenous-groups-ecuador-threaten-action-over-amazon-oilfield-2024-01-25/> [<https://perma.cc/66HA-ZP5R>] (last visited Mar. 8, 2026).

292. Furukawa, at ¶¶ 7.4(H.20), 93–106; Mapping the Global Abaca Supply Chain from the Dirt to the Consumer, *supra* note 75, at 11, 14.

293. Instead, Furukawa received labor merit awards from the Ministry of Labor. Mapping the Global Abaca Supply Chain from the Dirt to the Consumer, *supra* note 75, at 11, 14.

294. De Greiff & Knapp, *supra* note 17, at [].

Furthermore, state capture reduces trust in government agencies and processes.²⁹⁵ Businesses can use this distrust to their advantage. If a company believes its employees will not rely on labor bureaus or courts for human rights violations, the company will be more likely to ignore labor laws and human rights obligations. Meanwhile, employees will either (a) accept this mistreatment or (b) seek other employment. Scholars have regularly noted the brain drain that occurs in states experiencing high levels of state capture.²⁹⁶ State capture creates a system of patronage-punishment that often results in a brain drain (i.e., the flight of educated or professional people from one country, region, economic sector, or profession to another industry or region in search of better pay or living conditions).²⁹⁷ Beyond brain drain resulting in the migration of more educated workers, blue-collar workers may move to other regions or states where labor laws are better respected. Furthermore, in an environment of government distrust and migration, businesses are able to take advantage of disenfranchised and marginalized workers.²⁹⁸

C. Implications

Understanding that state capture is an enabling factor of human trafficking, the question becomes, what are the implications of this on the promotion and fulfillment of human rights and on the rule of law?

First, recognizing that state capture is an enabling factor for human trafficking will allow advocates and policymakers to promote the creation of better oversight mechanisms that are outside the control of capture networks. Ideally, this means that third parties should have oversight of (a) various government

295. *Id.*

296. *Id.* at 21.

297. *Id.*; see also Anna Grzymala-Busse, Beyond Clientelism: Incumbent State Capture and State Formation, 41 COMP. POL. STUD. 638 (2008); B. Guy Peters and Jon Pierre, Politicization of the Civil Service: Concepts, Causes, Consequences, in THE POLITICIZATION OF THE CIVIL SERVICE IN COMPARATIVE PERSPECTIVE 2 (2004).

298. See, e.g., Janie Booth and Victoria Wang, *How State Capture Affects Women*, WOMEN'S LEGAL CENTRE, <https://wlce.co.za/how-state-capture-affects-women/> [https://perma.cc/88NL-8CP9]; Mi Yung Yoon, *Voter's Perceptions of Gender Differences in Vote Buying: The Case of Tanzania*, 55(2) AFRICA SPECTRUM 125 (2020), <https://journals.sagepub.com/doi/pdf/10.1177/0002039720957010> [https://perma.cc/JHD6-C6FU]; Michael Li & Yuij Rudensky, *How the Supreme Court's New Gerrymandering Case Threatens the Voting Rights Act*, BRENNAN CENTER (Sept. 29, 2022), <https://www.brennancenter.org/our-work/research-reports/how-supreme-courts-new-gerrymandering-case-threatens-voting-rights-act> [https://perma.cc/5FPW-4LUW] (discussing the strategic use of gerrymandering to diminish the strength of minority votes in Alabama as seen in *Merrill v. Milligan* and the potential effect the case could have on the Voting Rights Act); Saskia Brechenmacher, *Comparing Democratic Distress in the United States and Europe*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (June 21, 2018), <https://carnegieendowment.org/2018/06/21/comparing-democratic-distress-in-united-states-and-europe-pub-76646> [https://perma.cc/4FPV-DRAY] (describing issues with partisan gerrymandering in the United States as well as other means of diminishing voting rights and representation); Commission Report part IV, Vol. II ¶ 928, p458 (discussing the Free State housing project in South Africa in which a scheme was quickly devised for R1.3 billion to be spent resulting in payments to over 100 contractors without any written agreements or proof of houses being built); Liam Dillon & Ben Poston, *Affordable Housing in California Now Routinely Tops \$1 Million per Apartment to Build*, L.A. TIMES (June 20, 2022), <https://www.latimes.com/homeless-housing/story/2022-06-20/california-affordable-housing-cost-1-million-apartment> [https://perma.cc/2GMS-U69E]; Nicholas, *supra* note 289; Davis, *supra* note 289; Myer, *supra* note 249.

offices to ensure that they are properly inspecting businesses and (b) businesses to ensure that they are adhering to human rights laws. Creating better oversight mechanisms also means strengthening and deepening reporting requirements. For example, businesses should not be allowed to isolate their employees to the extent that Furukawa Plantaciones was able to do. Companies should have to report to oversight agencies on the registration of their employees for social security, access to medicine, access to education, age of employees, etc.

Second, by viewing state capture as an enabling factor of human trafficking, both will become mutual red flags for the other. In other words, reports of capture practices will send up smoke signals to human rights advocates that labor trafficking is lurking in the shadows. Similarly, evidence of strong human trafficking practices in a state will prompt advocates to consider what captor networks could be present, allowing such widespread human rights violations to occur with impunity.

Third, by situating human trafficking within the larger framework of state capture, practitioners will be better able to address all the human rights violations that victims have suffered rather than just those directly associated with trafficking. By extension, advocates and practitioners will be able to argue for systemic changes that will address both trafficking and capture practices. Because state capture is rhizomic, trafficking is but one branch of it. If practitioners only address human trafficking, they will not root out deeper social problems that are allowing these human rights violations to occur. Although laws and practices related to labor trafficking may strengthen after a judgment such as that in *Furukawa*, failing to address the underlying state capture practices that allowed the trafficking to happen will permit human rights violations to continue in other forms. Furthermore, viewing state capture as an enabling factor for human trafficking emphasizes the need to holistically approach trafficking prevention. Prosecuting human trafficking by itself is not enough. Although recognizing that litigation and other justice and accountability mechanisms are crucial to holding perpetrators of human trafficking accountable, more is necessary to ensure that trafficking stops. Involving a robust and inclusive civil society, including journalists and other uncorrupted members of the media, is essential for preventing state capture and recovering public institutions in captured states.²⁹⁹

Fourth, state capture allows practitioners and researchers to consider the impact of foreign investment and foreign influence as it relates to human trafficking. Human trafficking need not involve foreign entities or the crossing of borders. However, studies have shown that the more enmeshed foreign corporations become with state politics, the more likely it is for state capture to

299. See De Greiff and Knapp, *supra* note 17, at xi, 27 (noting that supportive institutions, an accountable security sector, a certain political ethos, public culture, and a strong and inclusive civil society fortify and augment litigation efforts).

arise.³⁰⁰ When these foreign companies are operating within another state, they will typically immunize themselves against future liability through capture processes.³⁰¹ Returning to human trafficking, this means foreign corporations will likely use state capture processes to immunize themselves from accountability for trafficking.

Finally, viewing state capture as an enabling factor for human trafficking allows for a reconceptualization of the effects of state capture and beneficiaries. Traditional research on state capture conceptualizes state capture as benefiting the captors, whether state or non-state actors.³⁰² However, by reframing state capture as an enabling factor for other human rights violations that is not dependent on the perpetrator's participation in the capture project, practitioners and scholars reveal more about the underlying networks. Scholars and practitioners can begin to show how entire industries or fields are indirectly influenced by capture projects while simultaneously opening pathways to the captors' accountability. For example, by demonstrating how the captors' actions to reduce the number of inspectors within the Ministry of Labor resulted in concrete harms to workers, practitioners can begin to strategize new and exciting potential lawsuits against indirect and direct beneficiaries of capture projects.

We can apply these implications directly to the *Furukawa* case. Beginning with the first implication (recognizing state capture as an enabling factor for human trafficking will lead to better oversight mechanisms), if the plaintiffs argued that the human trafficking was enabled by larger state capture practices occurring within the state, they would have been better able to ensure that the creation and empowerment of new oversight mechanisms was included as a remedy. Although the Court in *Furukawa* attempted to at least partially address the systemic problems with the requirement of an inter-institutional public policy aimed at addressing and overcoming structural causes of human trafficking and a registry of legal entities operating in industries prone to trafficking,³⁰³ both of these measures fall short. First, both measures address only the causes of human trafficking as opposed to the larger enabling factors of state capture. Using the analogy of a rhizome, this approach weeds out the obvious plants while leaving the existing rhizomic network underneath. So long as that enabling environment continues to exist, human trafficking will continue to flourish. The underlying networks will continue to influence policy outcomes. For example, captors will be able to determine what constitutes "an industry prone to trafficking." In doing so, the captors can carve out exemptions for their own industries or at least for their companies. Regarding the

300. Elizabeth David-Barrett & Ken Okamura, *Does State Capture Facilitate Strategic Corruption?*, PUB. INTEGRITY (2025); Sherpa, *Corporate Capture: The Harmful Influence of Multinationals on Our Democracies* (April 22, 2025), <https://www.asso-sherpa.org/corporate-capture-the-harmful-influence-of-multinationals-on-our-democracies> [https://perma.cc/S67P-9Y48]; Elizabeth David-Barrett, *State Capture and Development: A Conceptual Framework*, J. INT'L RELAT. DEV. (Mar. 2023) (gathering studies).

301. See David-Barrett & Ken Okamura, *supra* note 300.

302. See, e.g., De Greiff and Knapp, *supra* note 17, at 7–8.

303. *Furukawa*, *supra* note 2, at ¶¶ 207, 209, 213.2, 223, § 12 (Decisión), ¶ 5(f).

Court's order to conduct more labor inspections of these industries to ensure human trafficking is not present, captors can ensure that inspections are outsourced to third-party auditors, a practice already done by many countries.³⁰⁴ Human rights advocates have long noted problems with these auditors.³⁰⁵

Second, this plan only includes MIES and the Ministry of Labor. Lawyers and policymakers must work with civil society to effectuate meaningful change. Here, the Court did not order consultation with civil society, survivors, or other actors at the local and national levels. No one affected by trafficking and no one who collaborates with trafficking survivors will be a part of the policy formation surrounding either measure, leaving ample room for loopholes and omissions to enter the policies. Without involving civil society and survivors, the government is also closing the door to the public and obfuscating the formation and regulation of these policies. Including civil society in the process and regulation promotes transparency at all stages of policy formation, thereby minimizing the ability of state capture processes to effect legislation and regulation of these trafficking practices.³⁰⁶ This involvement is particularly relevant to the Court's order to reform existing laws because if captors continue influencing legislation, new laws will provide loopholes to help captors and similarly situated entities evade responsibility. Accountability efforts will thus be weakened.

Finally, in the case of *Furukawa*, addressing state capture practices would require the creation of independent oversight mechanisms, at a minimum related to education, social security, housing, labor, child labor, and health. By creating these mechanisms, Ecuador could begin to prevent future human rights violations related to trafficking while also detecting those violations that are ongoing. Early identification is a key component not only of Ecuador's duty to prevent under international human rights law, but it is also at the crux of combating and preventing the spread of state capture.³⁰⁷

Regarding the third (holistically addressing victim harms) and fifth implications listed above (reconceptualizing the effects and beneficiaries of state capture), whereas the Court in *Furukawa* did address some of the underlying systemic issues in Ecuador that contributed to the victims trafficking,

304. See, e.g., California Transparency in Supply Chains Act (requiring companies to conduct audits to ensure that they are contracting with suppliers devoid of trafficking); Uyghur Forced Labor Prevention Act (creating a presumption that imported from Xinjiang Uyghur Autonomous Region are produced through human trafficking unless suppliers prove otherwise, including through the use of audits); Germany, Supply Chain Due Diligence Act (Lieferkettensorgfaltspflichtengesetz) (requiring companies implement risk management systems to identify and address human trafficking, including through the use of audits).

305. See, e.g., Carmen Molina Acosta, *Audits Aimed at Flagging Labor Abuses are 'Designed to Fail,' Investigation Finds*, International Consortium of Investigative Journalists (Oct. 16, 2023), <https://www.icij.org/investigations/trafficking-inc/audits-aimed-at-flagging-labor-abuses-are-designed-to-fail-investigation-finds/> [https://perma.cc/6W34-V3DJ]; Abigail Higgins, *Corporations are Paying for Worker Abuse Audits that are 'Designed to Fail,' Say Insiders*, THE GUARDIAN, (Oct. 10, 2023), <https://www.theguardian.com/global-development/2023/oct/10/corporate-auditing-foreign-workers-abuse-claims> [https://perma.cc/TS9Q-WWJP].

306. De Greiff and Knapp, *supra* note 17, at 33.

307. *Id.*

approaching the issues from a state capture perspective would allow practitioners to seek remedies more directly related to those systemic issues. In *Furukawa*, the plaintiffs were made vulnerable to trafficking in multiple ways: isolation, lack of education, minoritization, and poverty to name a few. As discussed above, state capture practices in Ecuador as exemplified by laws such as the Ley Organica de Eficiencia Economica y Generacion de Empleo (2024) exploit and deepen these vulnerabilities by incentivizing businesses—particularly agricultural industries located in remote, isolated locales—to hire minoritized workers and youths by creating tax deductions. By directly referencing this law as a product of state capture that enables human trafficking, the plaintiffs would have revealed larger structures that operate to the benefit of corporations and to the direct detriment of the public, particularly to disadvantaged Afroecuatorianos. Similarly, collaboration with researchers on the topic could have yielded insight on the impacts of reducing the number of inspectors within the Ministry of Labor on minoritized communities.³⁰⁸ By situating the discrimination noted in *Furukawa* within the larger state capture narrative, the Court could have ordered reforms that would have struck at the issues more deeply (i.e., ordering the reform of Ley Organica de Eficiencia Economica y Generacion de Empleo (2024) or for the government to remedy downsizing the number of inspectors in the Ministry of Labor).

Relatedly, state capture is not dependent on individual politicians or private actors. The rhizomic nature of state capture means that its strength lies in the underlying processes and networks that support it. *Furukawa Plantaciones* is but one company. It is not the only firm committing labor trafficking in Ecuador. Understanding how underlying processes and networks feed human trafficking helps address the larger issue. Instead of only going after the low-hanging fruit or sacrificial lambs proffered by capture networks, practitioners can strike at the heart of the issue. Practitioners can address the revolving door between private and public in Ecuador, laws that benefit corporations at the expense of the public, and racialized policies that marginalize and reduce the capacity of certain peoples.

Further research is needed into *Furukawa Plantaciones* and other companies' structures to begin to address the fourth implication (foreign investment and influence). Based on the level of foreign involvement in the State, it seems likely that foreign investment and foreign influence are influencing accountability mechanisms for human trafficking in Ecuador. This is an area for further research that could reveal insight on trafficking practices in Ecuador.

Finally, regarding the second implication listed above (state capture and human trafficking as mutual red flags), researchers have noted evidence of state capture in Ecuador since at least 2007. This should have been a red flag to look for human trafficking. By situating human trafficking within the state capture narrative, the Court in *Furukawa* could have strengthened its arguments regarding when various government agencies were put on notice. Because state

308. To the best of the author's knowledge, this study has not been undertaken.

capture and human trafficking serve as mutual red flags, *Furukawa* demonstrates the prevalence of capture practices in Ecuador. Government agencies should be on notice and taking action. Practitioners can use *Furukawa* as evidence in future human rights cases that government agencies knew or should have known of the prevalence of state capture practices.

CONCLUSION

The *Furukawa* case represents a significant win for practitioners working on human trafficking and human rights issues by holding both corporate and state actors accountable. At the same time, the judgment fails to consider how the human trafficking described ties into larger issues within Ecuador. Although the Constitutional Court of Ecuador's landmark judgment is notable for being the first time a national court found a state responsible for failing to prevent human trafficking, the case leaves critical questions unanswered regarding the underlying causes and systemic issues.

State capture serves as an enabling factor for human trafficking. Understanding this connection fills a gap in scholarship and helps scholars and practitioners begin to understand the complexities of capture networks regarding indirect beneficiaries. By analyzing the *Furukawa* case through the lens of state capture, it becomes evident that capture practices allow both corporate entities, like Furukawa Plantaciones, and state agencies to evade accountability for human trafficking, despite the existence of relevant laws. The public vulnerabilities and opportunities for impunity created by state capture can indirectly benefit actors who are not directly involved in capture projects, thereby fostering an environment where human trafficking can flourish. To effectively address human trafficking and its root causes, practitioners must consider the broader narrative of state capture. By understanding the link between state capture and human trafficking, practitioners can better address clients' harms and seek remedies that strike at the systemic issues and vulnerabilities that lead to human rights violations, particularly those related to trafficking.

