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BACKGROUND:

1. In a letter of 18 February 1985, the following complaint was made to the Inter-American Commission on Human Rights:

Nemesio Fernández Lapa, 75 years old, a civil servant and retired from the army, was arrested at 11 p.m. on 15 July 1984, at Ayacucho, Huanta, by the Marine Infantry. His corpse was found on 23 August 1984, in a clandestine pit at Pucayacu.

2. According to the magazine *Caretas* of 20 August 1984, the family testified in the office of the attorney General to the arrest of Fernández Lapa and the subsequent identification of his corpse. According to this magazine, the remains were recognized by his daughter from among the 50 corpses in the common grave at Pucayacu.

3. In a note of 25 March 1985, the Inter-American Commission on Human Rights transmitted the pertinent parts of the complaint to the Government of Peru with a request for information on the facts referred to in that letter, and for any data that might indicate whether in the case in hand the domestic remedies had been exhausted.

4. In a note of 26 March 1986, the Government of Peru supplied information on this and other cases, stating that they had been the subject of "a similar inquiry from the Working Group on Enforced or Involuntary Disappearances of the United Nations Commission on Human Rights, which now regards some of them as cleared up."

5. In keeping with the Regulations procedure for petitions and complaints, the Commission sent the complainant the information from the Government of Peru for observations and comments. In a letter of 12 August 1986, the complainant presented observations of substance, which were submitted in turn to the Government of Peru with a note of 15 October 1986, requesting that all reports on the case be supplied within 30 days.

6. This request for information was repeated in notes of 1 May 1986, and 12 January 1987, in which the Commission advised that, failing receipt of the information requested, it would move to consider the

possibility of applying Article 42 of its Regulations.

7. These notes having elicited no reply, the Inter-American Commission on Human Rights once again repeated its request for information on 23 June 1987.

8. In the absence of any reply to these communications, the Commission repeated yet again its request for information in a note of 12 August 1987.

CONSIDERING:

a. That, despite the time that has elapsed and the repeated and fruitless efforts of the Commission, the Government of Peru has not provided a reply on the present case, nor has it sought an extension of time for forwarding the requested information;

b. That, in its action on the complaint in this case, and despite its failure to receive any acknowledgement of its many communications to the Government of Peru, the Commission granted new extensions and deadlines so as not to restrict the right of reply of the Government complained against;

c. That the Government of Peru, while not challenging the facts, has confined itself to objecting to the Commission's competence on the argument that the case has been examined in the Working Group on Enforced or Involuntary Disappearances of the United Nations Commission on Human Rights, "which now regards some of them as cleared up";

d. That the Inter-American Commission on Human Rights has no information on which to establish that the situation of Nemesio Fernández Lapa has been cleared up by the Working Group on Enforced or Involuntary Disappearances of the United Nations Commission on Human Rights;

e. That, in the judgment of the Inter-American Commission on Human Rights, it should refrain from considering the present case only if it is pending settlement in another proceeding in an inter-governmental organization of which Peru is a member and that proceeding is substantially a replication of a petition outstanding or already examined and resolved by the Commission or some other inter-governmental organization of which Peru is a member;

f. That, on the other hand, the Commission should not refrain from considering the case if a proceeding in progress in another organization is confined to a consideration of the general human rights situation in the country, and no decision has been reached on the specific facts concerning which the petition has been submitted to the Commission, or the decision does not lead to a real settlement of the violation charged;

g. That, in keeping with the relevant resolutions of the United Nations Human Rights Commission, and particularly with its Resolution 20 (XXVI) of 29 February 1980, it is not in the competence of the Working Group on Enforced or Involuntary Disappearances to decide on the specific facts alleged in the present case;

h. That, in consequence, the Inter-American Commission on Human Rights is not barred by either its Regulations or under the American Convention on Human Rights from considering the present case.

i. That in Resolution 666 (XIII/083) and Resolution 742 (XIV-0/84) the General Assembly of the Organization of American States declared that "the practice of the forced disappearance of persons is an affront to the conscience of the Hemisphere and constitutes a crime against humanity."

j. That Article 42 of the Commission's Regulations establishes that:

The facts reported in the petition whose pertinent parts have been transmitted to the Government of the State in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 34, paragraph 5, the Government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLVES:

1. To presume true the facts charged in the communication of 18 February 1985, concerning the death of Nemesio Fernández Lapa while in the custody of the Marine Infantry following his arrest in Ayacucho, Huanta.
2. To observe to the Government of Peru that these facts constitute extremely serious violations of Article 4 (right to life) of the American Convention on Human Rights.
3. To recommend to the Government of Peru that it launch a thorough and impartial investigation to identify the perpetrators of the acts charged, punish them in accordance with Peruvian law, and inform the Commission within 60 days of the action taken to implement the recommendations contained herein.
4. To transmit this Resolution to the Government of Peru.
5. If the Government of Peru does not present information on the action taken within 60 days, the Commission, pursuant to Article 63, paragraph g, of its Regulations, will include this Resolution in its Annual Report to the General Assembly of the Organization of American States.