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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 22/87; Case No. 9467
Session:	Seventieth Session (22 June – 2 July 1987)
Title/Style of Cause:	Felipe Huamán Palomino v. Peru
Doc. Type:	Resolution
Decided by:	President, Dr. Gilda M.C.M. Russomano; First Vice President, Dr. Marco Tulio Bruni Celli; Second Vice President, Mr. Oliver T. Jackman. Members: Dr. Marco Gerardo Monroy Cabra; Dr. Bruce McColm; Ms. Elsa Kelly; Luis Adolfo Siles Salinas
Dated:	30 June 1987
Citation:	Huamán Palomino v. Peru, Case 9467, Inter-Am. C.H.R., Report No. 22/87, OEA/Ser.L/V/II.71, doc. 9 rev. 1 (1986-1987)
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HAVING SEEN the background information on this case, viz:

1. In a communication dated October 1, 1984, the Inter-American Commission on Human Rights received the following petition:

FELIPE HUAMAN PALOMINO, of 32 years of age, was arrested in his home in Ayacucho by members of the so called Republican Guard, dressed as civilians, on July 23, 1984. Police officials deny his detention. There is, however, information indicating his detention at the Quicapata Barracks. In spite of the actions taken his whereabouts are unknown.

This case could constitute a violation of the American Convention on Human Rights to which Peru is a State party.

2. In a note dated November 5, 1984, the Commission requested the Government of Peru to provide the pertinent information, in accordance with Article 31 of its Regulations.

3. In a note dated January 30, 1985, the Commission repeated its request for information to the Government of Peru and mentioned Article 39 of its Regulations whereby, since no reply was received, the facts of the case may be presumed true.

4. In a note dated March 6, 1985 (No 7-5-M/37), the Government of Peru provided the following information:

With reference to case 9467, concerning Felipe Huamán Palomino, the Public Prosecutor's office is making major efforts to obtain the requested information as soon as possible.

5. In a note dated March 19, 1985, the Commission transmitted the pertinent parts of the information provided by the Government of Peru to the petitioner requesting that he submit his comments

thereon within 45 days.

6. In his communications of May 3 and June 28, 1985, the petitioner furnished his observations and comments on the Government's communication to the Commission including additional complementary information on the case, summarized as follows:

a. That the Government of Peru was not actually responding to the IACHR's request for information but only offering or promising to reply once the Government Attorney's office completes its investigations;

b. That Mr. Huamán Palomino's wife had submitted to the District Attorney, in Ayacucho, on July 19, 1984, a sworn statement declaring that on July 17, 1984, a member of the Republican Guard took Mr. Huamán to the military barracks at Quicapata where Mr. Huamán disappeared; that she had requested information on her husband from the Investigations Police of Peru, the Republican Guard, at "Los Cabitos" barracks and at the police precincts in Ayacucho without results, and that the claim before the Public Prosecutor's office had not had any effect either;

c. That in this case, as in others concerning presumed disappearances, it has been communicated to the authorities that there have been obstructions when investigating on disappeared persons and that in some cases "investigators have been denied any approach or access to certain rural areas or detention centers and that these same concerns were denounced by the Executive Secretary of the Andean Commission of Jurists in a Report dated October 1984" (Ayacucho and Human Rights, Center/or Independence of Judges and Lawyers, No 14, pp. 49-53);

d. That the competency of the Government Attorney's office to carry out investigations and verify arrests is questionable since the arrested parties were not placed or held in ordinary prisons but in special detention centers created by the military;

e. That the military authorities will not provide information to the Public Prosecutor's office, and that especially in Ayacucho those lawyers devoted to defending political prisoners have been persecuted and forced to leave after having been victims of terrorist attacks;

f. That likewise, in Huamanga and Ayacucho, the district attorneys have been threatened by security forces which explains the changing (in less than one year) of the District Attorney in Huamanga, the position being vacant at that time, and that after the massacre of 34 rural citizens denounced by the District Attorney Jorge Zegarra Dongo, in 1984 in Soccus, two armed men (presumably members of the P.I.P.) unlawfully searched his home and threatened said Attorney forcing him to resign;

g. That the same thing happened to the former District Attorney of Cangallo, Mr. Luis Altamirano, who tried to speed up the investigations in that area, in particular the case concerning the abuses committed by Colonel Armando Mellet Castillo and a General with the last name of Noel; therefore we conclude that in cases of disappearance, such as that of Mr. Felipe Huamán Palomino, competent judicial authorities are prevented from carrying out their tasks and, therefore, justice is denied to the victims and their relatives.

7. In its note of October 11, 1985 the Commission again reiterated to the Government of Peru the information offered on the results of the investigations on this case and others pending.

8. In a note dated March 26, 1986 (No 7-5-M/44) the Government of Peru furnished the following response:

In accordance with the domestic jurisdiction, investigations are still in process on the facts presented in Note No 7-5-M/37, dated March 6, 1985 of this Permanent Mission.

9. In its communication of April 16, 1986 the Commission sent the above transcribed to the petitioner and requested him to submit his final observations on the case within 45 days.

10. In a communication dated May 30, 1986 the petitioner provided the following information and comments:

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In its communication of March 26, 1986 the Government of Peru has not provided any relevant information on the case of Mr. Felipe Huamán Palomino. In its previous response, dated March 6, 1985 the Government did not respond to the facts denounced before the IACHR on October 1, 1984 concerning Mr. Felipe Huamán Palomino; it has only promised to respond once the Public Prosecutor's office completes its investigation. Nevertheless, the Government of Peru's communication of March 26, 1986 does not contain any information on the investigations carried out by the Public Prosecutor's office, as had been offered.

The Government promised to make major efforts to resolve this case. As we pointed out in our communication of May 3, 1985, Mr. Huamán's wife submitted a sworn statement nine months before to the District Attorney of Ayacucho, a necessary step in order to investigate Mr. Huamán's disappearance. A year has passed and the Public Prosecutor's office has had one year and nine months to investigate this case. The Government of Peru promised to furnish the requested information as soon as possible and has yet to do so.

11. In its note of June 12, 1986 the Commission transmitted the petitioner's observations to the Government of Peru, requesting it furnish all the information on the case within 30 days.

CONSIDERING:

1. That this case meets the admissibility requirements set forth in the Commission's Regulations.
2. That the procedure before the Commission and the regulatory time limits have elapsed.
3. That the information provided by the Government of Peru in the case of Mr. Felipe Huamán Palomino's disappearance, since July 23, 1984, in Ayacucho, is completely inadequate and dilatory with regard to the nature of the Commission's requests and the process and results of the investigations made by the competent authorities of Peru on this case.
4. That based on the observations and comments submitted by the petitioner it is affirmed that the facts claimed are true and that, moreover, the competent judicial authorities of Peru have not been able to complete their investigations in a timely and formal manner whereby it can be assumed that, in this case, the claimants were denied access to the domestic legislation remedies or that the administration of justice was unduly delayed whereby the Commission is exempt from the provisions of Article 46 a, of the American Convention on Human Rights, and Article 37, paragraph 1 of its Regulations.
5. That the information provided by the Government of Peru does not include specific data on the authority in charge of the investigations; the actions taken; when to expect the examining stage of the process to conclude (after two years) and its current status and, finally, if there are any guilty parties presumed responsible for Mr. Huamán Palomino's disappearance.
6. That, consequently, the Commission, in accordance with Article 42 of its Regulations and lacking any facts to detract from the claim, concludes the facts to be true.
7. That, moreover, in the case that is the subject matter of this Resolution the Commission has been unable, by reason of the nature of the petition, that is, the forced disappearance of Mr. Felipe Huamán Palomino, to apply the friendly settlement procedure set forth in Article 48, paragraph 1, f of the American Convention on Human Rights and in Article 45 of its Regulations.

8. That in accordance with Article 42 (formerly 39) of its Regulations the Commission presumes the facts denounced to be true, as long as other evidence does not lead to a different conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,  
RESOLVES:

1. To consider true the facts reported in the petition of October 1, 1984 concerning the disappearance of Mr. Felipe Huamán Palomino, in Ayacucho, on July 23, 1984.
2. To declare that this constitutes a very serious violation of the right to personal liberty (Article 7) and the right to life (Article 4), established in the American Convention on Human Rights.
3. To recommend to the Government of Peru that it carry out, as soon as possible, an investigation on the events and punish the persons responsible with the most severe penalties established in the internal legislation.
4. To declare that the relatives of the victim are entitled to fair compensation, according to law, and, therefore, that the Government of Peru grant said compensation.
5. To request the Government of Peru to report to the Commission, within 60 days, on the measures taken to implement the recommendations of this Resolution. If within that period the Government of Peru has not submitted information, the Commission will include this Resolution in its Annual Report to the General Assembly, in accordance with Article 63, paragraph g of its Regulations.
6. To transmit this Resolution to the Government of Peru and the petitioner.