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on Civil and Political Rights**

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HUMAN RIGHTS COMMITTEE
Fifty-first session

VIEWS

Communication No. 449/1991

Submitted by: Barbarín Mojica

Victim: His son, Rafael Mojica

State party: Dominican Republic

Date of communication: 22 July 1990 (initial submission)

Documentation references: Prior decisions
- Special Rapporteur's rule 91 decision, transmitted on 13 August 1991 (not issued in document form)
- CCPR/C/47/D/449/1991
(Decision on admissibility, dated 18 March 1993)

Date of adoption of Views: 15 July 1994

On 15 July 1994, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol, in respect of communication No. 449/1991. The text of the Views is appended to the present document.

[Annex]

*/ Made public by decision of the Human Rights Committee.
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ANNEX

**Views of the Human Rights Committee under article 5, paragraph 4,
of the Optional Protocol to the International Covenant
on Civil and Political Rights
- Fifty-first session -**

concerning

Communication No. 449/1991

Submitted by: Barbarín Mojica
Victim: His son, Rafael Mojica
State party: Dominican Republic
Date of communication: 22 July 1990
Date of decision on admissibility: 18 March 1993

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

Meeting on 15 July 1994,

Having concluded its consideration of communication No. 449/1991 submitted to the Human Rights Committee by Mr. Barbarín Mojica on behalf of his son, Rafael Mojica, under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts its Views under article 5, paragraph 4, of the Optional Protocol.

1. The author of the communication is Barbarín Mojica, a citizen of the Dominican Republic and labour leader residing in Santo Domingo, Dominican Republic. 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 State party of articles 6, 7, 9, paragraph 1, and 10 paragraph 1, of the Covenant in respect of his son.

The 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 contends that during the weeks prior to his son's disappearance, Rafael Mojica had received death threats from some military officers of the Dirección de Bienes Nacionales, in particular from Captain Manuel de Jesus 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 Rafael Mojica. The Dominican representative of the American Association of Jurists wrote a letter to this effect to President Balaguer; apparently, the author did not receive a reply. 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 the beach of Haina. Fearing that one of the bodies might be 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 que éste según sus familiares es de tez oscura"). On 6 July 1990, the Office of the Procurator General released a copy of the autopsy report to the author.

2.4 On 16 July 1990, the author, through a lawyer, requested the Principal Public Prosecutor in Santo Domingo to investigate the presumed involvement of Captain Morel and his 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 the communication to the Human Rights Committee, and the beginning of 1994.

2.5 The author contends that under the law of the Dominican Republic, no specific remedies are available in cases of enforced or involuntary disappearances of persons.

The complaint:

3. It is submitted that the above facts reveal violations by the State party of articles 6, 7, 9 paragraph 1, and 10, paragraph 1, of the Covenant.

The Committee's admissibility decision:

4.1 During its 47th session, the Committee considered the admissibility of the communication. It noted with concern the absence of cooperation on the part of the State party and observed that the author's contention that there were no effective domestic remedies to exhaust for cases of disappearances of individuals had remained uncontested. In the circumstances, the Committee was satisfied that the requirements of article 5, paragraph 2(b), of the Optional Protocol had been met.

4.2 As to the author's claim under article 10, paragraph 1, of the Covenant, the Committee considered that it had not been substantiated and that it related to what might hypothetically have happened to Rafael Mojica after his disappearance on 5 May 1990; the Committee thus concluded that in this respect, the author had no claim under article 2 of the Optional Protocol.

4.3 Concerning the author's claims under articles 6, 7 and 9, paragraph 1, the Committee considered them to be substantiated, for purposes of admissibility. On 18 March 1993, therefore, the Committee declared the communication admissible in so far as it appeared to raise issues under articles 6, 7 and 9 of the Covenant. The State party was requested, in particular, to provide information about the results of the investigation into Mr. Mojica's disappearance and to forward copies of all relevant documentation in the case.

Examination of the merits:

5.1 The State party's deadline under article 4, paragraph 2, of the Optional Protocol expired on 10 November 1993. No submission on the merits has been received from the State party, in spite of a reminder addressed to it on 2 May 1994.

5.2 The Committee has noted with regret and concern the absence of cooperation on the part of the State party, in respect of both the admissibility and the merits of the communication. It is implicit in article 4, paragraph 2, of the Optional Protocol and in rule 91 of the rules of procedure that a State party investigate thoroughly, in good faith and within the imparted deadlines, all the allegations of violations of the Covenant made against it, and to make available to the Committee all the information at its disposal. This the State party has failed to do. Accordingly, due weight must be given to the author's allegations, to the extent that they have been substantiated.

5.3 The author has alleged a violation of article 9, paragraph 1, of the Covenant. Although there is no evidence that Rafael Mojica was actually arrested or detained on or after 5 May 1990, the Committee recalls that under the terms of the decision on admissibility, the State party was requested to clarify these issues; it has not done so. The Committee further notes the allegation that Rafael Mojica had received death threats from some military officers of the Dirección de Bienes Nacionales in the weeks prior to his disappearance; this information, again, has not been refuted by the State party.

5.4 The first sentence of article 9, paragraph 1, guarantees to everyone the right to liberty and security of person. In its prior jurisprudence, the Committee has held that this right may be invoked not only in the context of arrest and detention, and that an interpretation which would allow States parties to tolerate, condone or ignore threats made by persons in authority to the personal liberty and security of non-detained individuals within the State party's jurisdiction would render ineffective the guarantees of the Covenant. In the circumstances of the case, the Committee concludes that the State party has failed to ensure Rafael Mojica's right to liberty and security of the person, in violation of article 9, paragraph 1, of the Covenant.

5.5 In respect of the alleged violation of article 6, paragraph 1, the Committee recalls its General Comment 6[16] on article 6, which states *inter alia*, that States parties should take specific and effective measures to prevent the disappearance of individuals and establish effective facilities and procedures to investigate thoroughly, by an appropriate impartial body, cases of missing and disappeared persons in circumstances that may involve a violation of the right to life.

5.6 The Committee observes that the State party has not denied that Rafael Mojica (a) has in fact disappeared and remains unaccounted for since the evening of 5 May 1990, and (b) that his disappearance was caused by individuals belonging to the Government's security forces. In the circumstances, the Committee finds that the right to life enshrined in article 6 has not been effectively protected by the Dominican Republic, especially considering that this is a case where the victim's life had previously been threatened by military officers.

5.7 The circumstances surrounding Rafael Mojica's disappearance, including the threats made against him, give rise to a strong inference that he was tortured or subjected to cruel and inhuman treatment. Nothing has been submitted to the Committee by the State party to dispel or counter this inference. Aware of the nature of enforced or involuntary disappearances in many countries, the Committee feels confident to conclude that the disappearance of persons is inseparably linked to treatment that amounts to a violation of article 7.

6. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee reveal a violation by the State party of articles 6, paragraph 1, 7 and 9, paragraph 1, of the Covenant.

¹ See the Committee's Views on communications Nos. 195/1985 Delgado Páez v. Colombia), adopted on 12 July 1990, paragraphs 5.5 and 5.6; 314/1988 Bwalya v. Zambia), adopted on 14 July 1993, paragraph 6.4; 468/1991 Oló Bahamonde v. Equatorial Guinea), adopted on 20 October 1993, paragraph 9.2.

7. Under article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author with an effective remedy. The Committee urges the State party to investigate thoroughly the disappearance of Rafael Mojica, to bring to justice those responsible for his disappearance, and to pay appropriate compensation to his family.

8. The Committee would wish to receive from the State party, within ninety days, information about the measures taken in response to its Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]