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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 21/87; Case No. 9466
Session:	Seventieth Session (22 June – 2 July 1987)
Title/Style of Cause:	Teodoro Huancahuari 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:	Huancahuari v. Peru, Case 9466, Inter-Am. C.H.R., Report No. 21/87, 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 Commission received the following petition:

TEODORO HUANCAHUARI disappeared on December 12, 1983 from Lucanamarca, the town where he resided in Ayacucho. Captain Edgar Acevedo López, of the district of Lucanamarca, reported to the authorities that Teodoro was detained at the army facilities in Cangallo. Actions taken by his family and local authorities have had no result. To date his location is unknown. These facts constitute a violation of the American Convention on Human Rights, of which Peru is a member State.

2. In its note of November 5, 1984 the Commission requested the Government of Peru to provide pertinent information on the petition, in accordance with Article 34 (formerly 31) of its Regulations.

3. In its note of March 6, 1985 (N<sup>o</sup> 7-5-M/37), the Government of Peru replied to the Commission with the following information:

With reference to Case 9466, concerning Teodoro Huancahuari, on May 6, 1983 he was accused of heading the clandestine Sendero Luminoso guerrilla group in the town of Pelacucho, Huancayo, and concealing his participation in subversive activities through his post as Mayor of the district of Lucanamarca, Ayacucho.

4. In its communication of March 19, 1985, the Commission transmitted the information provided by the Government of Peru to the petitioner, requesting that he comment on it within a period of 45 days.

5. In his communication of May 3, 1985 the petitioner made the following comments:

Case No. 9466: Teodoro Huancahuari Matias:

The Government of Peru's reply on the case of Mr. Huancahuari is completely inadequate. It is affirmed without evidence or analysis that Mr. Huancahuari was accused, on May 6 of 1983, of being the head of the Sendero Luminoso guerrilla group in the city of Pelacucho, Huancayo, and participating in subversive activities as Mayor of Lucamarca, District of Ayacucho. This "reply" from the Government of Peru does not actually respond to the petition we submitted to the Inter-American Commission on Human Rights.

On October 1, 1984, we submitted a copy of the sworn statement made by Mr. Huancahuari's wife, Vicenta Evanan Huancahuari. This statement, dated February 14, 1984, was first made and presented to the Public Prosecutor's office, the Superior District Attorney's office in Ayacucho. This document basically states that Mr. Huancahuari disappeared during the month of December, 1983, by action of civil or military authorities of the Government of Peru and that repeated formal and informal actions before these authorities have not resulted in information on the whereabouts and condition of Mr. Huancahuari.

The Government of Peru's "reply" does not refer to any of the events denounced in the sworn statement submitted to the Commission. On the contrary, it refers to the tendencious accusation, made in May of 1983, against Mr. Huancahuari. Likewise, no information is provided regarding which court or which authorized official made the accusation; the charges against Mr. Huancahuari are not stated, and curiously enough, there is no transcript of the charges, which was apparently submitted to the IACHR.

Most important of all, the Peruvian Government's reply does not mention the events of December 1983 and January 1984 as claimed in the sworn statement. Supposedly, in a case concerning an individual accused of participating in "subversive activities" and arrested by public officials, the Government would mention these facts in its reply. Contrary to the above, the sworn statement contends that Mr. Huancahuari was free before he went to the offices of Investigations Police of Cangallo on December 7, 1983, to make a statement on a different matter. This took place seven months after Mr. Huancahuari was accused.

If the sworn statement is true then it is unlikely that the slanted accusation made by the Government of Peru would have occurred. Clearly, the Peruvian Government's reply is inadmissible: "In response to the claim based on the fact that Mr. Huancahuari disappeared in 1983 by action of the civil or military officials of Peru, the Government of Peru affirms that Mr. Huancahuari was charged, in May of 1983, by an unidentified official and of unspecified crimes." This response is irrelevant and unrelated to the claim submitted to the Commission.

A minimal response by the Government of Peru would have discussed the facts set forth in the sworn statement and indicated Mr. Huancahuari's present whereabouts.

This response would have allowed the Commission to make a substantive study of Mr. Huancahuari's case, with the aim of affirming that the rights guaranteed in the American Convention on Human Rights are being respected by the Government of Peru.

6. In its note of May 8, 1985 the Commission transmitted the comments made by the petitioner to the Government of Peru granting it a period of 30 days in which to provide pertinent information. In a note of May 9, 1985 the petitioner was advised on this action.

7. In a memorandum dated June 28, 1985, the petitioner referred to having exhausted internal remedies and the applicability exceptions of this principle, recognized in Article 46, 2, a and b of the American Convention as also in the Regulations of the Commission (Article 37, 2, a and b and c), and pointed out that in the present case the interested parties had exhausted internal remedies or the actions taken had not been effective or the interested parties had been denied such actions. In said memorandum, moreover, the petitioner submitted additional information on the claim and the status of the investigations requested by the victim's relatives.

8. In a note dated September 25, 1985 (No 7-5-M/176), the Government of Peru reported that " with reference to the specific cases submitted to the Inter-American Commission on Human Rights, the Government of Peru had ordered all the public offices involved in the claims to submit a complete report on the facts contained in the claims on alleged violations of human rights, which will be transmitted

immediately to that Honorable Executive Secretariat".

9. In accordance with the above, in a note dated March 26, 1986 (No 7-5-M/44), said Government submitted the following information on case 9466:

Concerning case 9466 we reiterate the fact that Mr. Teodoro Huancahuari was accused of acting as head of the Sendero Luminoso guerilla group in the town of Huancayo.

10. In its letter of April 16, 1986, the Commission transmitted the information provided by the Government of Peru to the petitioner requesting he submit his observations or comments within a period of 45 days.

11. In a communication dated May 30, 1986, the petitioner submitted observations and comments along with additional information, as follows:

Case No. 9466 Teodoro Huancahuari Matías

The reply of the Government of Peru in the case of Mr. Huancahuari is the same previous reply of March 6, 1983. As stated in our letter of May 3, 1985, the Government's reply is absolutely inadequate since it determines, without any evidence or further detail, that Mr. Huancahuari was prosecuted because he was the leader of the clandestine Sendero Luminoso group in the city of Huancayo. This reply by the Government of Peru does not actually respond to the information submitted to IACHR or to the questions contained in our note of May 3, 1985.

On October 1, 1984 we submitted to the IACHR a sworn statement made by Mr. Huancahuari's wife, Vicenta Evanan Huancahuari. Originally that statement made on February 14, 1984, was submitted to the Public Prosecutor's office, the Superior Court of Ayacucho. Basically the statement alleges that Mr. Huancahuari was "disappeared" by military and/or civilian officials of the Government of Peru during the month of December, 1983, and that repeated actions, both formal and informal before the authorities, did not result in information on the whereabouts or condition of Mr. Huancahuari.

Attached to the present is a sworn statement dated June 7, 1985, signed by Mr. Huancahuari's sons, that clearly shows that to date they have no knowledge whatsoever of his whereabouts.

In its response, the Government of Peru does not mention any of the alleged events in the statement submitted to the IACHR, and instead reports Mr. Huancahuari's prosecution. No information is provided as to which court or public official took those actions; the exact charges against Mr. Huancahuari are not specified, and curiously enough, apparently the IACHR was not sent transcripts of this action. We requested this information in our note of May 3, 1985, and the Government has apparently been unable to provide it.

Most important of all is the fact that the Government's reply does not refer to the events which occurred in December 1983 and January 1984 in the complaint. Presumably, an individual processed for participating in "subversive activities" would have been arrested and detained by Government officials, but in the Government's reply it is not said that Mr. Huancahuari was free when he himself appeared before the Investigations Police of Cangallo on December 7, 1983, to make a statement on another matter. This took place seven months after Mr. Huancahuari's processing. If this statement is true, then it seems incredible that the Government of Peru should actually have convicted him. The reply given by the Government of Peru is obviously insufficient. In response to claims containing detailed data whereby Mr. Huancahuari disappeared in December of 1983 by action of civilian and/or military officials of Peru, the Government states he was convicted by unspecified officials and for unspecified crimes. The response is irrelevant to the complaint submitted to the IACHR.

With a minimal and adequate response from the Government of Peru, the facts declared in the statement could be discussed and Mr. Huancahuari's whereabouts indicated. This kind of response would allow the IACHR to initiate study of Mr. Huancahuari's case in a constructive manner, with the aim of assuring that the rights guaranteed by the American Convention on Human Rights be respected by the Government of

Peru. The Government's second response, of March 26, 1986, does not meet any of these requirements.

12. In its note of June 10, 1986, the Commission transmitted the above comments to the Government of Peru, requesting it submit the pertinent information on the case within a period of 30 days. This request was reiterated in a note dated July 25, 1986 whereby it was indicated that the above-mentioned time limit of 30 days had expired.

CONSIDERING:

1. That this case meets all the admissibility requirements set forth in the Regulations of the Commission.

2. That the action and the established time limits have expired before the Commission.

3. That the information submitted by the Government of Peru in the present case of Mr. Teodoro Huancahuari, disappeared since December 12, 1983, in Lucanamarca, Ayacucho, is insufficient, since it does not answer the Commission's request concerning the whereabouts or status of Mr. Huancahuari Matias.

4. That in the responses made by the Government of Peru, which did not include copies of the files or corroborating evidence of its statements, it affirms that the afore-mentioned "was charged on May 6, 1983, with being the leader of the clandestine Sendero Luminoso group in the town of Pelacucho, Huancayo, and concealing his participation in subversive activities through his post as Mayor of the District of Lucanamarca, Ayacucho," which is, moreover, irrelevant to the contents of the claim submitted to the Commission.

5. That, moreover, the information submitted by the Government of Peru does not recognize or consider the sworn statement made by the victim's wife, Mrs. Vicenta Evanan Huancahuari, on February 14, 1984, submitted to the Public Prosecutor's office, the Superior District Attorney's office of Ayacucho, whereby it is declared that Mr. Huancahuari disappeared through the action of members of the armed forces or civilian government officials during the month of December of 1983, and that all efforts to determine the location of her husband have failed.

6. That, moreover, there is on file a statement dated July 7, 1985, subscribed to by Mr. Huancahuari's sons which declares they do not know the whereabouts of their father and that, having checked at the Cangallo barracks, where they were first told he could be found by Captain Edgar Acevedo López, they have not received any reply on the matter.

7. That the information provided by the Government of Peru does not furnish any information on the court or judge that processed Mr. Huancahuari; nor what specific charges were brought up, nor transcript of the sentence, date or place in which the mentioned prosecution apparently took place.

8. That, consequently, the Commission lacks sufficient data to detract from the claim and that, on the contrary, from the evidence on record the events denounced before the Commission are presumed true.

9. That in the case under consideration, the petitioners have exhausted all domestic legal remedies, that is, a petition or statement to the Public Prosecutor's office, on February, 1984--an autonomous body created by the National Constitution (Article 250) to investigate attempts made on the rights of the persons mentioned in the petitions submitted to this body--and the records show that other remedies such as that of Habeas Corpus, have not been available to the petitioners.

10. That, moreover, in the case that is the subject matter of this Resolution, the Commission has not been able, by reason of the nature of the petition, that is, the forced disappearance of Mr. Teodoro Huancahuari, to apply the friendly settlement procedure provided for in Article 48, paragraph 1, f of the American Convention on Human Rights and in Article 45 of its Regulations.

11. That Article 42 (formerly 39) of the Regulations authorizes the Commission to presume true the facts contained in the petition 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 denounced in the communication of October 1, 1984, concerning the disappearance of Mr. Teodoro Huancahuari Matías, on December 12, 1983 in the location called Lucanamarca, Ayacucho.

2. To declare this constitutes a very serious violation of the right to personal liberty (Article 7) and of the right to life (Article 4) set forth in the American Convention on Human Rights.

3. To recommend to the Government of Peru that it proceed, as soon as possible, with an investigation of the case and punish the responsible agents for the disappearance of Mr. Huancahuari Matias with the most severe penalties.

4. To declare that the relatives of the victim are entitled to fair compensation, in accordance with the law, and for which the Government of Peru is responsible.

5. To request the Government of Peru to inform the Commission, within a period of 60 days, of the measures taken to implement the recommendations set forth in this Resolution. If after this period the Government does not report on the measures taken, the Commission will include this Resolution in its Annual Report to the General Assembly of the OAS, in accordance with Article 63, paragraph g of its Regulations.

6. To transmit this Resolution to the Government of Peru and the petitioner.