## P. Communication No. 318/1988, E. P. et al. v. Colombia (Decision of 15 July 1990, adopted at the thirty-ninth session)

Submitted by: E. P. et al.

Alleged victims: The authors

State party concerned: Colombia

Date of communication: 10 June 1988 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 25 July 1990,

Adopts the following:

### Decision on admissibility

1. The authors of the communication (initial submission dated 10 June 1988 and subsequent correspondence) are E. P., F. W., D. B., L. G., O. B. and A. H., all citizens of Colombia, residing in the islands of San Andrés, Providence and Catalina, which form an archipelago 300 miles north of mainland Colombia. They invoke articles 1, 2, 25, 26 and 27 of the International Covenant on Civil and Political Rights and claim that, as members of an overwhelmingly English-speaking Protestant population, they are subjected to violations of their rights by Colombia, which has sovereignty over the islands.

2.1 The authors state that in 1819, Colombia asserted sovereignty over the archipelago under the doctrine of uti possidetis and consolidated its administration by military force against the will of the islanders. The authors claim that Colombia has been violating their rights ever since.

2.2 According to the authors, recent Colombian legislation has led to the dispossession of many islanders of their land. As part of a project to "Colombianise" the islands, the Government provides subsidies and incentives to mainland Colombians, particularly to families of four or more, to settle in the archipelago. The process of registering land ownership (Juicio de pertenencia) favours mainlanders by permitting them to post their claims in Spanish at the court house or even in Spanish language newspapers in far-away towns, such as Bogotá or Barranquilla. Indigenous land owners who cannot afford a lawyer, or cannot understand Spanish, or are simply unaware of claims against their land, are in effect victims of expropriation by mainland Colombians. Already 40,000 mainland Colombians and other foreigners have settled on the 44 square kilometre island of San Andrés.

2.3 The authors assert that the overpopulation resulting from the government's policies has caused severe environmental damage. New developments, including more than 30 hotels, 10 banks and 700 imported-goods stores, have put such demands on the water table that an artificial drought has been created, making farming

impossible, thus destroying one of the islanders' traditional livelihoods. The Government has permitted the destruction of the mangrove swamps, formerly rich sources of lobster, fish, crabs and crayfish, by allowing electric power plants freely to dump hot, polluted water. Environmental protection laws are allegedly selectively applied to islanders.

2.4 The authors assert that the Government has granted fishing rights and other concessions to Honduras and other countries without regard to native interests. This has deprived the islanders of another traditional means of survival.

2.5 Spanish has been made the official language. Education is provided only in Spanish and native children are rejected by the schools if they fail to learn Spanish. Public libraries offer books only in Spanish. Natives are presumed to know Spanish in Court. Islanders allegedly are often harassed or even arrested by the police for speaking English in public. Disciplinary actions for these abuses are rare and never result in more than the transfer of the responsible officers; the abuses continue with their replacements. All the mass media are in Spanish. These facts are alleged to constitute violations of article 27 of the Covenant.

2.6 The authors claim that native islanders suffer pervasive employment discrimination. Only 15 per cent of the workers in the private sector are indigenous. Most businesses, and at least one Government agency, La Registraduría de Instrumentos Públicos, hire no natives at all. Natives reap less than 5 per cent of the islands' total income. Natives are also denied equal access to public utilities such as water, electricity and telecommunications. The foregoing, in the authors' opinion, constitutes violations of article 26 of the Covenant.

2.7 With regard to article 25 of the Covenant, the authors note that the archipelago's Governor is not elected by the islanders but is appointed in Bogotá by the President of Colombia. Only 11 of the 90 Governors appointed by the central government have been islanders. Elections to the local council are not by secret ballot. This has led to rampant favouritism and alleged blackmail with regard to jobs, housing, scholarships and other government benefits. In any event, by virtue of law One of 1972, the local council was stripped of much of its power, which was transferred to the Governor. This law also stripped San Andrés of its status of a municipality.

2.8 The authors object to the increasing militarisation of their islands, in particular, the expansion of the Cove-Seaside naval base and other recent land acquisitions by the Colombian Armed Forces. They fear that this may involve them militarily in Central American conflicts of which they wish no part.

2.9 The authors claim to have exhausted domestic remedies, to the extent that they can be deemed available and effective for purposes of article 5, paragraph 2 (b), of the Optional Protocol. A series of letters, telegrams and petitions sent in 1985-1987 to former President Betancur, the Governor and other ministers went unanswered. President Virgilio Barco sent a telegram in reply to one of their letters but nothing that was promised was accomplished. On 4 January 1987, they unsuccessfully submitted a Proyecto de Acuerdo to the Governor seeking restraints on the alienation of land. Several meetings with the Governor produced verbal promises that were not fulfilled. Moreover, the Constitution and the National Bill of Laws of Colombia contain no provisions for the protection or recognition of minorities or their rights, in violation of article 2 of the Covenant.

3. By decision of 21 October 1988, the Working Group of the Human Rights Committee requested the authors to clarify whether they had been individually affected by the alleged activities of the Colombian authorities and to elaborate on their claim that they had complied with the requirements of article 5, paragraph 2 (b), of the Optional Protocol concerning exhaustion of domestic remedies.

4. In their reply, dated 21 December 1988, to the Working Group's request for clarification and elaboration, the authors itemize the effects that the Government's policies are said to have had on them personally:

- O. B. allegedly was denied a teaching position for which she was otherwise qualified because she did not speak Spanish. F. W., D. B., E. P. and L. G., were allegedly unable to qualify for teaching positions in English.

- Three of the authors have children who are allegedly unable to receive education in their native language.

- E. P. was allegedly denied the possibility to apply for a scholarship because he is not Catholic.

- None of the authors claims to have felt able to vote freely because the ballots are not secret.

- All of the authors allege that they are required to speak Spanish in court, before the police and before other officials.

5. By decision of 4 April 1989, the Working Group of the Human Rights Committee transmitted the communication to the State party and requested it, under rule 91 of the rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication.

6.1 In its submission under rule 91, dated 9 August 1989, the State party contends that the authors failed to exhaust domestic remedies, as required by article 5, paragraph 2 (b), of the Optional Protocol.

6.2 The State party outlines in general terms the jurisdiction of the Colombian Supreme Court over constitutional claims emanating from individuals or groups of individuals, and the jurisdiction of the Administrative Courts over collective claims. The State party further notes that administrative remedies are available through the Consejo de Estado (Council of State) or Administrative Tribunals with full jurisdiction and authority to nullify administrative acts deemed to be arbitrary, illegal or an abuse of power. Only after the exhaustion of these remedies may leave to appeal to the Supreme Court be considered and granted.

6.3 The State party finally claims that the authors have failed to clearly identify in their complaint the alleged victims, the rights considered to have been violated or the administrative agents responsible for their situation.

7.1 In their comments, dated 30 August and 2 September 1989 and 17 April 1990, the authors indicate that the domestic remedies suggested by the State party are ineffective. They cite in their support the 1968 decision of the Consejo de Estado, which struck down resolution 206 of INCORA providing land for settlers.

Ostensibly a legal victory, the ruling was allegedly circumvented by the State party through other procedural means, and the dispossession of the natives has continued unabated. Legislation that would have restored San Andrés' status as a municipality was vetoed by President Barco on 30 January 1990 for reasons of "national security and sovereignty".

7.2 Furthermore, the authors contend that resort to domestic judicial remedies would be too prolonged and prohibitively expensive due to the large number of acts and legislation to be contested. They cite the example of a petition to the Attorney General in 1987 in which they asked for collective action on many of their grievances. There was no reply for over two years, and then the authors were merely requested to report in person for confirmation. Meanwhile, the settlement of more Colombians on the islands proceeds at a rate of some 8,000 individuals per year. In view of the urgency of the situation, therefore, the pursuit of protracted domestic remedies is considered ineffective, with no prospect of adequate redress.

7.3 Finally, the authors state that many of the laws and actions in question are constitutional. There is no right of self-determination in the Constitution and article 27 thereof actually guarantees the "free alienation" of land, one of the authors' principal complaints. Contrary to the Government's assertion, the International Covenant on Civil and Political Rights is not incorporated into Colombian law.

8.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

8.2 With regard to the issue of the authors' standing, the Committee reaffirms that the Covenant recognizes and protects in most resolute terms a people's right to self-determination as an essential condition for the effective guarantee of observance of individual human rights and for the promotion and strengthening of those rights. However, the Committee reiterates that the authors cannot claim under the Optional Protocol to be victims of a violation of the right of self-determination enshrined in article 1 of the Covenant. a/ The Optional Protocol provides a procedure under which individuals can claim that their individual rights have been violated. These rights are set out in part III of the Covenant, articles 6 to 27, inclusive. The Committee further notes that no individual, or group of individuals, can in the abstract, by way of actio popularis, challenge a law or practice deemed to be contrary to the Covenant. An individual, or a group of individuals, can only claim to be a victim in the sense of article 1 of the Optional Protocol if he or she, or they, are actually affected.

8.3 With regard to the requirement of exhaustion of domestic remedies, the Committee reiterates that pursuit of such remedies can only be required to the extent that they are both available and effective. It notes that the authors have not pursued the remedies which the State party has submitted were available to them, because they consider them ineffective and because their pursuit would be "too prolonged and prohibitively expensive". The Committee further observes that the authors did not comply with the Working Group's request for clarifications about the steps they had taken to pursue remedies available to them in respect of their individual grievances (see paragraph 4 above). The Committee concludes that the authors have not shown the existence of circumstances which would have absolved

them from exhausting the remedies which the State party indicates are available to them; it reaffirms b/ that mere doubts about the effectiveness of remedies, as well as the prospect of protracted and costly legal proceedings, did not absolve the authors from exhausting them. Accordingly, the requirements of article 5, paragraph 2 (b), have not been met.

9. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(b) That this decision be transmitted to the State party and the authors.

[Done in English, French, Russian and Spanish, the English text being the original version.]

## Notes

a/ See annex X, sect. A above, para. 32.1.

b/ See Communication No. 224/1987 (A. and S. N. v. Norway), inadmissibility decision of 11 July 1988, para. 6.2.