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Represented by: APPLICANT: the Committee of Relatives of Defenseless Victims of Social Violence
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I. SUMMARY

1. On June 5, 2000, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received from the OAS office in Buenos Aires a petition submitted by the Committee of Relatives of Defenseless Victims of Social Violence (COFAVI) (hereinafter “the petitioner”), asserting alleged violations of human rights perpetrated by the Argentine Republic (hereinafter “the State”) against Fernando Horacio Giovanelli, now deceased (hereinafter “the alleged victim”). The attorney Mariana Bordones represented the parents of the alleged victim in the proceeding before the IACHR.

2. The petitioner maintains that the alleged victim was detained on October 17, 1991, by officers of the Buenos Aires Provincial Police, and transferred in an unmarked vehicle to the Third Police Station in Quilmes, where he was brutally beaten; he was then taken to a public thoroughfare, thrown onto the footpath and murdered by one of the police officers, who shot the alleged victim in the head. The petitioner says that his body was found in a shanty town called “Los Eucaliptos”. The petitioner further states that the police investigation was deliberately oriented toward covering up the truth of the killing.

3. On February 22, 2001, the Inter-American Commission on Human Rights adopted report 30/01 in which it decided to admit the petition with regard to the alleged violation of Articles 4, 5, 7, 8(1), and 25 of the Convention, in connection with Article 1(1) of that instrument. Subsequently, in a visit by a delegation of the Commission to the Republic of Argentina in August 2002, the Argentine State, the Government of the Province of Buenos Aires and the petitioners agreed to engage in dialogue in order to explore the possibility of reaching a friendly settlement in accordance with the terms contained in Article 48(1)(f) of the American Convention. The Commission facilitated this process through the exchange of written

information as well as through working meetings held both in Buenos Aires and at the headquarters of the IACHR.

4. On August 23, 2007, a friendly settlement agreement was signed by the representatives of the State and the petitioners, represented by Esther Ana Ramos de Giovanelli and Horacio José Giovanelli. Through publication of Decree 1033/2008 signed by the President and of the Republic of Argentina, Cristina Fernández de Kirchner, the State officially authorized the friendly settlement agreement and pledged to comply fully with the undertakings given therein.

5. Pursuant to Articles 49 of the Convention and 41(5) of the Commission's Rules of Procedure, this friendly settlement report includes a summary of the petitioners' allegations, the friendly settlement agreement reached, and the IACHR's decision to publish it.

II. PROCESSING BY THE COMMISSION

6. Following approval of Admissibility Report 30/01, in communications dated May 4, 2001, the Commission transmitted said report to the parties and granted the State and the petitioners one month to respond to the offer of the Commission to place itself at the disposal of the parties pursuant to Articles 48(1)(f) of the Convention and 45(1)(2) of its Rules of Procedure. The State submitted its comments on June 4, 2001, which were relayed to the petitioners on July 9, 2001.

7. On August 27, 2001, the petitioners presented observations on the response of the State, which were transmitted to the State in a communication of September 10, 2001. On October 15, 2001, the Commission received the observations of the State, which it passed on to the petitioners on October 29, 2001, and gave them one month to submit their comments. On March 17 and 27, 2002, the petitioners presented observations to the response of the State, which were transmitted to the Government of Argentina on April 26, 2002.

8. On March 7 and October 18, 2006, the IACHR received information from the petitioners, which was transmitted to the State on December 4, 2006. In a communication of December 1, 2006, the IACHR invited the State and the petitioners to a working meeting in Buenos Aires on December 6, 2006, on the occasion of a working visit to Argentina by a delegation of the Commission. On January 10, 2007, the IACHR received a request for an extension from the State, which was granted on January 17, 2007. Subsequently, on October 29, 2007, the Commission received from the petitioners a copy of the friendly settlement agreement signed on August 23, 2007, of which it confirmed receipt on December 12, 2007.

9. On April 2, 2008, the petitioners sent a new communication to the IACHR, which was conveyed to the State on April 10 of that year. Finally, on July 7, 2008, the Commission received a copy of Decree 1033/2008 which approves the friendly settlement agreement of August 23, 2007.

III. THE FACTS

10. The petitioner claims that at around 9:45 p.m. on October 17, 1991, the alleged victim left his family residence in the district of Quilmes, Buenos Aires province, with the intention of visiting his uncle who was handicapped. While still only a few yards from his home, he was confronted by officers of the Buenos Aires Provincial Police inside a vehicle, who demanded that he show them his identification documents. Since he had failed to bring his papers with him and was thus unable to produce them, the alleged victim was arrested and transferred, in an unmarked vehicle, to the Third Police Station in Quilmes.

11. The petitioner holds that at the police station the alleged victim was brutally beaten and then taken to the August 14 Bridge (Quilmes district), a few meters from the police station, where he was thrown onto the footpath and murdered by one of the police officers who shot the alleged victim in the head (the bullet entering through the left earlobe). The petitioner claims that his body was later taken to the place known as "Villa Los Eucaliptos", which is under the jurisdiction of the police station, and dumped outside that shanty town approximately two and a half hours after his death.

12. The petitioner maintains that the version of events contained in the police report, which was used as the basis for the criminal proceedings, is plagued with inconsistencies. According to the police report, the alleged victim was approached and assaulted by four residents of the Los Eucaliptos shanty town, one of whom fired on him when he put up resistance. According to the petitioner, however, "[i]t is impossible that Fernando [the alleged victim] was in that area at 1:00 a.m. because [...] his plan was to visit his uncle, who lived far away from there, and there is no possibility that he could have taken that route to reach a destination that is 40 blocks from his home."

13. The petitioner states that the autopsy conducted on October 18, 1991, in the police morgue of the La Plata cemetery describes a series of wounds and bruises inflicted prior to death, indicating that the alleged victim was tortured. Furthermore, the petitioner notes that a forensic report drawn up by three physicians from La Plata Forensic Service dated December 17, 1993, concluded that the alleged victim's corpse was abandoned in a location other than the murder scene. This conclusion was based on the absence of sufficient blood at the place where the body was found.

14. The petitioner holds that the version set forth in the police report was inconsistent regarding the time of day the incident occurred, in that it does not agree with the times given in either the autopsy or the subsequent forensic report. According to the police report, the attack and killing took place at around 1:00 a.m. on October 18, 1991, while the two medical reports agree that death must have taken place between 9:30 and 10:30 p.m. the night before, on October 17.

15. The petitioner says that the preliminary inquiries were carried out by the Third Police Station of Quilmes and by the Quilmes Investigation Unit, which concluded that Fernando Giovanelli was out jogging along Avenida La Plata when he was intercepted by youths from the shanty town Los Eucaliptos with the intent of robbing him, and that when Fernando Giovanelli resisted, one of the attackers shot him in the head, killing him instantly.

16. The petitioner claims that the police investigation was deliberately oriented toward covering up the truth of the killing. In that regard, the petitioner notes that two innocent young men of humble origins who lived in a shanty town were incarcerated for several years merely to shift responsibility away from the real culprits in the murder. The petitioner alleges that a series of irregularities were committed in the criminal proceeding initiated in connection with the murder of Fernando Giovanelli, including diversion of the focus of the investigation on to individuals who had nothing at all to do with the facts; and failure to carry out relevant judicial procedures; in particular, the examination of the case by seven different judges who limited themselves to producing evidence that was largely irrelevant for clarifying the facts, including corroboration of the torture allegedly inflicted on the alleged victim prior to death.

17. The petitioner says that owing to the offenses committed in the preliminary investigation of the case, three related proceedings were instituted, all of which are closed: the first originated from the blows that a witness, who was a minor, received from police officers at the Third Police Station in Quilmes to coerce him to say certain things in his statement; and the other two came about as a result of the forgery of the signatures on two witness statements, which were corroborated by a handwriting expert.

18. The petitioner holds that in spite of the time elapsed since the initial proceedings, it would be true to say that little has been done to clarify the murder. They say that the various judges who took up the case limited themselves to producing evidence that was largely irrelevant for clarifying young Mr. Giovanelli's death, and they failed to address elements that appeared confusing, suspicious, and contradictory in the case.

IV. FRIENDLY SETTLEMENT

19. The petitioners, represented by Ms. Esther Ana Ramos de Giovanelli and Horacio José Giovanelli, and the representatives of the State, Under-Secretary for Advancement and Protection of Human Rights, Rodolfo Aurelio Mattarollo; Special Representative for Human Rights of the Ministry of Foreign Affairs, International Trade, and Worship, Ambassador Horacio Arturo Méndez Carreras; and National Director for International Affairs of the Nation, Andrea Gladys Gualde signed the friendly settlement agreement, the text of which provides as follows:

FRIENDLY SETTLEMENT AGREEMENT

The parties in case 12.298 in the register of the Inter-American Commission on Human Rights - Fernando Horacio Giovanelli - : The petitioners, Esther Ana Ramos de Giovanelli and Horacio José Giovanelli, and the Government of the Argentine Republic, in its capacity as State Party to the American Convention on Human Rights, hereinafter "the Convention," acting under the express mandate of Articles 99 subparagraph 11 and 126 of the Constitution of the Argentine Nation and in accordance with the provisions of Article 28 of the Convention, represented by the Under-Secretary for Advancement and Protection of Human Rights, Rodolfo Aurelio Mattarollo; the Special Representative for Human Rights of the Ministry of Foreign Affairs, International Trade, and Worship, Ambassador Horacio Arturo Méndez Carreras; and the National Director for International Affairs of the Nation, Andrea Gladys Gualde, have the honor of informing the

illustrious Inter-American Commission on Human Rights that they have reached a friendly settlement agreement in the petition, the contents of which are provided below. They request that the Commission accept it as a reflection of the consensus they have achieved and adopt the relevant report, in conformity with Article 49 of the Convention.

I. Background of the case before the IACHR – The friendly settlement procedure

1. The Inter-American Commission on Human Rights transmitted the petition to the Argentine State on June 28, 2000. In the petition the petitioners alleged acts committed in the jurisdiction of the Province of Buenos Aires to the detriment of Fernando Horacio Giovanelli, which they assert violated the rights to life, humane treatment, personal liberty, a fair trial, and judicial protection recognized in Articles 4, 5, 7, 8(1), and 25, respectively, of the American Convention on Human Rights, in connection with Article 1(1) thereof.

2. On February 22, 2001, in the framework of its 110th Regular Session, the IACHR adopted Admissibility Report 30/01 in which it concluded that it was competent to deal with all the allegations of this petition and that the case was admissible under Articles 46 and 47 of the Convention.

3. Subsequently, at a working meeting held in the course of a visit by a delegation of the Commission to the Argentine Republic in August 2002, the Argentine State, the Government of the Province of Buenos Aires, and the petitioners agreed to engage in dialogue in order to explore the possibility of reaching a friendly settlement of the case, under the auspices of the Commission.

II. The primary responsibility of the province of Buenos Aires. The attendant international responsibility of the Argentine State.

1. In a memorandum dated October 14, 2003, and by Provincial Decree 1859 of October 15, 2003, the Government of the Province of Buenos Aires recognized deficiencies in the judicial investigation carried out in Case 1-2378, titled "Prado, Jose Ramón; Carabajal, Cristian Leonardo re. Homicide. Victim Giovanelli, Fernando Horacio", heard by the Third Transitory Criminal Court of First Instance in Quilmes Judicial District, before the case was taken up by the judge currently presiding in said criminal proceeding; and that same deficiencies violated the guarantees recognized in Articles 8 and 25 of the American Convention on Human Rights. In the aforementioned instruments it was also noted for the record that the parties set March 15, 2004 as the date on which to set out and evaluate the progress made in the investigation of the case to confirm or rule out the possible involvement of personnel of the Police of the Province of Buenos Aires in the murder of Fernando Horacio Giovanelli, and, as appropriate, to establish between the parties pertinent reparation mechanisms.

2. Prior to the deadline mentioned in the preceding point, by Provincial Decree 482 of March 12, 2004, the Government of the Province of Buenos Aires recognized that agents of the Police of the Province of Buenos Aires were presumed to have had some kind of involvement in the killing of Fernando Horacio Giovanelli, and it undertook to pursue the administrative and

judicial proceedings connected with said murder until the relevant avenues were completely exhausted.

3. Furthermore, having made a detailed examination of the contents of the judicial record, and bearing in mind the decrees cited in the preceding point, the Ministry of Foreign Affairs, International Trade, and Worship of the Argentine Republic concluded that, in view of the fact that the competent authorities of the Province of Buenos Aires have not managed to rule out the possibility that agents of the Police of the Province of Buenos Aires were involved in the detention and subsequent killing of Fernando Horacio Giovanelli, and recognizing that they are presumed to have actually participated therein, in accordance with generally recognized rules of interpretation under international human rights law and pursuant to Article 39 of the Rules of Procedure of the Illustrious Inter-American Commission on Human Rights, the foregoing would be sufficient to assume the objective responsibility of the Province of Buenos Aires and, therefore, of the National State, in the alleged acts.

4. For his part, the Minister of Justice and Human Rights of the Argentine Republic, in a note dated September 13, 2004, informed the Ministry of Foreign Affairs of the opinion issued by the Secretary of Human Rights of the former Ministry, which concludes that "... the conditions exist for the Foreign Affairs Ministry to pursue a friendly settlement, including express recognition of the objective responsibility of the national State in the case in point."

5. Bearing in mind the foregoing, and in keeping with the international character of the previously acknowledged violations of rights that occurred in the jurisdiction of the Province of Buenos Aires, the Government of the Argentine Republic declares its willingness to accept objective responsibility at the international level as a state party to the Convention and, in accordance with the constitutional norms cited herein, to request that the illustrious Inter-American Commission on Human Rights take as recognized the alleged violations under the terms of the petition.

III. Measures to be adopted

a. Economic reparation

1. The parties agree to set up an "ad-hoc" Arbitration Tribunal to determine the amount of economic reparation due to the petitioners, in keeping with the rights acknowledged to have been violated and the applicable international standards.

2. The Tribunal shall be made up of three independent experts, with recognized expertise in human rights and of the highest moral caliber. The petitioners will designate one expert, the national State shall propose a second, and the third shall be proposed by the two experts designated by the parties. The Tribunal shall be formed no later than 30 days following the approval of this agreement by Decree of the Executive Branch of the Nation.

3. The procedure to be followed shall be determined by common agreement among the parties, and set forth in writing, a copy of which shall be submitted to the Inter-American Commission on Human Rights. To this end, the parties shall designate a representative to

participate in the discussions of the procedure. In representation of the National State, the Ministry of Foreign Affairs, International Trade, and Worship and the Ministry of Justice and Human Rights shall be charged with designating an official in the area with competence in human rights matters in both Ministries.

4. The arbitration tribunal's award shall be final and not subject to appeal. It shall contain the amount and type of monetary reparation agreed upon, the beneficiaries thereof, and a calculation of any applicable costs and fees incurred in the international proceeding and by the arbitration entity. These shall be submitted to the Inter-American Commission on Human Rights for evaluation in the framework of the process to follow up on compliance with the agreement, in order to verify whether the latter is consistent with the applicable international parameters. The payments set forth in the award shall be immune from seizure and shall not be subject to currently applicable taxes, contributions, or fees, or any that may be imposed in the future.

5. The petitioners relinquish, definitively and irrevocably, the ability to initiate any other claim of a monetary nature against the national State associated with the instant case. In addition, they cede and transfer to the national State all litigation rights they may have in the framework of the suit brought against the government of the Province of Buenos Aires and undertake to sign the respective instrument before a national Notary Public within ten working days following the effective delivery of the payment resulting from the arbitration award.

6. Without prejudice to the foregoing transfer in its favor, the national State declares that it reserves the right to recover the amounts actually paid out to the petitioners as determined by the Arbitration Tribunal from the Government of the Province of Buenos Aires by subtracting those amounts from the totals that might correspond to that province under the federal sharing law [ley de coparticipación], and/or any other lawful means.

b. Measures of non-monetary reparation

1. The Government of the Argentine Republic pledges to publish this agreement by means of a notice, whose text shall be agreed in advance with the victim's next of kin, in the Official Gazette of the Argentine Republic and in a nationally distributed newspaper, once it has been approved by the Inter-American Commission on Human Rights in accordance with the provisions of Article 49 of the American Convention on Human Rights.

2. The Government of the Argentine Republic undertakes to invite the Government of the Province of Buenos Aires to report on the status of the following cases being heard by courts in the provincial jurisdictional until their final conclusion:

a) Case 1-2378, titled "N.N. re. Homicide - victim: Giovanelli, Fernando Horacio" proceeding before the Third Transitory Criminal Court of First Instance in Quilmes Judicial District, Province of Buenos Aires.

b) Case 3001-1785/00 titled "Supreme Court of Justice - General Secretariat re. Irregular situation observed in the processing of case 1-2378 before the Third Transitory Criminal Court in Quilmes ", proceeding before the Supreme Court of Justice of the Province of Buenos Aires - Judicial Oversight and Inspection Office.

3. The Government of the Argentine Republic undertakes to invite the Government of the Province of Buenos Aires to evaluate the possibility of including the "Giovannelli" case in the current study programs at police training academies, as a measure to ensure non repetition of practices that violate human rights.

4. The Government of the Argentine Republic commits to developing a law setting forth the procedures for processing and responding to petitions under study by the Commission and before the Inter-American Court of Human Rights, that includes the establishment of a specific entity with jurisdiction in the decision-making process—including the institution of “friendly settlement”—, and a mechanism to ensure compliance with the recommendations and/or judgments of the Commission and/or the Inter-American Court of Human Rights, in accordance with the provisions of Article 28 (federal clause) of the American Convention on Human Rights, in connection with Articles 1(1) (general obligation to observe and ensure rights) and 2 (duty to adopt domestic legal provisions) of said international instrument.

IV. Petition

The Government of the Argentine Republic and the Petitioners sign this agreement, expressing their full acceptance of its content and scope and mutually value the good will that was evident during the negotiation process. They attest that in order to finalize the agreement, it must be approved by executive decree, at which time the Inter-American Commission on Human Rights will be asked to ratify the friendly settlement agreement reached through the adoption of the report stipulated in Article 49 of the American Convention on Human Rights.

Buenos Aires, August 23, 2007

20. In accordance with the terms of the signed agreement, it was finalized through the approval of Decree 1033/2008, signed by the President of the Republic, Cristina Fernández de Kirchner.

21. The Commission would like to point out that, in accordance with the terms of Article 28, both the Federal Government as well as the Government of Buenos Aires Province must take the necessary steps to ensure compliance with the obligations set forth in the American Convention.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

22. The IACHR reiterates that, under Articles 48(1)(f) and 49 of the Convention, this procedure has the objective of “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” The State’s consent to pursue this avenue is evidence of its good faith to honor the Convention’s purposes and objectives, based on the principle of *pacta sunt servanda*. According to that principle, States must comply in good faith with the obligations undertaken in treaties. The IACHR also wishes to point out that, with the friendly settlement procedure provided for in the Convention, individual cases can be settled in a non-contentious manner. In cases involving a number of countries, the friendly settlement procedure has proven to be a useful vehicle that both parties can utilize to arrive at a solution.

23. The Inter-American Commission has closely monitored the development of the friendly settlement arrived at in the present case. The Commission greatly values the efforts that both parties made to reach this settlement, which is compatible with the object and purpose of the Convention.

VI. CONCLUSIONS

24. Based on the foregoing and in keeping with the procedure provided for in Articles 48(1)(f) and 49 of the American Convention, the Commission would like to reiterate its profound appreciation of the efforts made by the parties and its satisfaction that the friendly settlement arrived at in the present case is consistent with the object and purpose of the American Convention.

25. Based on the considerations and conclusions contained in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To approve the terms of the friendly settlement agreement that the parties signed on August 23, 2007.
2. To continue to monitor and supervise each and every point of the friendly settlement agreement and, in this context, to remind the parties of their commitment to regularly inform the IACHR as to compliance with this friendly settlement.
3. To make the present report public and include it in its annual report to the General Assembly of the OAS.