

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 15/95; Case 11.010
Session:	Ninetieth Regular Session (11-21 September 1995)
Title/Style of Cause:	Hildegard Maria Feldman v. Colombia
Doc. Type:	Report
Decided by:	First Vice Chairman: Dean Claudio Grossman; Second Vice Chairman: Ambassador John S. Donaldson; Members: Dr. Patrick Robinson, Dr. Leo Valladares, Dr. Oscar Lujan Fappiano, Professor Michael Reisman. Commission member Dr. Alvaro Tirado Mejia abstained from participating in the consideration and voting on this report, in accordance to Article 19 of the Regulations of the Commission.
Dated:	12 September 1995
Citation:	Maria Feldman v. Colombia, Case 11.010, Inter-Am. C.H.R., Report No. 15/95, OEA/Ser.L./V/II.91, doc. 7 rev. (1995)
Terms of Use:	Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. BACKGROUND

1. The Inter-American Commission on Human Rights received the following complaint on March 31, 1992.

The missionary HILDEGARD MARIA FELDMAN, a lay sister belonging to the Order of Lay Missionaries, a Swiss national, had arrived in Colombia early in 1980 for the purpose of performing pastoral and practical work in community development through administering medical care to the peasant population of rural zones. In June, 1990, under orders of the Diocese of Ipiales (Nariño) to which she belonged, she had been commissioned to work in the locality of El Sande, a small village near the municipality of Ipiales.

At 4.30 p.m. on September 9, 1990, troops of the Third Army brigade entered that locality shooting indiscriminately at the civilian population. The sister Hildegard Maria was at the time attending to a patient in the house of JOSE RAMON ROJAS ERAZO and, according to the statement of his wife Regalía Marina Leyton, who was also in the house, the army shot at the dwelling with no prior warning to its occupants. As a consequence of this action the sister and Mr. José Ramón Erazo were murdered.

In view of the attack, Señora María Graciela Alvarez, her husband, Segundo Abigail García Torres and his wife Carmen Guelga de García, ran to the back of Rojas García's house seeking safety. Mr. HERNANDO GARCIA was at that moment wounded in the leg. His three companions proceeded to apply a tourniquet, hid him below some stones near the river, and went

off to another contiguous spot. Minutes later, some soldiers found Hernando García's hiding place and fired at him. Mr. García lost his life as a consequence.

According to statements of witnesses, the commander of the troops immediately ordered the inhabitants to gather in the church of the locality where they were compelled to remain lying on the floor all night under threat of being shot to death.

Subsequently, the army ordered some of the villagers to move the bodies from where they were to a sports field located in the center of the hamlet where they remained exposed all night.

In addition to the foregoing, the inhabitants of the village were victims of the plundering of the locality's clinic which was installed in the house where the sister Hildegard María Feldman and Ramón Rojas Erazo were murdered.

II. PROCESSING OF THE CASE BEFORE THE IACHR

2. Having received the complaint and without prejudgment as to its admissibility, the Commission, in a communication of May 22, 1992, transmitted the pertinent parts to the Government of Colombia, and requested it to supply the respective information.

3. In a note of September 16, 1993, the Government of Colombia replied to the Commission and with respect to the murder of HILDEGARD MARIA FELDMAN, RAMON ROJAS ERAZO, and HERNANDO GARCIA informed that the current status of proceedings was as follows:[FN1]

The investigation having been concluded, the Brigadier General Commander of the Third Brigade, Judge of First Instance, decided to suspend all proceedings against the army personnel involved in the investigation in view of it being considered that there was no basis for convoking a court martial, since it was proven that, pursuant to the Military Criminal Code, there were grounds, such as legitimate defense and unavoidable accident, for excluding illegal action and culpability. In a judicial decision of July 22, 1991, the Honorable Superior Military Court confirmed in all its parts the suspension of all proceedings initiated on May 17, 1991 by decision of first instance in view of the consideration that in the case sub-examine there appear to be three fully demonstrated grounds to assume no illegality and justification, such as strict performance of a legal duty, necessary defense of a personal right or that of another against unjust aggression, and the necessity of defending a personal right or that of another not defensible by other means (established in Article 26, Nos. 1,4, and 5 of the Military Criminal Code).

With respect to the nonexhaustion of internal remedies, the Jurisdiction of Administrative Law establishes for those damaged by acts or omissions of officials of the Government or the Government itself, the possibility of bringing suit under this Jurisdiction against the entity, the official, or both, and if such suit should be successful, the satisfaction of the damages on the part of the entity shall be provided for in the decision. Colombian law (Decree No. 01 of the 1984 Code of Administrative Law) contains a specific procedure for cases of responsibility against the Nation which must be exhausted before appealing to the respective international venues.

[FN1] This and all other texts cited are a summary of the content of the originals.

4. The Commission continued to process the case in accordance with the standards of the American Convention on Human Rights and its Regulations, giving each of the parties the opportunity to argue what they consider advisable with respect to the statements of each and sent the reply of the Government of Colombia to the petitioner on October 4, 1993.

5. On November 11, 1993, the petitioners presented objections and observations with respect to the reply by the Government of Colombia which were duly noted by the Commission and passed on to the Government for its information and comments.

6. In the course of gathering and checking information provided by the parties, the Commission, in its note of November 30, 1993, placed at the disposal of the Government of Colombia the pertinent parts of the document of remarks transmitted to the Commission by the petitioners.

7. On December 30 of the same year, the Government of Colombia reported that the staff of the personnel office of the Jurisdictional Branch was on vacation pursuant to Decree 1660 and requested a 45-day extension for giving a response. The additional time was granted by the Commission in its communication of March 13, 1994. The Government has provided no new information on the status of the case since that date.

8. During its 85th period of sessions, the Commission granted the petitioners a hearing on January 28, 1994 to take up, among various other matters, the case concerning the murder of HILDEGARD MARIA FELDMAN, RAMON ROJAS ERAZO, and HERNANDO GARCIA.

9. In the course of the hearing before the Commission and representatives of the Government of Colombia, the petitioners expressed their observations orally and in writing with respect to the facts and the status of the investigations. The Government of Colombia presented no comments regarding the statement by the petitioners at the hearing of January 28, 1994 with respect to the status of the case.

10. In adopting the present report, the Commission has taken into consideration statements of various witnesses, whose testimonies were placed at its disposal by the petitioners on March 25, 1994, and which concern the following facts: a) the death of sister Feldman and the farmer José Ramón Rojas Erazo; b) the form in which Señor HERNANDO GARCIA was executed by the army; c) the form in which the army acted against the inhabitants of El Sande on September 9, 1990.

11. TESTIMONIALS[FN2]

[FN2] The testimonies given below are an extract of the original documents.

A. With respect to the death of sister Feldman and the farmer José Ramón Rojas Erazo:

a. ROGELIA MARINA LEYTON, owner of the house where José Ramón Rojas Erazo and the sister Feldman died.

"On September 9, my husband JOSE RAMON ROJAS ERAZO was taking care of some livestock business and returned here at four o'clock. He tied up his horse in front of the house, came directly into the kitchen and told me that he was hungry and that I should serve him food. I did not serve him on the dining-room table but on another bench. Sister Hildegard was in the house taking care of a patient whom I was helping with the food, so she sat down next to my husband on the same bench and asked him how he had made out with the business. Then the shooting began. My husband went on eating and Señorita Hildegard covered her face with her hands and said, 'Holy Virgin, what was that? Now what do we do?' I told her that we should get down on the floor. And so they stood in preparation for sitting down and when they stood the shots hit them. My husband fell to one side and sister Hildegard on the other. Then I put my arms around my husband's waist and held him up so that he wouldn't fall down hard. He said 'Jesus' and made a sound that couldn't be understood, a strange sound like about three times. At the second one, he made an effort to speak but at the next one, he didn't answer me. The nurse FLORINDA QUIROZ and the other two, my daughter Gladys Concepción Rojas, and Ruby Marleny Zambrano, my goddaughter, said "Let's run because they're going to kill us here."

So, we went out through the front door, the main one, supporting the patient. We ran to a hill to hide and stayed there until the shooting stopped at around five in the afternoon and then came down. I begged them to find out for me if I could get into the house to get the bodies of my husband and sister HILDEGARD and they told me that the comandante had said to come. We got there and the comandante gave me his condolences and said, 'There's your husband. See what you can do about burying him. Take charge of your husband's body.' I replied, 'What about Señorita HILDEGARD's body?' He told me 'Don't worry, we'll be responsible.' He asked me what she was doing and I told him that she was treating a good friend of mine who was ill and then he asked me 'Why do you give shelter to guerrilleros?' and I told him, 'Señor comandante, you are carrying a gun in your hand and you come and ask me for shelter. I won't refuse you because you may kill me.' So, he said, 'That's how it is' and he laughed.

He asked me if the house was ours and if we kept weapons. As for weapons belonging to us, 'My husband had two rifles, one was to lend to the workers and he used the other for hunting. My husband did not belong to any armed group, he worked in farming, had cattle, paid his obligations.'"

b. FLORINDA QUIROZ ROSERO (patient whom Hildegard was treating)

"On September 9, I was in the house of Don Ramón Rojas and Rogelia Leyton. That was around four o'clock. I was there with sister HILDEGARD. I'd had an injection a little while before they began shooting from outside. The house went dark. They did it without any warning. The late Ramón Rojas fell first and then sister HILDEGARD. We women all ran out because if we didn't they would have killed us all with another burst. They did that thinking that there were

guerrilleros but there weren't any guerrilleros. In Don Ramón Rojas's house there were myself, the doctor (Hildegard), my good friend Don Ramón, Don Ramón's wife, the little servant Ruby, and Concepción's daughter. There was no warning or any shout before the shooting started or we would have heard something and we would have run. And we didn't see anybody, either."

c. Priest CIPRIANO LORENZO BASTIDAS (parish priest of Samaniego)

"The guerrilla attack on the army became known in this way: The army came up because they knew for certain that a group of guerrilleros was in El Sande and they found out which house they were sheltered in. As I was told, they came in on one side of El Sande and turned off on the side of a ravine where they circled the house where the group of guerrilleros was. When they were close to the objective, a guerrillero who was standing guard saw them and opened fire. The other guerrilleros were bathing in Cristal River 100 meters or so from the house. The soldiers killed the guerrillero and then, thinking that the other guerrilleros were in the house, opened fire on the two houses. It should be noted that the two are adjoining."

d. Lieutenant NESTOR BELTRAN DUSSAN

"For the last four days we were on a troop movement from the locality of Guachavez towards El Sande because we had been informed that there was a FARC group, Movement 29 Front of the FARC, in the vicinity. Precisely on September 9, we were coming from El Socorro and at approximately 15 hours we made contact with two civilians or peasants who were coming from El Sande whose names I don't know. They informed us that between twelve-thirty and one-thirty, the group we were looking for had held a meeting in the locality of El Sande and they had deployed toward the house of señor Ramon Rojas, who died in that place... As soon as we learned that, we adopted a military approach maneuver in order to arrive through the high ground and come down simultaneously to keep the group from escaping us. The counterguerrilla that was deployed at the high ground surrounded the village and found itself close to Don Ramon Rojas's house, exactly where El Tigre ravine and Cristal River meet. In those movements we made visual contact with the group and at the moment we approached we were sighted by the lookout (sentinel) who, on seeing us opened fire, and so starting off the battle. We began to advance by eliminating the sentinel and firing on the rest of the group who were on the river. Going forward on the road we came to Ramón Rojas's house, from which shots were coming. In attempting an approach to it, private Caicedo Angulo, a machine gunner, was wounded. On that account, the attack on the house was intensified for the purpose of consolidating the objective. The battle on the river was taking place at the same time. After a while...it was possible to reach the house and the respective search was made..."

e. Private JULIO CESAR CAICEDO ANGULO

"On Sunday, September 9, of this year, at about 4 o'clock in the afternoon, I was at El Sande Section, that is, in this place where we now are. I was on patrol with my comrades Montaña, Hernández, and other whose exact names I don't know. We were close to the village of El Sande and we passed it. On crossing the river I saw that there was a sentinel there in a policeman's uniform and he was able to shoot at my comrades who were also armed and they shot at him. The sentinel fell dead. I must clarify that I was not aware whether he was dead. We continued on

our way and further down was the house from where they shot at me because I was going to set up my machine gun to rake the ones on the river. I was exposing half my body and felt that they hit me on my right leg and so I sent off a burst at the house and remained there. Then, my other comrades came, they supported me and followed me and that was all that happened. He was able to see what person shot at him and he wounded him, identifying him in that way. There were two guerrilleros and it was one of them who shot at me and he was wounded and left and the other ran off."

f. Official of the municipality of Samaniego[FN3]

"The only thing I know about these incidents was the version given me by the army major in command of all the detachments present in this place. He told me that the incidents happened in this manner: When they arrived at the place, they saw that there was a man on the outside of the house with a gun. He says that it was a guerrillero and that when they approached this man shot at him wounding a soldier in the leg. That in retaliation, this soldier who was armed with a machine gun shot at the attacker and that since he was on the outside of the house, some of the shots struck the house and went through the walls and, unfortunately, the Swiss sister and Señor Ramón Rojas were inside and were hit by the bullets and died..."

[FN3] Version of Major Cajiao.

g. Judge SANDRA BASTIDAS

With respect to the proceedings of judicial inspection and of inspection of the place at the "encampment," she stated that "First, I must clarify that I carried out the proceeding of judicial inspection of the house in which there were the elements and tools used by the guerrilleros and which belonged to the regular Armed Forces but not the one indicated as an 'encampment and where the persons mentioned died...' "One of the lieutenants explained to me in his statement that in the intelligence operations prior to the confrontation they were informed that the guerrillero group was sheltered in the house of one of the citizens of the village and for that reason they went to that place and attacked it. Unfortunately, there were civilians inside the house who died... As a human being and as a judge, at no time do I consider it moral, humane, or legal to indiscriminately attack a population because of considering, from the point of view of the Armed Forces, that all the members of the community are guerrilleros. Apart from military operations and tactics about which I know absolutely nothing, I believe that the conflict and the war is between the armed forces and the subversive groups; the civilian population deserves more respect and consideration. I believe that never should such a course of action be taken as was, unfortunately, the case in this succession of events..."

That upon arriving at the site of the conflict, the bodies had already been buried by the inhabitants of the region, for which reason it was decided that they should be exhumed and post mortems done by the medical personnel attached to the court. That she received statements regarding the events from persons of the place who had witnessed them. That she received them from four persons, who were in agreement. That the Army arrived at the place without warning

and attacked the population indiscriminately asserting that they were all guerrilleros. That the dead were for the most part members of the civilian population. That this version was confirmed in the exhumation and examination of the bodies, inasmuch as only one of the dead was a guerrillero and the rest were persons known in the region, farm workers who had no connection with subversive activities; stating for the record that the painful aspect was that the community concerned was one of the most poverty-stricken and forsaken. That they had caused the death of a missionary who was serving them as a nurse and operated a rudimentary pharmacy. That some members of the population, in a very confidential and fearful manner admitted that their lives had been threatened by the Army...

B. Regarding the manner in which Señor HERNANDO GARCIA was executed by the Army:

a. SEGUNDO ABIGAIL GARCIA TORRES

"On September 9, 1990, I was on my farm. I was with my wife. Three of my children were in the settlement of Sande. At four o'clock, more or less, I was with HERNANDO GARCIA ZAMBRANO or ZEMBRANO GARCIA and his wife. At that time we heard three or four shots. These were followed right away by the rest of the shots, now in a burst. We got scared then and I said to them, 'Let's run for the river.' My wife, said 'But what about the children? Where could they be?' We left, running with the same fear, HERNANDO, my wife, HERNANDO's wife, my daughter with the children, and a brother of mine. We told my daughter and the youngest boy, and my brother to leave the house up above and go to the other house. Then HERNANDO said, 'Don't leave me alone because I'm shot in the leg.' So, I tied up his leg and made him go deeper into the mountain and I told him, 'Stay quiet here until this blows over. Your leg is broken. We'll get you to the first-aid station later so they can give you intravenous serum and an anesthetic.' I accompanied him there and hid nearby him. He called to me a number of times and I went back to see him. There was no sound of shooting anymore and he said, 'Get me out of this.' 'Stay quiet till the shooting is over. Let's wait a little longer.' I returned to my post and heard some shouts. I went out to listen, thinking that it was the Army telling us we could come out but it had been some soldiers shouting among themselves. I asked, or shouted to them, 'Can we come out, now?' So, they answered me, 'Get out of there.' I knew where my family was and ran to the edge of the river where there was a large cave encircled by stones. The Army fired two shots at the stones where we were and a burst right after that. I said to my family, 'They finished off HERNANDO.' Then it got dark and we wanted to get out of there because we could not sleep in that place and so that's what we did. When we got to the farm we were all together. Then, they said HERNANDO GARCIA and the other guerrilleros had been killed."

With respect to the members of the Army who fired the shots at the stones and to the place where you all were, he said that they saw only the sparks. "What I did was to go to the cave with my family." That he remained in the ditch for at least an hour and a half. That he thinks that the persons who did the killing were from the Army. That HERNANDO did not belong to any armed group and that he was a poor man, a farmer, and head of a family. That HERNANDO carried no weapon. That after he left HERNANDO, there was silence for a good while, then a shot and I said, "They finished off HERNANDO..."

b. Lieutenant NESTOR BELTRAN DUSSAN

"The individual HERNANDO GARCIA was one of those who was shot down at the upper part of the river at the moment he was running away with another alleged outlaw. This act was done by an army squad known as "Arco 3."

c. MARIA CARMEN GUELGA DE GARCIA

"While we were going, they wounded Señor Hernando García who was with us. I saw them clearly and they were from the Army... I immediately put a tourniquet on Hernando which stopped the bleeding. We put his leg up and his head down. I said, 'Let's leave him and hide.' And he answered 'Don't go. The shooting is over.' And my husband came out and shouted to the Army, 'We're coming out.' And then they said, 'Hit the ground, and right now.' Afterwards, I took off with my husband and we stayed there. Later I heard the shooting that they finished him off with... When we reached the chapel, I said, 'It makes me sad that you killed Hernando.' And he answered, 'No, it was a guerrillero who was groaning...'"

d. ROGELIA MARINA LEYTON (wife of Don Ramón Rojas Erazo)

About the persons who died on September 9 as a result of the shooting that took place that day, she said that a man by the name of HERNANDO GARCIA ZAMBRANO and a guerrillero died. All they said was: There were four dead and one wounded. I knew him because he was one of my husband's workers. That the place where the body lay, or was found, of the one they said was a guerrillero, was right out in the road opposite the HIMAT, a little off on a diagonal, which was very far from my house. That she knew the missionary Hildegard since "being here in our settlement, she would help us in preparing our celebrations."

C. On how the army behaved against the inhabitants of El Sande on September 9, 1990:

a. LUZ MARINA ERAZO, wounded by Army shots.

"I was in the settlement of El Sande on September 9. It could have been more or less five o'clock, maybe a quarter of, when I was coming out of Sande on my way to the house of an uncle of my husband's and in the last house, Don LUIS TORRES's we saw some men. It was the Army and they were armed. It wasn't very far from Don Luis Torres's house when I saw those Army men and they told us to get over to one side of the road. We had to bring some pictures of the Virgin of Laja to Señora Rosario. We delivered them and went to my husband's uncle's house. We hadn't reached his house when we heard shots and we dropped to the ground. My husband fell on the lower side, like in a ditch with a step, and I stayed above. Then, when the shooting stopped, a lot of shots, my husband told me 'Come down here because up there they'll kill you.' When I fell below, my husband said, 'They killed her' and the shooting kept up. They had wounded me but I didn't think I was wounded, only bruised. We threw ourselves on the ground and that was when I choked up with blood. When the shooting stopped, he said, 'Let's go down to the hollow' and when I raised my head there were a lot of soldiers in front and I said to him, 'They're going to kill us, let's not go down.' But later I said to him, 'Let's go down because I am going to die.' I received medical attention on Monday when one of the counter guerrilla, that is, the same ones as

the Army, put adhesive tape on me. My husband tried to get me out that day but he couldn't because he was alone there. They said that all the people were locked up in the chapel... That they didn't see any of the guerrilla people at the moment of the shooting and there hadn't been anyone of them in sight for a long time. I saw no guerrilla shooting. The people shooting were wearing Army uniforms, some with camouflage and others with green trousers and green undershirts which also had green stripes, all of them mixed together..."

b. MANUEL MESIAS OVIEDO GARCIA

"I met up with the teachers José Antonio Rodríguez and Luis Augusto Moran. The three of us were in the kitchen and they invited me to come and see the things they had there for teacher José to use in that kitchen from then on. And then we heard shooting and I asked them 'What could that be?' and they said, 'Holy Virgin, it's the Army. Let's hit the ground!' We stretched out on the floor and then I put my hands over my eyes and when they went out, I was left alone. I heard shouts that had come from the Army and they were saying, 'Come out of the houses, you sonsofbitches.' Then I opened the back door and got under the school but when I hear the shouts, 'Come out!' repeated, I got out of there and went back into to kitchen so as to come out into the hall. Then, inside the house I met two soldiers who pointed guns at me. So, I said to them, 'No, let me by' and they told me 'Go ahead and hit the ground.' I went out to the hall and stretched out and they told me 'In the ball court.' And they were getting more people out and stretching them out in the court next to me, some women with little children and they kept us there and were shouting at us that we were guerrilleros, that they were going to kill us all, and they separated the women on one side and the men on the other side, and they kept on saying to the men that we were guerrilleros. Then this man Señor Rodrigo Morales began to talk. 'No, sir, we are all farmers and I vouch for them.' And so they said, 'And, if they are guerrilleros, we will kill you...'

THE INVESTIGATION BY THE OFFICE OF THE ATTORNEY GENERAL

12. Pursuant to the investigation by the Office of the Attorney General, the following was established:

That four persons were killed in the village of El Sande, township of Santa Cruz: The missionary HILDEGARD MARIA FELDMAN, the farmers RAMON ROJAS and HERNANDO GARCIA, and one guerrillero. Luz Marina Erazo and one soldier received bodily injury. Objects and medicines were stolen from the clinic and, furthermore, the population was detained and threatened thereby causing panic among the inhabitants of the region. That this behavior was observed during an action against Group 29 of the FARC by the counterguerrilla company Pantera 5 and the second counterguerilla. The first, belonging to the counterguerrilla battalion which has its headquarters in the Jose Hilario Lopez battalion in the city of Popayán and the second in the squadron of the CABAL group with headquarters in Ipiales (Nariño).

Likewise, the following conclusions were reached:

That, as shown by photographs taken at the site of the crime and the statements

of witnesses, the lay missionary and Señor Ramón Rojas were sitting on a bench in the rear near the kitchen where it was impossible to see or be aware of what was happening around them. That the members of the Army shot into that poor dwelling built of boards without giving any sign of a warning, basing themselves upon false imputations and assumptions, not being sure who was inside there, causing the death of defenseless civilians. That they wounded and killed Hernando García, a farmer, 28 years of age, father of two children. The Office of the Attorney General comes to the conclusion that "The members of the Army were the ones who committed this unjust and reprehensible act of barbarism which should be punished in accordance with the standards provided therefor..."

13. CONCLUSIONS OF THE ATTORNEY GENERAL'S OFFICE FOR HUMAN RIGHTS

The Attorney General's Office for Human Rights came to the following conclusions:

1. The military operation activated on September 9 and 10, 1990 in the locality of Sande, overstepped the bounds of all general principles that enter into forming the basis for behavior on the part of members of that institution, in coming out with its erratic, excessive, and violent procedures, conduct that is not only actionable but disciplinable: theft, infliction of bodily harm, and homicide... 2. Homicide is under consideration because the officials linked to the investigation because of their behavior caused the death of two farmers without political links of any kind (Ramón Rojas and Hernando García), of a sister who was carrying out nursing duties (Hildegard Feldman) and of another person of unknown identity... 3. Ramón Rojas and Hildegard Feldman were killed by members of the Army inside the residence of the former... 4. Hernando García Zambrano died of wounds inflicted by firearms at the hands of the National Army when he sought refuge in a place quite distant from Ramón Rojas's dwelling...

14. The Attorney General's Office for the Armed Forces, as the Commission is aware, decided, pursuant to the resolution of November 6, 1992, "not to institute disciplinary investigation" because it considered that there was no evidence that would constitute a basis for establishing irregular conduct on the part of the soldiers in charge of the operation and, as a consequence, ordered quashing of the proceeding.

15. On October 6, 1994, the Government sent information regarding the case indicating that according to statements by Rogelia Marina Leyton and Gladis Rojas Leyton, who were in the house at the time the events transpired, it was not a matter of an indiscriminate action as the petitioners assert but rather of a lamentable unavoidable accident. That the armed aggression that triggered the military retaliation came precisely from another house belonging to Señor Rojas, next door to the one in which the victims were. In this context, the Government requests that the circumstance be taken into consideration that although the events in which the persons mentioned lost their lives constitute a lamentable, unavoidable accident, unforeseen by the troop that fought off a guerrillero attack, they cannot be characterized as an arbitrary summary execution.

16. During its 88th session, February 1995, the Commission adopted Report 2/95, which was forwarded to the Government of Colombia so that, within 90 days of the transmittal date, it might make such observations as it deemed pertinent.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

WHEREAS:

Study of the records, reports, and resolutions cited by the parties indicates the following:

A. With regard to admissibility

1. That pursuant to Article 44 of the American Convention on Human Rights of which Colombia is a State Party, the Commission may examine subject matter of the case inasmuch as it concerns violations of rights set forth in the American Convention on Human Rights in Article 4 on the right to life, Article 5 on the right to humane treatment, Article 8 on the right to a fair trial, and Article 25 on the right to judicial protection;

2. That the complaint fulfills the prescribed conditions of admissibility in the American Convention on Human rights and in the Regulations of the Inter-American Commission on Human Rights.

3. That the complaint concerned is not subject to another proceeding of international settlement nor is it a repetition of prior petition already examined by the Inter-American Commission on Human Rights.

4. That all the legal and prescribed procedures, as provided in the Pact of San José and the Regulations of the Inter-American Commission on Human Rights have been exhausted in the prosecution of this case.

2. With regard to the utilization and exhaustion of the remedies of internal jurisdiction

1. That the Mixed Court Judge of the Township of Guachavez, Sandra Oliva Bastidas, was cognizant of the issues from the outset, having received statements from inhabitants of the locality of "El Sande" and relatives of the victims;

2. That the Mixed Court Judge of Guachavez, in turn, gave statements to the Second Court of Public Order who continued to hear evidence;

3. That the Judge, Sandra Oliva Bastidas, reiterated in her statements that those killed were from the civilian population and not the guerrilla. That the house in which the missionary Hildegard María Feldman and Señor Rojas Erazo died was "a common, ordinary dwelling of the village of Sande" and not a guerrillero encampment as alleged by the Army from the outset. And that all the witnesses she questioned agreed in "asserting that they were attacked without warning by shots which were heard and they were aimed indiscriminately at the population";

4. That the testimony in the criminal investigation and in the disciplinary enquiry by the office of the Attorney General, from Rogelia Marian Leyton and Florinda Quiroz de Rosero indicates that no warning of any kind was given prior to the Army attack on the dwelling;

5. That from the testimony given by various of the inhabitants of "El Sande," among them by Señora María Carmen Guelgua de García and by Señor Segundo Abigail García Torres, coincide with the statement of lieutenant Nestor Beltran Dussan, it is evident that Señor Hernando García was executed by members of the Army when he was found hiding behind some stones waiting for the shooting to cease, a place to which he had been brought by his wife after having been wounded in the leg as a consequence of the Army having shot at the population;

6. That the statements of all the witnesses coincide in indicating that there was no crossfire which would support the assumption of combat with the guerrilla and that the army troops shot at the houses and the population in an indiscriminate manner;

7. That, subsequently, Military Criminal Investigating Judge 18, who took over the hearing of the investigation, and despite the statements of the eyewitnesses and of other officials who repeatedly attested to the direct responsibility of the members of the Army for the death of Maria Feldman and the farmers Rojas Erazo and Hernando García, and instead of taking into account this testimony rejected it, exonerating the Army of all responsibility in a judicial decision of May 17, 1991;

8. That the Superior Military Court upheld the foregoing in its judicial decision of July 22, 1992, citing in favor of the members of the Army, antijudicial grounds, such as "strict compliance with a legal duty, the necessity of defending a personal right or that of another against unjust aggression and the necessity of defending a personal right or that of another, not possible by any other means";

9. That the grounds of illegality cited do not appear to be applicable, inasmuch as it has been proven that the victims were constantly in a condition of total defenselessness; that they were not carrying weapons; that mistakenly the dwelling of Mr. José Ramón Rojas Erazo was pinpointed by the Army as a military objective and was attacked as such with no respect for the life of civilians who were inside; that Señor Hernando García was executed by members of the Army when he was found alone, wounded, and unarmed; and because--in accordance with the Office of the Attorney General--the members of the Army who entered "El Sande" on September 9, 1990 committed unjust and censurable acts of barbarousness that should be punished;

10. That, therefore, remedies of internal jurisdiction for the defense of violated human rights are entirely exhausted, without the responsible parties having been either singled out or punished;

11. That this situation falls under the standards established in Article 46.1.a of the American Convention on Human Rights.

C. With regard to the utilization of other remedies

The disciplinary process

1. That the conclusions of the investigating team of the Office of Special Investigations of the Office of the Attorney General are precise in indicating that members of the Army shot at the humble dwelling of Señor José Ramón Rojas Erazo "without giving any warning, on the basis of false imputations and assumptions, not being certain as to who might be inside, thereby causing the death of defenseless civilians" and that members of the Army were the ones who committed "that unjust, censurable act of barbarism which should be punished in accordance with the standards provided for the case" that caused the death of the farmer Hernando García;

2. That during the proceedings of the disciplinary process before the Office of the Attorney General, the Office for Human Rights of the Office of the Attorney General established that the members of the Colombian Army linked to the investigation caused the death of José Ramon Rojas Erazo, Hernando García, and Hildegard María Feldman through their "erratic, excessive, and violent" conduct;

3. That despite the foregoing affirmations by the Office of Special Investigations and the Office for Human Rights, the Office of the Attorney General for the Armed Forces decided, in the resolution of November 9, 1992, "not to open disciplinary investigation" and quashed the trial.

Procedure in accordance with administrative law

1. That, as indicated by the Commission in previous reports, as well as the Inter-American Court of Human Rights in the Saúl Godínez Cruz case, the remedies of internal jurisdiction exhausted in order to enable resorting to an international appeal are not the only ones that may exist in a country's internal law; because not all are applicable in all circumstances; but those that are pertinent are the ones concerned, since "if the remedy is not relevant in a specific case, it is obvious that there is no need to exhaust it";

2. That, as maintained by the Government of Colombia, administrative law jurisdiction does not declare responsibility of the authors of a punishable crime; does not impose administrative nor, even less, criminal punishment, which is precisely what the petitioners claim, since it is intended only as a means of supervision of the State's administrative activity and to obtain compensation for damages caused by abuse of authority on the part of the Executive Branch, but not as a means of redress of human rights violations as provided in the American Convention on Human Rights.

D. With regard to the claim for justice and punishment of the responsible parties

1. That the investigations by the Judge of the Mixed Court of Guachavez, Sandra Oliva Bastidas, the Second Court of Public Order of Pasto, Provincial Prosecuting Attorney's Office for Public Order of Ipiales, the Office of Special Investigations of the Office of the Attorney General, and the conclusions of the Office of the Attorney General for Human Rights in its resolution of October 18, 1991, are at variance with the decisions of military criminal justice--by the Judge of First Instance, commander of the Third Brigade of the Army and of the Superior Military Court which declared suspension of the proceedings in favor of the military personnel involved on the basis of alleged existence of illegality, on such grounds as self-defense and

unavoidable accident, but ignoring the versions of the witnesses that affirm the deliberate form in which the members of the Army attacked Señor José Ramón Rojas Erazo's house causing the death of the missionary Hildegard María Feldman and Señor Rojas Erazo and the manner in which they executed Señor Hernando García without a thought;

2. That the fact that it was military criminal justice that finally conducted the investigation and issued the final decision exonerating those responsible for the death of Hildegard María Feldman, Hernando García, and Ramón Rojas Erazo, constituted an openly unfavorable circumstance for obtaining a fair decision based on the collection and evaluation of the body of evidence put forward in the trials in an objective and impartial manner, as provided by the American Convention on Human Rights;

3. That, as stated by the Commission in Reports Nos. 1/94 and 2/94, in a country where by law when the acts constitute a human rights violation and are attributed to soldiers on duty, the judicial investigations must be carried out by the military agency in question, it becomes symptomatic, although explicable, that this jurisdiction almost always refuses to recognize the accusatory evidence and exonerates the soldiers implicated of responsibility which hampers clarification of the truth and punishment of the offenders, as in the present case, thereby constituting a serious factor directly affecting the right to justice to which the victims and their families are entitled;

4. Trial of military personnel by military courts does not provide the guarantee of impartiality and independence required by the Convention for victims.

E. With regard to friendly settlement

1. That the questions that gave rise to the complaint: the irrecoverable right to life and the irreversible absolution of the responsible parties in the face of evidence that forever denies the victims and their families the right to justice are not easily amenable to settlement by friendly solution;

2. That the parties did not petition the Commission for application of the procedure of friendly settlement provided in Article 48.1.f of the Convention and Article 45 of the Regulations of the Commission;

3. That at the Commission's hearing on September 26, 1994, the accusing organization expressly stated that they did not accept the friendly settlement procedure, for which reason they requested that the proceedings provided for in Articles 50 and 51 of the American Convention be continued;

4. That in the event the friendly settlement procedure is not applicable, the Commission must enforce Article 50.1 of the Convention, issuing its opinion and conclusion on the matter submitted to it for consideration.

F. With regard to the responsibility of the Government of Colombia

1. That in the course of the present case, it has been established, and the Government has at no time denied it, that agents of the Colombian Army participated in killing the Swiss lay missionary Hildegard María Feldman and Mr. Ramón Rojas Erazo and then took part in the arbitrary execution of the farmer Hernando García, during a military operation carried out by the Army in the settlement of El Sande on September 9, 1990;

2. That this point is confirmed by the unimpeachable proofs presented at the criminal investigation during the time it heard proceedings of the provincial court, as well as during the proceedings before the military judges and the disciplinary enquiry by the Office of the Attorney General which are contained in this report and are clear in detailing the manner in which the events transpired on September 9, 1990 in the village of El Sande, department of Nariño, where the Army came in attacking the civilian population intentionally and indiscriminately as manifested in their statements by Señora Marina Erazo who was also wounded by shots fired by the soldiers in this unbridled attack that caused the death of the Swiss missionary and the two farmers;

3. That the States Parties to the American Convention on Human Rights assume, as States, the responsibility of respecting and guaranteeing the rights and freedoms recognized in the convention for all persons under their jurisdiction and they agree to adopt the necessary measures for enforcing the exercise and enjoyment of those rights and freedoms;

4. That, consequently, the Colombian State's international responsibility in the field of human rights, whether established or not by internal justice, arises from the acts of the public power in cases in which, voluntarily or involuntarily, its agents, by action or omission, violate human rights, among them, the rights of persons to personal justice to the degree in which they are denied their legitimate right that the perpetrator of the homicide be criminally punished.

G. Observance of the procedures established by the Convention

1. That on May 23, 1995, the Government of Colombia presented its observations on Report 2/95, stating that the arguments in its defense had not been taken into account; that the testimony of the witnesses had been fragmented and their statements had been only partially cited instead of included verbatim; that the witnesses' statements were not forwarded to the Government so it was not aware of them and had no opportunity to refute them; and that the Government was absolutely and completely in disagreement with Report 2/95 and asked that it be reconsidered;

2. That in processing the instant case, the Commission has given the Colombian Government and the petitioners equal opportunity to defend themselves, has been equally attentive to the arguments of both sides and has been completely impartial and objective in weighing the evidence that each side has presented;

3. That the testimonies cited by the Commission in Report 2/95 are from official documents produced in investigations conducted by Colombian public authorities, some by the Office of the Attorney General of the Nation, an organ of the Colombian Government, and hence cannot be disregarded or disclaimed by the representatives of the Colombian Government;

4. That the Colombian Government itself admits the participation of its agents and its responsibility for the material facts of the claim when, in the same note wherein it requests reconsideration of Report 2/95, it states the following verbatim:

OBVIOUSLY, AS SAID BEFORE, THE GOVERNMENT HAS NEVER DENIED THAT THE EVENTS THAT LED TO THE DEATH OF MISSIONARY FELDMANN AND OF MR. ROJAS ERAZO OCCURRED BECAUSE OF SHOTS FIRED BY THE ARMY.

5. That the procedure of formulating by the Office of the Attorney Delegate for the Military Forces a list of charges against the soldiers directly responsible and belatedly applying administrative sanctions against them, which was also reported, only confirms the Colombian Government's responsibility for the material facts of the claim. It also confirms the Government's responsibility for violating the victims' right to a fair trial. This resulted when the military courts intervened (a practice the IACHR has so often condemned, but which frequently occurs) and exonerated the military of all criminal penalties. The administrative sanctions, which the Commission is not disregarding, do not free the Colombian Government of its international responsibility for the violations of the American Convention on Human Rights to which Report 2/95 refers;

6. That the considerations set forth in the reply from the Colombian Government do not add any new elements that would disprove the facts denounced or show that adequate measures have been taken to correct the situation denounced, so that its request for reconsideration, dated May 23, 1995, is unfounded;

7. That in the conduct of the present case all the legal procedures and regulations of the American Convention on Human Rights and in the Regulations of the Inter-American Commission on Human Rights have been observed, complied with, and exhausted.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

CONCLUDES:

1. That the Government of Colombia has failed to comply with its obligation to respect and guarantee the rights set forth in Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial) and 25 (right to judicial protection), in connection with Articles 1.1 and 2 set forth in the American Convention on Human Rights of which Colombia is a State Party, with respect to the death of Hildegard María Feldman, Ramón Rojas Erazo and Hernando García.

2. That the Government of Colombia has not complied with the precepts set forth in Article 2 of the American Convention on Human Rights, by adopting, in accordance with its constitutional and legal procedures in force, legislative or other types of measures necessary to make effective the right of persons to have justice done them by punishing members of the law enforcement forces on active duty who, in carrying out acts in performance of those duties, violate the right to life.

3. To recommend that the Government of Colombia continue and broaden the investigation of the issues denounced and punish the responsible parties.

4. To recommend that the State of Colombia pay compensatory damages to the families of the victims.
5. To recommend that the Colombian Government adapt its domestic laws to the American Convention on Human Rights so that trials of Government agents involved in human rights violations be conducted by regular courts and not by military penal courts, in order to guarantee that victims will have independent and impartial courts to decide on their cases.
6. To request that the Government of Colombia guarantee the safety of and provide the necessary protection to the eyewitnesses of the events who, at the risk of their lives, have helped to shed light on the facts.
7. To deny the Colombian Government's request for reconsideration of May 23, 1995, since under Article 54 of the IACHR Regulations, the Commission may only admit and consider requests of this nature in the case of OAS member States that are not parties to the American Convention on Human Rights.
8. To publish this report in the Annual Report to the General Assembly of the Organization of American States, pursuant to Article 51.3 of the American Convention on Human Rights and Article 48 of the Commission's Regulations, inasmuch as the Colombian Government failed to take steps to correct the denounced situation within the time periods set in Report 2/95, of February 17, 1995, which was approved by the Commission at its 88th session.