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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 28/90; Case No. 10.185
Session:	Seventy-Ninth Session (11 – 22 February 1991)
Title/Style of Cause:	Basilio Chirhuana Carbajal, Bethy Bazan Huaman, Pedro Carbajal Roldan, Rosa Velasquez Marca, Matilde Ni O. Guzman Ayvar, Rosa Ni O. de Guzman Ayvar, Luisa Guzman de Guzman Ayvar, Celio Carbajal Ayvar, Jose Ayvar Cavero, Fermin Gonzalez, Jorge Ayvar Huamani, and Julian Salinas v. Peru
Doc. Type:	Report
Decided by:	Chairman: Patrick L. Robinson; First Vice Chairman: Marco Tulio Bruni Celli; Second Vice Chairman: Oscar Lujan Fappiano; Members: Gilda M.C.M. de Russomano; Oliver Jackman; Leo Valladares Lanza; Michael Reisman
Dated:	22 February 1991
Citation:	Chirhuana Carbajal v. Peru, Case 10.185, Inter-Am. C.H.R., Report No. 28/90, OEA/Ser.L/V/II.79, doc. 12 rev. 1 (1990-1991)
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BACKGROUND:

1. On March 23, 1988, the Inter-American Commission on Human Rights received the following complaint:

The detention and subsequent disappearance of Basilio Chirhuana Carbajal, Bethy Bazan Huaman, Pedro Carbajal Roldan, Rosa Velasquez Marca, Matilde Ni O. Guzman Ayvar, Rosa Ni O. de Guzman Ayvar, Luisa Guzman de Guzman Ayvar, Celio Carbajal Ayvar, Jose Ayvar Cavero, Fermin Gonzalez, Jorge Ayvar Huamani, and Julian Salinas on November 11, 1988, by Peruvian Army troops in the Province of Aymaraes, Department of Apurimac, an area that has been placed under a state of emergency.
They were arrested at their homes, from which the Army also took household goods and provisions; the soldiers forced their relatives to feed them. The Army denies holding these individuals even though there were numerous witnesses.

2. In a note of April 29, 1988, the Commission transmitted the pertinent parts of the complaint to the Government of the Republic of Peru, with a request for any relevant information, but failed to receive a reply within the statutory period.

3. The request for information was reiterated through note sent to the Government on September 7, 1989, which referred to the possibility of applying Article 42 of the Regulations of the Commission. No reply was received to that note either.

CONSIDERING:

1. That in resolution AG/RES. 666 (XIII-O/83) the General Assembly declared that "the practice of forced disappearance of persons in the Americas is an affront to the conscience of the hemisphere and constitutes a crime against humanity."

2. That the period established in Article 34, paragraph 5, of the Regulations of the Commission has elapsed without the Government of Peru having responded to the request for information made by the IACHR in the notes referred to in the background section of this report, so that it may be presumed that there are not any remedies under domestic jurisdiction
to be exhausted (Article 46 of the American Convention), in light of the adversarial procedure established in that Convention.

3. That Article 42 of the Regulations of the Commission reads:

Article 42
The facts reported in the petition whose pertinent parts have been transmitted to the government of the State in reference 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.

4. That Article 1, paragraph 1, of the American Convention on Human Rights reads:

Article 1. Obligation to Respect Rights
1. The States Parties to this Convention 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, without any discrimination for reasons of race, color, sex, language, religion, polistical or other opinion, national or social origin, economic status, birth, or any other social condition.

5. That the Republic of Peru is a State Party to the American Convention on Human Rights and has ratified the binding jurisdiction of the Inter-American Court of Human Rights.

Therefore, in view of the related background and the considerations as well as of the fact that the Commission does not have any other evidence that would lead it to a different conclusion, based on Article 42 of its Regulations,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
RESOLVES:

1. To presume to be true the claims presented in the March 23, 1988, correspondence pertaining to the arbitrary arrest by agents of the Peruvian state and subsequent disappearance of Basilio Chirhuana Carbajal, Bethy Bazan Huaman, Pedro Carbajal Roldan, Rosa Velasquez Marca, Matilde Ni O. Guzman Ayvar, Rosa Ni O. de Guzman Ayvar, Luis Guzman de Guzman Ayvar, Celio Carbajal Ayvar, Jose Ayvar Cavero, Fermin Gonzalez, Jorge Ayvar Huamani, and Julian Salinas in the Province of Aymaraes, Department of Apurimac, on November 11, 1988.

2. To declare that that act constitutes a serious violation by the Peruvian state of the rights to life, humane treatment, personal liberty and a fair trial (Articles 4, 5, 7, and 8, respectively, of the American Convention on Human Rights).

3. To recommend to the Government of Peru that it conduct the most exhaustive investigation possible of the acts denounced in order to identify those who are directly or indirectly responsible so that

they may receive the corresponding legal penalties and that it inform the Commission of its decision and the measures taken, within a maximum period of 60 days.

4. To recommend to the Government of Peru that it adopt the measures established under national law to indemnify the families of the victims.

5. To transmit this report to the Government of the Republic of Peru and to the petitioners.

6. If, within the period set in operative paragraph 3 of this report, the Government of Peru has not presented observations, the Commission shall include this report in its Annual Report to the General Assembly, in accordance with Article 48 of the Regulations of the Commission.