## I. SUMMARY

1. On June 15, 1994, María Merciadri de Morini (hereinafter "the petitioner") filed a petition before the Inter-American Commission on Human Rights (hereinafter "the Commission," the "Inter-American Commission," or "the IACHR") in which she alleged that the Argentine Republic (hereinafter "the State," the "Argentine State," or "Argentina") had violated her rights to due process (Article 8), the right to participate in government (Article 23), the right to equal protection (Article 24) and the right to judicial protection (Article 25), set forth in the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention").

2. The petitioner alleged that on the list of six candidates running on the Unión Cívica Radical party ticket for election as national deputies from the Province of Córdoba, one woman was fourth on the list and another sixth. This was a violation of Law 24.012 and its governing decree Nº 379/93, which required that two women be listed among the first five positions. The petitioner invoked the available domestic remedies before the courts; however, the latter not only dismissed her complaint but also denied her procedural standing to bring an action. Finally, the Supreme Court denied her appeal on the grounds that it was moot, ruling that "the votes that the Unión Cívica Radical carried in the October 3, 1993 election entitled it to four seats in the Chamber of Deputies; this case was about who ended up in fifth place."

3. The Commission declared the case admissible in Report 102/99 of September 21, 1999, approved during its 104th regular session. The Commission also placed itself at the disposal of the parties for the purposes of reaching a friendly settlement based on respect for the rights upheld in the Convention, and requested the parties to submit their views on that possibility. A friendly settlement agreement was reached on March 8, 2001, when the parties signed an agreement in Buenos Aires wherein the petitioner states that Presidential Decree Nº 1246, issued by the President of the Argentine Republic, Fernando de la Rúa, "adequately covers the fundamental issues that prompted the complaint filed" before the IACHR.

4. The present friendly settlement report, prepared in accordance with Article 49 of the Convention and Article 41(5) of the Commission's Rules of Procedure, sets forth the facts alleged by the petitioner and the friendly settlement reached, as well as the Commission's decision to publish the report.

## II. PROCEEDINGS BEFORE THE COMMISSION

5. The petitioner filed her petition with the IACHR on June 15, 1994. A copy of that petition was then forwarded to the State on June 16, 1994. The State responded on January 9, 1995, and the petitioner sent her comments on the State's response on February 27, 1995. The State requested and received an extension and sent its response on May 4, 1995. The petitioner presented her comments on June 5, 1995 and the State answered on August 10, 1995. On October 11, 1995, the petitioner sent to the Commission a new communication wherein she reiterated her previous arguments, and on November 17, 1997, forwarded rulings in other court cases that would support her complaint. The State's response was received on February 18, 1998, and on March 31, 1998, observations were received from the petitioner.

6. The Commission approved Report Nº 102/99 on September 21, 1999, during its 104th regular session. In that report, the Commission declared that it was competent to hear this case and that the petition was admissible under Articles 46 and 47 of the Convention. In accordance with Article 48(1)(f) of the Convention, the Commission, on its own motion, also made itself available to the parties with a view to arriving at a friendly settlement of the matter based on respect for the human rights established in the Convention. On October 12, 1999, the Commission sent the Admissibility Report to the parties.

7. On October 18, 1999, the petitioner supplied additional information. On January 4, 2000, the State requested an extension and on March 14, 2000 informed the Commission that it was engaged in talks with the petitioner with a view to arriving at a friendly settlement of the case. On June 7, 2000, the petitioner informed the Commission that she was still in talks with the State. On August 17, 2000, the State reported that a draft decree governing Law 24.012 had been prepared that would adjust this provision to conform to the petitioner's position. It further reported that the competent State authorities had the draft under study. The State and the petitioner signed the friendly settlement on March 8, 2001. The State forwarded the text of the agreement to the Commission by a note of that same date.

## III. THE FACTS

8. The petitioner alleged that by mutual agreement among its leaders, the Unión Cívica Radical political party of the Province of Córdoba had put together the list of six names that it was running for the national deputy seats up for election on October 3, 1993. It put the names of two women in third and sixth place on the list, without taking into account that the party had five national deputy seats up for election. This was a violation of Law 24.012, called the Quota Act, enacted on November 6, 1991, which guarantees that at least thirty percent (30%) of the candidates on the political parties' slates for elective office are to be women, in numbers "proportional to the chances of being elected." Article 2 of Decree 378/93, which is the law's governing decree, stipulates that "the thirty percent quota that Law 24.012 sets for women, shall be regarded as a minimum. If application of the 30% formula results in fractions that are less than whole numbers, the minimum number shall be the number shown in the table attached as Appendix A, which is an integral part of this decree." The appendix in question states: "seats to be filled, five; minimum number: two." This provision is binding upon political parties when putting together their lists of candidates, and the consequence of failure to comply shall be denial of certification.[FN1] The law also establishes the corollary right of citizens entitled to vote under the constitutional right of suffrage,[FN2] to be able to vote for slates of candidates on which women are represented in accordance with the formula that the law stipulates.

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[FN1] The petitioner invokes Article 60, paragraph 2, in fine of Law 24.012.
[FN2] The petitioner invokes Article 37 of the Constitution, which guarantees "full exercise of the right to participate in government."

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9. The petitioner alleged that, as a registered voter affiliated with that political party, she filed a complaint with the Board of Elections challenging the slate. The complaint was rejected on the grounds that the "list of candidates was the product of a consensus built among all factions of the party, which agreed upon a single list." When she filed an appeal, the federal court denied her request and declared that she did not have legal standing to bring an action. The petitioner appealed that decision, but the Federal Elections Court also denied that she had legal standing to bring an action, on the grounds that she had no personal stake in the matter. The petitioner contends that the list drawn up by the Unión Cívica Radical party violates the right of the voter to equal opportunity, for men and women alike, to stand for elective office. She further argues that any citizen has the right to challenge the list, and need not be the party injured by his/her place on the list of candidates. The classic requisite that the plaintiff must have had a subjective right violated or his/her concrete interests disregarded is not the applicable paradigm, especially since the Argentine Supreme Court's ruling in Ekmekdjian v/Sofovich.[FN3] She also cites Article 57 of the Political Parties Statute Nº 23.298, which gives members of political parties standing before the court "when the rights they are given in the Statute are denied and when the recourses within the party have been exhausted."

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[FN3] This decision ruled, inter alia, on the hierarchy that international human rights treaties have within Argentina's legal system.

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10. The petitioner filed an extraordinary appeal seeking reversal of the decision on grounds that it was unconstitutional, but the court refused to allow her appeal to go forward on the grounds that the election had been held on October 3, 1993, and that the matter had therefore become moot. Finally, she filed a complaint with the Supreme Court because of the lower court's refusal to allow her appeal to go forward. The Supreme Court, however, denied her appeal arguing that "the votes that the Unión Cívica Radical carried in the October 3, 1993 election entitled it to four seats in the Chamber of Deputies; this case was about who ended up in fifth place." The petitioner considers that the question was not "moot" because there is a very concrete "right of expectation" that has to be upheld were a vacancy to occur among those elected. As matters stand, if such a vacancy were to occur, it would be filled by a man–the one who is in fifth place—and not by a woman. It is for that reason that a woman should have been listed in fifth place and the man in sixth. Even had there been only four seats to be filled, two women should have been elected because one woman alone is equivalent to just 25% of the total, which is below the legally mandated quota.

11. The petitioner alleged that the State violated Articles 8 and 25 of the Convention because the court of first instance had ruled that she did not have legal standing to bring suit. The petitioner further argued that, when the Supreme Court denied her complaint, it violated the principle of equality before the law, upheld in Article 24 of the Convention, thus violating her right to participate in government, provided for in Article 23 of the Convention.

IV. FRIENDLY SETTLEMENT

12. The State and the petitioners signed a friendly settlement, the text of which establishes the following:

FRIENDLY SETTLEMENT AGREEMENT*

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* The translations of this and other documents to English as used in the present report were prepared by the Commission.

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Between the Argentine State, represented by the Minister of Foreign Affairs, International Trade and Worship, Adalberto Rodríguez Giavarini, and the petitioner in Case Nº 11.307, MARIA TERESA MERCIADRI de MORINI, the following agreement is hereby concluded:

1. Concerning the petition filed by Dr. MORINI before the Inter-American Commission on Human Rights on June 15, 1994, alleging violation of rights recognized in the American Convention on Human Rights in Articles 8 (guarantees of due process), 23 (right to participate in government), 24 (equal protection), and 25 (judicial protection), which petition the Commission now has before it and declared admissible on September 21, 1999 through Report Nº 102/99, the parties wish to arrive at a friendly settlement, under the terms of Article 48(f) of the American Convention on Human Rights.

2. Accordingly, on December 28, 2000, the President of the Nation, Dr. FERNANDO DE LA RUA, promulgated decree Nº 1246 –a copy of which is attached-, which contains the

provisions by which law Nº 24.012 shall be implemented and strikes down regulatory decree Nº 379/93.

3. The Argentine State recognizes that this decree serves to ensure women's concrete and effective participation in the lists of candidates for national elective office, thus reinforcing the rights upheld in law 24.012, as well as Article 37 of the Constitution, and in the counterpart provisions of the international human rights treaties to which Argentina is party.

4. Petitioner Dr. MARIA TERESA MERCIADRI de MORINI hereby undertakes to desist from the petition she filed with the Inter-American Commission on Human Rights, registered as case Nº 11.307, as she recognizes that Decree Nº 1246/00 adequately provides for the fundamental issues she raised in the complaint she filed with the Commission.

5. Both parties are grateful to the Inter-American Commission on Human Rights for its important contribution and ask that it give its approval to this friendly settlement and close case 11.307.

13. The above-cited friendly settlement was signed in Buenos Aires on March 8, 2001, by the Minister of Foreign Affairs, International Trade and Worship and by the petitioner, Dr. María Teresa Merciadri de Morini, in the presence of Dr. Santiago Canton, representing the Inter-American Commission on Human Rights, and the President of the National Women's Council, Dr. Carmen Storani.

14. Decree Nº 1246, which President de la Rúa promulgated mindful of the provisions of the Constitution and the friendly settlement process in this case, contains the provisions by which Law Nº 24.012 shall be implemented and repeals the previous implementing decree so as to ensure full compliance with the provisions of that law:

BUENOS AIRES, [DEC. 28, 2000]

HAVING SEEN law No. 24,012 which replaces Article 60 of the National Electoral Code and its Implementing Decree No. 379 of March 8, 1993, and

CONSIDERING:

That on November 6, 1991, the HONORABLE CONGRESS OF THE NATION enacted a law requiring that women be included on the political parties' lists of candidates for elective office; the consequences of a failure to comply with the obligatory minimum percentage stipulated in Law Nº 24.012 extends to denial of certification for the slate in question.

That the provisions in question apply to slates of candidates presented for elective office as national deputies, senators and members of a constituent assembly.

That the reasoning at the time the law was enacted was that the purpose of Law Nº 24.012 was to effectively integrate women into political life, thus avoiding the delay that would ensue were women to be excluded from the ranks of candidates having a reasonable expectation of being elected.

That a consideration taken into account when Decree Nº 379/93 was promulgated was that general rules had to be established to standardize implementation of the law in question, so that all political parties and alliances would apply the law in the same manner, thereby avoiding subsequent party or court challenges.

That, this intention notwithstanding, the differing interpretations that the various political parties gave to the law and even the inconsistent rulings of the courts on this matter necessitated a law that would take into account the clearest and most protective interpretations by the courts.

That important cases have not been able to be presented before the Supreme Court because of the brevity of the period between a challenge to the list and election day.

That this situation has not changed, despite the clear language of Article 37 of the Constitution in effect since 1994 and Article 4(1) of the Convention on the Elimination of All Forms of Discrimination against Women–which has the status of constitutional law under Article 75(22) of the Constitution as amended in 1994.

That one aspect where the inconsistency is greatest is the position of women candidates on the lists; in many cases, only men have ended up in listed positions that have any expectation of being elected to office, in violation of Law Nº 24.012, which clearly stipulates that women are to occupy, at a minimum, THIRTY PERCENT (30%) of the places on a party's ticket that have a reasonable possibility of being elected.

That for all these reasons and bearing in mind the provisions of the Constitution, and inasmuch as the Inter-American Commission on Human Rights has declared Case Nº 11.307 –María MERCIADRI de MORINI–ARGENTINA to be admissible and has placed itself at the disposal of the parties for the purpose of arriving at a friendly settlement based on respect for the rights recognized in the American Convention on Human Rights, it is imperative that Decree Nº 379/93 be repealed and that a new decree be promulgated that effectively ensures compliance with the provisions of Law Nº 24.012, the Constitution and international human rights treaties, which have constitutional primacy.

That this measure is issued in exercise of authorities based on Article 99(2) of the Constitution.

Therefore,

THE PRESIDENT OF THE ARGENTINE NATION

DECREES:

ARTICLE 1 - Article 60 of the National Electoral Code, as replaced by Law Nº 24.012, shall apply to all elective offices for deputy and senator to the National Congress and members of a National Constituent Assembly.

ARTICLE 2 - The THIRTY PERCENT (30%) of the offices that are to be filled by women, as Law Nº 24.012 prescribes, is the minimum percentage. In cases where mathematical application

of this formula leaves less than a whole number, the minimum number shall be the next highest whole number and shall be governed by the formulas in the table attached as Appendix I, which is an integral part of this Decree.

ARTICLE 3 - The minimum percentage required by Article 60 of the National Electoral Code replaced by Law Nº 24.012 shall apply to all candidates on the list that every political party, confederation or temporary alliance nominates. To be in full compliance with the thirty percent requirement, however, it must be applied to the number of seats that the political party, confederation or temporary alliance has up for re-election.

ARTICLE 4 - When a political party, confederation or alliance nominates a candidate for the first time, seeks an incumbent's re-election or is not seeking re-election of any candidate, it shall, for purposes of Article 3 of this Decree, bear in mind that the number of seats up for re-election is equal to ONE(1). In that case, it shall make no difference whether the candidate in first place is a man or a woman. However, the candidate second on the ticket must be someone of the opposite sex to the one whose name figures first on the ticket.

When TWO (2) seats are up for re-election, one of the nominees shall always be a woman.

When just ONE(1) or TWO(2) seats are up for re-election and the woman on the ticket is in the third slot, this shall not constitute compliance with Law Nº 24.012.

When more than TWO(2) seats are to be filled, a woman must figure in at least one of the first THREE(3) slots on the ticket.

ARTICLE 5 - When ONE(1), TWO(2) or more seats are up for re-election, the calculation shall always be done starting with the first spot and the list shall have at least ONE(1) woman for every TWO(2) men in order to meet the minimum percentage required under Law Nº 24.012. Until the THIRTY PERCENT (30%) quota required under Law Nº 24.012 has been met, no three consecutive slots may be filled by persons of the same sex. Whatever the case, affirmative action measures shall be the preferred course, so that men and women truly have equal opportunity to seek elective office.

ARTICLE 6 - Permanent or temporary confederations or alliances shall abide by the provisions established in the preceding articles, and always ensure that names of at least THIRTY PERCENT (30%) of the certified lists are those of women. This rule obtains independently of their party affiliation, and with the same requirements as those established for the political parties, without exception.

ARTICLE 7 - Political parties, confederations and alliances at the district and national levels must amend their bylaws so that the system required under Law Nº 24.012 and the provisions of this Decree, can take full effect sufficiently in advance of the 2001 election to fill seats in the legislature.

ARTICLE 8 - If, using the procedure spelled out in Article 61 of the National Electoral Code and the amendments thereto, a judge with electoral jurisdiction finds that any of the women

candidates among the minimum THIRTY PERCENT (30%) required under Law 24.012, do not have the qualifications for the office or were listed on the slate below where they should have been according to the system established by this decree, said judge shall, in the same ruling on the candidates' qualifications, order the party, confederation or permanent or temporary alliance to replace the unfit candidates or move up the candidates whose names are too far down on the list. They must do so within a period of FORTY-EIGHT (48) hours of being notified of the decision. If the ruling is not obeyed, the Court shall, on its own motion, move the women whose names appear lower on the list. In doing so, it must also be taken into account that the names on the list of alternates must also meet the requirements set out in this Decree.

ARTICLE 9 – If, prior to the election, a women whose name appears on a certified list dies, withdraws from the race, becomes incapacitated, or ceases to serve in the position for whatever reason, her place on the list of candidates shall be filled by the next woman whose name appears on the respective list. This measure will only apply to the replacement of women.

ARTICLE 10 – In all districts nationwide, the lists or nominations consisting of ONE (1) or several persons nominated to fill national elective offices of any kind, shall abide by the minimum percentage established by Law Nº 24.012 and the provisions of this Decree.

ARTICLE 11 – All persons in a district's voter registration records have the right to bring a case in the Electoral Court challenging any list of candidates when they consider that the list was configured in violation of Law Nº 24.012.

ARTICLE 12 - Decree 379 of March 8, 1993, is hereby repealed.

ARTICLE 13 - Let it be so notified, published, and recorded and filed with the National Bureau of Government Records.

DECREE Nº 1246

Appendix I

| Seats to be filled | Minimum number | Seats to be filled | Minimum number |
|---|---|---|---|
| 2 | 1 | 21 | 7 |
| 3 | 1 | 22 | 7 |
| 4 | 2 | 23 | 7 |
| 5 | 2 | 24 | 8 |
| 6 | 2 | 25 | 8 |
| 7 | 3 | 26 | 8 |
| 8 | 3 | 27 | 9 |
| 9 | 3 | 28 | 9 |
| 10 | 3 | 29 | 9 |
| 11 | 4 | 30 | 9 |
| 12 | 4 | 31 | 10 |
| 13 | 4 | 32 | 10 |

| | | | |
|---|---|---|---|
| 14 | 5 | 33 | 10 |
| 15 | 5 | 34 | 11 |
| 16 | 5 | 35 | 11 |
| 17 | 6 | 36 | 11 |
| 18 | 6 | 37 | 12 |
| 19 | 6 | 38 | 12 |
| 20 | 6 | 39 | 12 |

and so on.

## V. DETERMINATION AS TO COMPATIBILITY AND COMPLIANCE

15. The IACHR would again point out that under Articles 48(1)(f) and 49 of the Convention, the friendly settlement process is undertaken with a view "to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in [the] Convention." The acceptance of this process expresses the good faith of the State to comply with the object and purpose of the Convention pursuant to the principle of pacta sunt servanda, through which states must comply with the obligations they undertake in treaties.[FN4] The Commission would also like to reiterate that the friendly settlement procedure contemplated in the Convention permits the resolution of individual cases in a non-contentious manner, and has been demonstrated in cases relative to various countries to offer an important approach to resolving matters that both parties may utilize.[FN5]

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[FN4] IACHR, Report No 68/99, Case 11.709, Luis María Gotelli (h). Argentina. Decision of May 14, 1999.

[FN5] IACHR, Friendly Settlement Report No 90/99, Case 11.713, Enxet-Lamenxay and Kayleyphapopyet ‑Riachito‑ Indigenous Communities. Paraguay. Decision of September 29, 1999.

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16. The Inter-American Commission has closely followed the friendly settlement process in the instant case. The information recounted above demonstrates that the agreement has been fulfilled in accordance with the provisions of the American Convention. The Commission greatly values the efforts made by both parties to arrive at a settlement based on the object and purpose of the Convention. As the Commission has noted on other occasions, achieving the free and full participation of women in political life is a priority for our hemisphere.[FN6] The purpose of Law Nº 24.012 is to effectively integrate women into political life, and Decree Nº 1246, promulgated as an outcome of the settlement, has the complementary objective of guaranteeing effective compliance with that law.

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[FN6] IACHR, "Considerations Regarding the Compatibility of the Affirmative Action Measures Designed to Promote the Political Participation of Women with the Principles of Equality and Non-Discrimination," Annual Report of the IACHR 1999, OEA/Ser.L/V/II.106, Doc. 3 rev., 13 April 2000, Vol. II, Chapter VI, Section IV; see Report of the Inter-American

Commission on Human Rights on the Status of Women in the Americas, OEA/Ser.L/V/II.100, Doc. 17, 13 Oct. 1998, V.C.

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VI. CONCLUSIONS

17. Based on the foregoing considerations and given the procedure provided for in Articles 48(1)(f) and 49 of the American Convention, the Commission would like to once again convey its deep appreciation for the efforts made by the parties and its satisfaction with the friendly settlement arrived at in the instant case, based on the object and purpose of the American Convention.

18. On the basis of the considerations and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To approve the terms of the friendly settlement signed on March 8, 2001.
2. To make public this report and include it in the Commission's Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington D.C., on October 11, 2001. (Signed): Claudio Grossman, President; Marta Altolaguirre, Second Vice-President; Commission members Hélio Bicudo, Robert K. Goldman, Peter Laurie and Julio Prado Vallejo.