

**HUMAN RIGHTS COMMITTEE**

**Neptune v. Trinidad and Tobago**

**Communication No. 523/1992**

**16 July 1996**

**CCPR/C/57/D/523/1992**

**VIEWS**

*Submitted by: Clyde Neptune*

*Victim: The author*

*State party: Trinidad and Tobago*

*Date of communication: 18 September 1992 (initial submission)*

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

Meeting on 16 July 1996,

Having concluded its consideration of communication No. 523/1992 submitted to the Human Rights Committee by Mr. Clyde Neptune 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 by the State party,

Adopts the following:

**Views under article 5, paragraph 4, of the Optional Protocol**

1. The author of the communication is Clyde Neptune, a Trinidadian citizen at the time of submission of the communication awaiting execution at the State Prison of Port-of-Spain. He claims to be a victim of violations by Trinidad and Tobago of articles 9, 10 and 14 of the International Covenant on Civil and Political Rights. In December 1993, the author's death sentence was commuted to life imprisonment, following the Privy Council's judgment in

## Pratt and Morgan.

### Facts as presented by the author

2.1 On 17 November 1985, the author was arrested for the murder of one Whitfield Farrel. On 25 May 1988, the author was convicted of the charge against him by the Port-of-Spain Assizes Court and sentenced to death.

2.2 The evidence relied on during trial was that a police patrol on duty had seen the victim running out of a bar with something looking like blood on his chest. The author then came out with a knife in his hand; he first started to walk fast, then began running, before he was caught up with by the police. The author allegedly confessed having stabbed Farrel, in retaliation for stabs Farrel had inflicted on him two months before. Farrel later died in hospital from his wounds.

2.3 The author, in an unsworn statement from the dock, states that the victim had, three months before the incident, stolen his boots and that, when asked to return the boots, he had stabbed the author with a knife. On 17 November 1985, when queuing up at a chicken outlet, the author was again attacked by the man. He tried to defend himself with his fists, upon which the man produced a knife. The author held the man's hand in order to prevent him from inflicting stab wounds, in such a way that the knife pointed to the man's chest. During the fight both of them tripped, the author falling on the victim and stabbing him with the knife by accident.

2.4 According to the author, he could not have run at the time of the crime, since he had sustained broken legs in a motorbike accident six months before the incident. The author asked his legal-aid lawyer to obtain his medical records from the hospital, but the lawyer allegedly refused to do so. The author contends that the legal-aid lawyer who was assigned to his case asked him for money, and since he did not have any, never visited him again to discuss the case.

### The complaint

3.1 The author claims that his right to a fair trial was denied since the judge was, at the time of the crime, the head of the department of public prosecution and directed the police to charge him with murder. His legal-aid lawyer refused to raise this issue. The judge, who was about to be transferred to another court, allegedly issued an order that, whichever court he would be transferred to, the author would have to appear before him. In addition to this, the hearing of the case, scheduled to start on 1 October 1987, was adjourned on 18 occasions, of which 17 times at the request of the prosecutor, because the only witness could not be traced. The hearing finally started on 20 May 1988. The author has remained in pre-trial detention since his arrest, in November 1985.

3.2 The author further complains that he and his fellow inmates are subjected to inhuman conditions of detention at the State Prison. He states that prisoners are kept all day in their cells, measuring 9 feet by 6 feet. Once every two to three weeks, the prisoners, handcuffed,

are taken outside for half an hour. The author submits that he is becoming blind due to lack of natural light. Only two visits per week, of 15 minutes each and with a prison officer staying in the proximity, are allowed. The family has to provide the prisoners with airmail letter forms, for which they then have to ask the prison authorities, and which they do not always receive. Allegedly, most of the letters are suppressed. The relatives further have to buy food and toiletries from the prison authorities in order to provide their imprisoned relatives with them. Dental care and medication have to be paid. Meals are composed, for breakfast and for supper, of bread, butter, jam and black coffee, and for lunch, of rice, peas, half-rotten potatoes and rotten chicken or rotten fish. Since the bread is half-baked and meals do not contain any oil, most prisoners suffer from constipation. A doctor visits the prisoners only once a month and the commissioner of prisons about twice a year. Prisoners are regularly beaten.

3.3 The author submits that, since he was removed from death row in December 1993, he shares a 9 x 6 feet cell with six to nine other prisoners. In the cell are only three beds, and a bucket for urinating. The food is rotten and filthy, and he is allowed only one visit per month. He adds that the prison officer in charge has threatened to kill him because he filed complaints about the situation in prison.

3.4 As to the requirement of exhaustion of domestic remedies, the author states that the Court of Appeal has not yet decided on his case. Three months after his conviction a legal-aid lawyer, who had already represented him before the Assizes Court, was assigned to him in order to represent him again before the Court of Appeal. The author refused this lawyer. Three or four months later, a second lawyer agreed to represent him on a legal-aid assignment. On 8 August 1989, however, this lawyer told the author that he would only represent him against remuneration. Consequently, the author found a third lawyer, who was willing to represent him on a legal-aid basis. Since 18 September 1989, the author has repeatedly been asking the authorities to assign him this third lawyer, and has several times asked the other lawyer to notify the legal-aid board that he is only willing to represent the author on a private basis. On 14 May 1990, however, the second lawyer wrote the author that he would examine his papers, which he had received from the registry of the Court of Appeal. The author therefore claims that his right to legal assistance of his own choosing has been denied. Subsequently, the author contacted a fourth lawyer, who reportedly will represent him before the Court of Appeal. In July 1993, the author was informed by the legal-aid authorities that his appeal was scheduled for hearing not later than November 1993. In a letter dated 29 January 1995, the author states, however, that his appeal has still not been heard.

#### The Committee's admissibility decision

4.1 During its fifty-third session, the Committee considered the admissibility of the communication. It noted with concern the lack of cooperation from the State party, which had not submitted any observations on admissibility.

4.2 The Committee ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter was not being examined under another procedure of

international investigation or settlement.

4.3 The Committee considered inadmissible the author's claim that he had an unfair trial because the judge had been the initial prosecutor in his case and had brought the charges against him, because the author has failed to substantiate this allegation for purposes of admissibility.

4.4 As regards the author's claim that the circumstances of his detention were degrading, the Committee considered that, in the absence of information from the State party about effective domestic remedies available to the author and noting the author's claim that he had been threatened with death for making complaints, it was not prevented by article 5, paragraph 2(b), of the Optional Protocol from examining the complaint.

4.5 The Committee considered that the application of domestic remedies with regard to the length of proceedings against the author and of the pre-trial detention was unreasonably prolonged and that the Committee was therefore not prevented by article 5, paragraph 2(b), of the Covenant from examining whether the communication might raise issues under articles 9, paragraph 3, and 14, paragraphs 3(c) and 5, of the Covenant.

5. Consequently, on 16 March 1995, the Human Rights Committee declared the communication admissible in so far as it might raise issues under articles 9, paragraph 3, 10 and 14, paragraphs 3(c) and 5, of the Covenant.

#### Issues and proceedings before the Committee

6. In a letter of 24 November 1995, counsel for the author states that he has been informed that the author's appeal was dismissed by the Court of Appeal on 3 November 1995.

7. The deadline for the submission of the State party's observations under article 4, paragraph 2, of the Optional Protocol expired on 1 November 1995. On 10 November 1995, the State party requested a one-month extension of the deadline. No further submission has been received from the State party, in spite of a reminder addressed to it on 17 January 1996. The Committee regrets the absence of cooperation on the part of the State party and recalls that it is implicit in article 4, paragraph 2, of the Optional Protocol that a State party must furnish the Committee, in good faith and within the imparted deadlines, with all the information at its disposal. In the absence of information from the State party, due weight must be given to the author's allegations, to the extent that they have been substantiated.

8. Accordingly, the Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

9.1 The Committee notes that the author's claims that he is sharing a 9 by 6 feet cell with six to nine fellow prisoners, that there are only three beds in the cell, that there is not enough natural light, that he was aired only half an hour once every two/three weeks and that the food is inedible have remained uncontested. The Committee finds that the conditions of

detention as described by the author are not compatible with the requirements of article 10, paragraph 1, of the Covenant, which stipulates that prisoners and detainees shall be treated with humanity and with respect for the inherent dignity of the human person.

9.2 The Committee also notes that the author was arrested on 17 November 1985, that the trial against him started on 20 May 1988, after numerous adjournments, and that the author was kept in pre-trial detention throughout this period. The Committee finds that, in the absence of any explanation by the State party and in the light of the author's claim that the reason for the adjournments was that the prosecution could not find the main witness, the delay in bringing the author to trial is incompatible with articles 9, paragraph 3, and 14, paragraph 3(c), of the Covenant.

9.3 The author has further indicated that he expressed his wish to appeal his conviction, immediately after the Assizes Court's judgement of 25 May 1988. It appears from the information before the Committee that seven years and five months elapsed before the Court of Appeal heard and dismissed his appeal. In the absence of any explanation by the State party justifying the delay, the Committee finds that such a long period between conviction and the hearing of the appeal cannot be deemed compatible with the provisions of article 14, paragraph 3(c), read together with paragraph 5.

10. 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 before it disclose a violation of articles 9, paragraph 3, 10, paragraph 1, and 14, paragraphs 3(c) and 5, of the International Covenant on Civil and Political Rights.

11. Pursuant to article 2, paragraph 3(a), of the Covenant, Mr. Neptune is entitled to an effective remedy. The Committee has noted that the State party has commuted the author's death penalty to life imprisonment. In view of the fact that the author has spent over 10 years in prison, of which five and a half years on death row, the Committee considers that the appropriate remedy would be the author's early release, and, pending release, the immediate improvement of the circumstances of Mr. Neptune's detention. Moreover, in order to avoid similar violations in the future, the Committee recommends to the State party to improve the general conditions of detention.

12. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's 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.]