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Title/Style of Cause:	Mercedes Gutierrez Caypani, Antonio Tinco, Mariano Huyhua, Andres Torres Huamani, Gloria Cortes Chipana, Enrique Casablanca Chipana, Fortunato Solorzano Pezo, Carrasco Huyhua, Eprocina Chipana and Llachua Jauregui Benites 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:	Gutierrez Caypani v. Peru, Case 10.308, Inter-Am. C.H.R., Report No. 37/90, OEA/Ser.L/V/II.79, doc. 12 rev. 1 (1990-1991)
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BACKGROUND:

1. On February 14, 1989, the Inter-American Commission on Human Rights received the following complaint:

Sacayca, August-September, 1988: During the feast of the patron saint, Saint Rose of Lima (August 27, 1988), a group of 30 army soldiers from the Ccapaya military base, under the command of Lieutenant E.P. "Marco Antonio" Castro, arrives in Sacayca.

Before reaching the district capital, they go to the Puiccahuasi annex, where they arrest:

Mercedes Gutierrez Caypani, peasant, illiterate, unmarried, age 32, who lived with her elderly mother, age 78. Mercedes was physically abused and even sexually molested. When her mother protested, she also was beaten and forced to do military training exercises.

Antonio Tinco, peasant, illiterate, married, father of 10 minor children, approximate age 45, is tortured on the premises of the district school.

Andres Torres Huamani, peasant, illiterate, married, approximate age 47, is also savagely beaten.

They abuse the townspeople who protest the abuse and later search the dwellings of the villagers, seizing a variety of items. They inflict many abuses on men, women, children, and elderly people.

Gloria Cortes Chipana and Enrique Casablanca Chipana are tied and suspended from a beam in the roof of the district school. Seeing this, a number of townspeople attempt to appease the army soldiers so as to help their neighbors. The soldiers and officials reject their appeals, threatening to do the same to them if they persist; Fortunado Solorzano Pezo and his spouse are forced to do physical exercises.

Mariano Huyhua is cruelly tortured to the point that he becomes incoherent and vomits blood. Later he is taken to the premises of the district school, which is regularly used as lodging for soldiers and for torturing detainees.

The next day, during the night, they arrest numerous young women between the ages of 18 and 30. They take them to the aforementioned site and rape them after savagely abusing them. The 30 soldiers who make up the detachment participate in this execrable act.

The victims include Carrasco Huyhua, Eprocina Chipana, and Llachua Jauregui Benites.

The next day, they free the arrested peasants, with the exception of Mariano Huyhua, Mercedes Gutierrez, Andres Torres, and Antonio Tinco.

Those individuals are taken on foot to the military base in Ccapaya. Along the way, some relatives attempt to give them food and clothing, but are repelled by the soldiers.

A few days later, Andres Torres Huamani is freed. He shows clear evidence of torture and refuses to give any information other than that he was in Ccapaya, because he fears for his life, so much so that he and his family have moved to a distant mountain area.

On September 5, 1988, the detainees were seen at the military base of Santa Rosa by a driver who is a friend of the brother of Mercedes Gutierrez. Since that time there has been no further information about them.

2. In a note of April 10, 1989, 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 8, 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, political 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 February 14, 1989, correspondence pertaining to the arbitrary arrest by agents of the Peruvian state and subsequent disappearance in Sacayca on August 27 and 28, 1988, of Mercedes Gutierrez Caypani, Antonio Tinco, and Mariano Huyhua, and the arbitrary arrest and torture of residents of Sacayca, including Andres Torres Huamani, Gloria Cortes Chipana, Enrique Casablanca Chipana, Fortunato Solorzano Pezo, and numerous young women, including Carrasco Huyhua, Eprocina Chipana, and Llachua Jauregui Benites.

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.