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Decided by:	Chairman: Carlos Ayala Corao; First Vice Chairman: Robert K. Goldman; Second Vice Chairman: Jean Joseph Exume.
Dated:	19 February 1998
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## I. THE FACTS

1. On March 1, 1990, the Inter-American Commission of Human Rights (hereinafter, "the Commission") received a complaint against the Republic of Peru (hereinafter, "the Peruvian State," the "State" or "Peru") regarding the forced disappearance of Angel Escobar Jurado, which stated that:

At 7 p.m. on Tuesday, February 27 of this year, Angel Escobar Jurado, aged 37, Assistant General Secretary of the Provincial Federation of Farming Communities in Huancavelica (Federación Provincial de las Comunidades Campesinas de Huancavélica) and Administrative Secretary of the Huancavelica Human Rights Committee and collaborator of APRODEH (National Pro-human Rights Association) was detained by five (unidentified) individuals dressed in civilian clothing but presumed to be members of the Armed Forces in Huancavelica, of the province and department of the same name.

The detention occurred when Angel Escobar left the offices of the Huancavelica Human Rights Committee, at No. 316, Avenida San Agustín Gamarra and was making his way home. His relatives made inquiries at police stations and military barracks, where they denied having detained him, a response that leads one to fear for his life and physical integrity.

## II. PROCESSING BY THE IACHR

2. Having received the denunciation, and without prejudging its admissibility, the Commission transmitted the pertinent parts of the complaint to the State of Peru in a communication dated March 1, 1990, requesting such information as it deemed appropriate. No reply was received in the statutory period.

3. This request for information was reiterated in a note sent to the Peruvian State on March 25, 1991, in which reference was made to the possible application of article 42 of the Regulations of the Commission, and which also went unanswered. On March 12, 1997, the Commission sent another communication requesting the State of Peru to supply information within 30 days regarding the instant case and reiterated the possible application of article 42 of the Regulations of the Commission. The State of Peru did not reply to the request, nor did it provide any information on the complaint during the period indicated.

4. Since the Peruvian State did not respond to any of the Commission's requests for information in this case, the friendly settlement procedure set forth in article 48.1.f of the American Convention was considered inapplicable, and the Commission proceeded to issue its article 50 report on this case.

### III. PROCEEDINGS AFTER COMMISSION ADOPTION OF THE ARTICLE 50 REPORT

5. Pursuant to article 50 of the Convention, the Commission on April 22, 1997, during its 96th Special Session, approved report 24/97 concerning the present case based on article 42 of its Regulations, by which the Commission is authorized to presume the facts reported in the petitioner "to be true" in the absence of any response on the part of the State, "as long as other evidence does not lead to a different conclusion."

6. By Note No. 7-5-M/135, dated April 21, 1997 but received at the Commission on April 25, 1997, three days after the article 50 report had been adopted, the Permanent Mission of Peru to the OAS informed the Commission that the Ministry of Defense by means of Report No. 3528-SGMD-D of July 1992 stated that the Joint Command of the Armed Forces had concluded after completing its investigations in regard to the case of Angel Escobar Jurado that Escobar had not been detained by Armed Forces or National Police personnel. This information had been brought to the attention of the Human Rights Commission of the Peruvian Congress as well as to the President of the Council of Ministers and the Ministry of Foreign Relations. Since this information is from 1990, an update was requested of the Ministry of Defense. In Report No. 3240-SGMD-G of April 4, 1997, the Ministry of Defense reiterated the above cited information. Consequently, according to this information, Angel Escobar Jurado was not detained and disappeared by the security forces of Peru. In addition, there is no information that any family members had presented a complaint before the competent national authorities.

7. The response of Peru on this case was transmitted to the petitioners on May 13, 1997, and they were asked to submit any observations thereon within 30 days. None were submitted.

8. By letter dated June 18, 1997, the Commission transmitted a copy of its article 50 report on this case to Peru and requested that the State provide information regarding steps taken to carry out the recommendations of the Commission, and advised them that they were not authorized to publish the report since it was still confidential.

9. By Note No. 7-5-M/295 dated August 22, 1997, Peru presented its observations on the Commission's confidential report, which were prepared by the National Council of Human Rights which are discussed below in the analysis of the merits.

#### IV. ANALYSIS OF THE MERITS

10. What happened to Angel Escobar Jurado, as set forth in this case, corresponds in content, nature and characteristics, to the concept of "forced disappearance", as developed in the jurisprudence of the Commission and the Inter-American Court of Human Rights (hereinafter, "the Inter-American Court,") and incorporated into Article II of the Inter-American Convention on the Forced Disappearance of Persons.[FN1]

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[FN1] See ANNUAL REPORT 1985-6 of the Inter-American Commission of Human Rights, OEA/Ser.L/V/II.682, Doc. 8 rev. 1, September 26, 1986, pp. 40-41; ANNUAL REPORT 1982-3 of the Inter-American Commission of Human Rights 1982-83, OEA/Ser.L/V/II.61, Doc. 22, rev. 1, September 27, 1983, pp. 48-50; ANNUAL REPORT 1980-1 of the Inter-American Commission of Human Rights 1980-81, OEA/Ser.L/V/II.54, doc. 9 rev. 1, October 16, 1981, pp. 113-14; Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 147; Inter-American Convention on the Forced Disappearance of Persons, Article II. The Inter-American Convention on Forced Disappearance came into effect on March 28, 1996 one month after Argentina and Panama deposited their instruments of ratification (February 28, 1996) at the General Secretariat of the OAS.

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11. Article II of the Forced Disappearance Convention defines a "forced disappearance" in the following terms:

For the purposes of this Convention, forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

12. Peru is not a State Party to the Forced Disappearance Convention

but the mere elaboration of the definition of a "forced disappearance" by the drafters of the Convention is useful for the purposes of identifying the distinct elements of the same. What is crucial is that the individual be deprived of his freedom by agents of the state or under the color of law, followed by a refusal or incapacity of the State to explain what has happened to him or to give information about his whereabouts. In this case, Peru, in its response dated August 19, 1997, stated that no family members lodged a complaint regarding Escobar's detention with the competent authorities.

13. In fact the file reveals that a number of denunciations were filed. Mr. Francisco Soberón, the Coordinator of the Association for Human Rights (APRODEH) of Peru, who brought the case to the Commission on March 1, 1990 (Escobar was detained on February 27, 1990), also denounced the detention to the Fiscal Superior Decano de Huancavelica, Dr. Julio C. Alvarado

Villena, on March 8, 1990. APRODEH also presented a writ of habeas corpus, on March 1, 1990, on behalf of Mr. Angel Escobar, President of CODEH-Huancavelica, whom, they alleged had been detained by five members of the military. On March 5, 1997, the habeas corpus was denied by the Superior Court of Huancavelica, and on March 7, 1990, APRODEH addressed the Investigating Judge of Huancavelica a second time requesting an appeal in this case. Also, on March 1, 1990, the President of the Committee on the Defense of Human Rights of Huancavelica denounced the detention of Escobar before the Prefect of the Department of Huancavelica, stating that he was presumably detained by members of the Police or the Armed Forces. On the same date, the President of the Committee sent a similar letter to the Political-Military Commander of the Huancavelica emergency zone and to the District Attorney General, requesting that his whereabouts be located. A report of the Commander of the Political-Military Zone of Huancavelica replied in Report No. 077/JPM-HVCA to the President of the Human Rights Committee of Huancavelica that Mr. Angel Escobar Jurado was not arrested by any military or police troops and that his whereabouts were unknown. This report was dated March 1, 1990.

14. In spite of these denunciations alleging the detention and disappearance of Angel Escobar Jurado, it appears that the Political-Military Commander of the emergency zone of Huancavelica did not carry out an investigation or attempt to locate the victim or identify the individuals who might have been responsible.

15. The Commission's experience has demonstrated that the main cause of forced disappearances derives from abuse of powers conferred on the armed forces of a State during a state of emergency. Under a state of emergency, the number of arbitrary detentions increases, individuals are detained without charges and kept in detention without benefit of trial, deprived of access to judicial remedies, and with no record of having been arrested, all of which is flagrantly at variance with the rule of law. In addition, human rights defenders, such as Mr. Escobar Jurado, were frequently targeted due to their involvement in such matters.

16. In Resolution 666 (XIII-O/83), the General Assembly of the Organization of American States declared that "the practice of forced disappearance of persons in America is an affront to the conscience of the Hemisphere and constitutes a crime against humanity".[FN2]

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[FN2] Resolution 666 (XIII-O/83) of the General Assembly of the Organization of American States.

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#### Right to life (Article 4 of the Convention)

17. The Inter-American Court of Human Rights has pointed out that the forced disappearance of persons "frequently (involves) execution of those detained, in secret and without any kind of trial, followed by hiding of the body with a view to removing all material traces of the crime and achieving impunity for those who committed it, which amounts to brutal violation of the right to life recognized under article 4 of the Convention." (Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 157).

18. In the case of Mr. Angel Escobar Jurado, the evidence put forward leads to the presumption that he was detained by State agents. The fact that his detention and disappearance were denounced to the authorities in Huancavelica and no serious investigation was carried out to find him, is evidenced by the fact that the Political-Military Commander of the zone issued his Report No. 077/JPM-HVCA on March 1, 1990, the same date on which the matter was denounced to him, having allocated no time to carrying out an investigation. In addition, Mr. Angel Escobar Jurado was a well known peasant leader and human rights defender, falling within a class of persons inimical to the interests of the military in the area. Furthermore, Escobar's whereabouts remain unknown eight years after his detention. The context in which the disappearance occurred and the fact that his whereabouts are still unknown are reasonable grounds for assuming that he was killed (Godínez Cruz Case, Judgment of January 20, 1989, paragraph 198).

19. The jurisprudence of the Court states: "The right to life and the guarantee and respect thereof by States cannot be conceived in a restrictive manner. That right does not merely imply that no person may be arbitrarily deprived of his or her life (...) It also demands of the States that they take all appropriate measures to protect and preserve it". "The international protection of human rights, as it relates to article 4.1 of the American Convention on Human Rights, has a preventive dimension, in which the obligation to act with due diligence assumes graver implications when dealing with illegal detentions." (Gangaram Panday Case, Judgment of January 21, 1994, dissenting opinion of judges Picado Sotela, Aguiar-Aranguren and Cançado Trindade, paras. 3,4).

20. Therefore, the Commission concludes that the State of Peru has violated the right to life, a fundamental right protected under Article 4 of the Convention which states that "Every person has the right to have his life respected..." and "No one shall be arbitrarily deprived of his life."

#### Right to Personal Liberty (Article 7 of the Convention)

21. A detention is arbitrary and illegal when it is practiced for reasons not validly envisaged by law, when it is carried out without observing legal standards, and when powers to detain have been abused, i.e. when a detention is carried out for reasons other than those contemplated and required by law. The Commission has also pointed out that detention for improper purposes is in itself a punishment or sentence, a kind of sentence without trial or extralegal sentence violating the democratic principles of the independence and separation of powers as well as the guarantees of legality and the presumption of innocence.

22. Concerning violation of this right, the Inter-American Court has ruled that: "the kidnapping of a person is an arbitrary deprivation of liberty, an infringement of a detainee's right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest, all in violation of Article 7 of the Convention which recognizes the right to personal liberty." (Godínez Cruz Case, *ibid.*, paragraph 163).

23. As a result of his disappearance, Mr. Angel Escobar Jurado was the victim of arbitrary arrest, which deprived him of his physical freedom without legal cause and without a

determination of the legality of his detention by a judge or competent tribunal. Those acts directly violate the right to personal liberty recognized under article 7 of the Convention and constitute a violation, on the part of Peru, of the duties to respect and ensure that right enshrined in Article 1.1 of the Convention (Godínez Cruz Case, *ibid.*, paragraph 196).

#### On the obligation of States to guarantee and respect rights

24. In this case it has been demonstrated that the Peruvian State has not complied with the prescription of article 1.1 that States Parties undertake "to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms." The consequences of the failure of the State to investigate have led to a violation of the rights contemplated in articles 4 and 7 of the Convention.

25. The first obligation of States assumed by the States Parties under article 1.1, is to respect the rights and freedoms of all persons subject to their jurisdiction. Referring to this obligation, the Court stated that: ". . . under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even if they act outside the sphere of their authority or violate internal law." It ruled, furthermore that: ". . . any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State." (Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraphs 170 and 172).

26. The Commission concludes that the detention and subsequent disappearance of Mr. Angel Escobar Jurado are public acts perpetrated by State agents, which means that the Peru violated the rights of the victim contemplated in article 1.1 in relation to violations of articles 4 and 7 of the Convention.

27. The second obligation envisaged in article 1.1 is to ensure free and full exercise of the rights and freedoms recognized in the Convention. Here Court jurisprudence establishes that: "This obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which State power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate, and punish any violation of the rights recognized in the Convention and, moreover, if possible, attempt to restore the right violated and provide compensation, as warranted, for damages resulting from the violation." (Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 166).

28. In the event of a "forced disappearance", the State is duty-bound to establish the fate and current circumstances of the victim, punish those responsible, and compensate the victim's relatives. In the case at hand, those obligations have not been met.

29. The response of the State to the Commission's confidential article 50 report is designed to afford the State an opportunity to demonstrate how it is complying with the Commission's recommendations.[FN3] As the Inter-American Court recently stated in the Loayza Tamayo Case "...if a State signs and ratifies an international treaty, especially if it deals with human rights, as is the case of the American Convention, it is obliged to use its best efforts in carrying

out the recommendations of an organ of protection such as the Inter-American Commission which is, furthermore, one of the principal organs of the Organization of American States. .".[FN4]

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[FN3] See I/A Court H.R. Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50 and 51 of the American Convention on Human Rights), Advisory Opinion OC-13/93 of July 16, 1993. Series A No. 13.

[FN4] Loayza Tamayo Case, Judgment of September 17, 1997, paragraph 80. Free translation from the Spanish original.

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30. Peru, in its response dated August 19, 1997 informed the Commission that the detention and disappearance of Mr. Angel Escobar Jurado are not registered in any official reports, and that, furthermore, the family members did not formalize any denunciation before the competent authorities. The information in the file reveals, however, that the matter was raised with the Political- Military Commander of the emergency zone and with the District Attorney General's office, both of which responded that they knew nothing about the detention of this individual, in spite of the fact that the report of the Political-Military Commander is dated the same date as the request for an investigation, leading to the conclusion that no investigation had been conducted, and leading to the presumption, given who Mr. Escobar was, that he was detained and disappeared by the military.

31. The Peruvian Amnesty laws, Laws Nos. 26479 and 26492, effectively tie the hands of the State from undertaking any investigation of any forced disappearance case or any other human rights violation committed by a member of the Armed Forces, or any other perpetrator, during the period May 1980 - June 14, 1995. The Amnesty laws cover all military, police and civilian officials, whether they have been arraigned, investigated, tried, indicted or convicted before a regular or special court for common or military crimes for any event, stemming from or originating on the occasion of, or as a consequence of, the struggle against terrorism, that may have been committed individually or by a group during this period.[FN5] An amnesty, by its nature, removes the criminal element from the conduct and the penalty, if the individual has been convicted or served a sentence, is considered never to have been enforced.[FN6]

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[FN5] See, IACHR, ANNUAL REPORT 1996, pp. 739-741.

[FN6] See UN STUDY ON AMNESTY LAWS, Report by Mr. Louis Joinet, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1985/16/Rev.1 (June 21, 1985).

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32. In the case of the Peruvian Amnesty Law No. 26479, article 6 provides:

The facts or crimes covered by the present amnesty, as well as the dismissals and acquittals, are not susceptible of investigation, inquiry or summary procedure; resulting in the definitive filing of all judicial proceedings in process or pending enforcement. (Emphasis added)

In summary, this law provides that the instant case is not susceptible of investigation, in flagrant disregard of the Peruvian State's obligations under the American Convention and the jurisprudence of both the Commission and the Inter American Court of Human Rights.

33. Amnesty laws frustrate and run contrary to a State's obligation to investigate and punish those responsible for human rights violations whether those responsible be members of the military or civilians. The expectation of an eventual amnesty casts a blanket of impunity over the Armed Forces or any non-military perpetrator, enabling them to commit any atrocity in the name of their cause, and such a climate breeds inevitable excess and contempt for the rule of law.[FN7]An amnesty in one country in the region which has ended its civil conflict, breeds the expectation of an amnesty in a second, albeit the latter is still in a state of internal conflict. A state policy of impunity, enshrined in amnesty laws, eventually leads to a loss of prestige and professionalism of the military in the eyes of the rest of the population.

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[FN7] See Report No. 36/96, Case 10.843 (Chile), 15 October 1996 in the Commission's ANNUAL REPORT 1996, p. 156.

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34. Consequently, the Commission concludes that the State of Peru has violated article 1.1, because it failed to safeguard the exercise of the rights and guarantees of Angel Escobar Jurado.

35. On the basis of the findings set forth in this report, the Commission

has arrived at the following conclusions and recommendations:

## V. CONCLUSIONS

i. That members of the Peruvian State Armed Forces detained Angel Escobar Jurado and subsequently, for the next eight years were unable to account for his whereabouts, and that, as a result, the Peruvian State is responsible for violating the right to life (article 4), the personal liberty (article 7) and the State's overall obligation to respect and ensure the exercise of these rights (article 1.1) enshrined in the American Convention.

## VI. RECOMMENDATIONS

i. That the Peruvian State, render without force any domestic measure, be it legislative or of some other nature, tending to prevent the investigation, trial, and punishment of those responsible for the detention and disappearance of Angel Escobar Jurado. To that end, the Peruvian State should declare laws N° 26479 and N° 26492 to be without force.

ii. That the Peruvian State carry out a serious, impartial and effective investigation of the facts by means of the competent organs, to establish the whereabouts of Angel Escobar Jurado and to identify those responsible for his detention-disappearance, and, through appropriate criminal proceedings, to punish those responsible for such grave acts in accordance with the law.

iii. That the Peruvian State provide reparation for the relatives of Angel Escobar Jurado, including in that compensatory indemnity payment for the suffering derived from not knowing the fate of the victim.

## VII. PUBLICATION

36. The Commission considered this case again during its 97th regular session and on October 16, 1997, adopted Report No. 42/97, its article 51 report on the case and transmitted it to the State of Peru on November 4, 1997. The Commission requested Peru to adopt reparatory measures in this case within a period of two months from the date of transmittal, in order for it to decide on the publication of the report.

37. The Peruvian State replied to the Commission by Note 7-5-M-468 dated December 29, 1997 in which the Government stated that it reaffirmed its conclusions set forth in Note No. 7-5-M/295 of August 22, 1997, regarding this case. The Commission considered this case again during its 98th regular session and on February 19, 1998, it took the decision to publish this Report.

38. In virtue of the fact that the Peruvian State responded expressing its decision to not comply with the recommendations issued by the Commission for the reasons expressed therein, and in conformity with articles 51.3 of the American Convention and 48 of its Regulations, the Commission decides to reiterate the conclusions and recommendations in chapters V and VI supra, to make public the present report and to include it in its Annual Report.