

HUMAN RIGHTS COMMITTEE

Mojica v. Dominican Republic

Communication No. 449/1991

18 March 1993

CCPR/C/47/D/449/1991 *

ADMISSIBILITY

Submitted by: Barbarín Mojica (alleged victim's father)

Alleged victim: Rafael Mojica

State party: Dominican Republic

Date of communication: 22 July 1990

Documentation references: Prior decisions - Special Rapporteur's rule 91 decision of the State party, transmitted on 13 August 1991 (not issued in document form)

Date of present decision: 18 March 1993

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The author of the communication is Barbarín Mojica, a citizen of the Dominican Republic and labour leader residing in Santo Domingo. He submits the communication on behalf of his son, Rafael Mojica, a Dominican citizen born in 1959 who disappeared in May 1990. The author claims violations by the Dominican Republic of articles 6, 7, 9, paragraph 1, and 10, paragraph 1, of the International Covenant on Civil and Political Rights.

Facts as submitted by the author:

2.1 The author is a well-known labour leader. His son, Rafael Mojica, a dock worker in the port of Santo Domingo, was last seen by his family in the evening of 5 May 1990. Between 8 p.m. and 1 a.m., he was seen by others at the restaurant "El Aplauso" in the neighbourhood of the

Arrimo Portuario union, with which he was associated. Witnesses affirm that he then boarded a taxi in which other, unidentified, men were travelling.

2.2 The author claims that in the weeks prior to his son's disappearance, Rafael Mojica had received death threats from military officers of the Dirección de Bienes Nacionales, in particular from Captain Manuel de Jesús Morel and two of the latter's assistants, known under their sobriquets of "Martin" and "Brinquito"; they allegedly threatened him because of his presumed communist inclinations.

2.3 On 31 May 1990, the author, his family and friends requested the opening of an investigation into the disappearance of Mr. Mojica; the Dominican representative of the American Association of Jurists wrote a letter to this effect to the President of the Republic. One month after Rafael Mojica's disappearance, two decapitated and mutilated bodies were found in another part of the capital, close to the industrial zone of Haina and on the beach of Haina. Fearing that one of the bodies was that of his son, the author requested an autopsy, which was performed on 22 June 1990. While the autopsy could not establish the identity of the victims, it was certain that Rafael Mojica was not one of them, as his skin, unlike that of the victims, was dark ("no se trata del Sr. Rafael Mojica Melenciano, ya question éste segun sus familiares es de tez oscura"). On 6 July 1990, the Office of the Procurator General made the autopsy report available to the author.

2.4 On 16 July 1990, the author, through a lawyer, requested the Principal Public Prosecutor to investigate the presumed involvement of Captain Morel and his two assistants in the disappearance of his son. The author does not specify whether the request received any follow-up between 23 July 1990, date of his communication to the Human Rights Committee, and the beginning of 1993.

2.5 The author claims that under the law of the Dominican Republic, no specific remedies are available in cases of forced or involuntary disappearance of persons.

Complaint:

3. It is submitted that the facts described above constitute violations of articles 6, 7, 9, paragraph 1, and 10, paragraph 1, of the Covenant.

Issues and proceedings before the Committee:

4.1 By decision of 13 August 1991, the Special Rapporteur on New Communications of the Human Rights Committee transmitted the communication to the State party, requesting it, under rule 91 of the rules of procedure, to submit information and observations in respect of the admissibility of the communication. The State party has not forwarded any such information, despite two reminders addressed to it on 18 June and 17 November 1992.

4.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the matter has not been submitted to another instance of international investigation or settlement.

4.3 The Committee notes with concern the absence of any co-operation from the State party on the matter under consideration. In particular, it observes that the Government of the Dominican Republic has failed to comment on the admissibility of the communication, in spite of two reminders addressed to it. It is implicit in the Optional Protocol that States parties make available to the Committee all the information at their disposal; this includes, at the admissibility stage, sufficiently detailed information about domestic remedies pursued by, or still available to, the author. The Committee observes that the author's assertion that there are no effective remedies for cases of disappearances of individuals has remained uncontested. In the circumstances, and bearing in mind that the State party has failed to address the issue despite several requests, the Committee is satisfied that the requirements of article 5, paragraph 2 (b), have been met.

4.4 In respect of the author's claim under article 10, paragraph 1, the Committee considers that it has not been substantiated, and that it relates to what might hypothetically have happened to Rafael Mojica after his disappearance on 5 May 1990. In that respect, therefore, the author has no claim under article 2 of the Optional Protocol.

4.5 With respect to the author's claim under article 9 of the Covenant, concerning his son's right to security of person, the Committee notes that he contends that the State party has both failed to provide protection after his son received death threats, of which it was notified, and that it failed to provide assistance in clarifying what occurred to his son. As the State party has not responded to the Committee's request for information, the Committee finds that the author's complaint is substantiated, for purposes of admissibility.

4.6 The author claims that the Government is itself responsible for the death of his son. As the State party has failed to reply to this part of the author's allegations, which related to article 6 and 7 of the Covenant, the Committee also deems them to be substantiated, for purposes of admissibility.

5. The Human Rights Committee therefore decides;

That the communication is admissible in so far as it appears to raise issues under articles 6, 7, and of the Covenant;

(b) That in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it, as well as all relevant documentation, including reports of the preliminary investigation in the author's case, or of such judicial proceedings, including court orders, as may have taken place in the meantime;

(c) That any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the author, with the request that any comments which he may wish to make thereon should reach the Human Rights Committee, care of the

Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(d) That this decision shall be communicated to the State party and to the author.

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

* All persons handling this document are requested to respect and observe its confidential nature.