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**Committee on the Elimination of Discrimination
against Women**
Forty-second session
20 October-7 November 2008

**Decision of the Committee on the Elimination of Discrimination
against Women under the Optional Protocol to the Convention on
the Elimination of All Forms of Discrimination against Women
(Forty-second session)**

Communication No. 15/2007^{1 2}

Submitted by: Ms. Zhen Zhen Zheng (represented by counsel,
Mr. Michel Arnold Collet)

Alleged victim: The author

State party: The Netherlands

Date of communication: 22 January 2007 (initial submission)

¹ The following members of the Committee participated in the examination of the present communication: Ms. Ferdous Ara Begum, Ms. Magalys Arocha Dominguez, Ms. Meriem Belmihoub-Zerdani, Ms. Saisuree Chutikul, Ms. Dorcas Coker-Appiah, Ms. Mary Shanthi Dairiam, Mr. Cees Flinterman, Ms. Naela Mohamed Gabr, Ms. Françoise Gaspard, Ms. Ruth Halperin-Kaddari, Ms. Violeta Neubauer, Ms. Pramila Patten, Ms. Silvia Pimentel, Ms. Yoko Hayashi, Ms. Hanna Beate Schöpp-Schilling, Ms. Heisoo Shin, Ms. Glenda P. Simms, Ms. Dubravka Šimonović, Ms. Anamah Tan and Ms. Maria Regina Tavares da Silva.

² The text of one individual opinion (dissenting) signed by Shanthi Dairiam, Violeta Neubauer and Silvia Pimentel (dissenting) is included in the present **document**.

Document references: Transmitted to the State party on
7 June 2007 (not issued in document form)

The Committee on the Elimination of Discrimination against women,
established under article 17 of the Convention on the Elimination of
All Forms of Discrimination against women,

Meeting on 27 October 2007

Adopts the following:

Decision on admissibility

1. The author of the communication dated 22 January 2007 with supplementary information dated 12 March 2007, is Ms. Zhen Zhen Zheng, a Chinese asylum seeker currently living in Deventer, the Netherlands. Ms. Zheng claims to be a victim of a violation by the Netherlands of article 6 of the Convention on the Elimination of All Forms of Discrimination against Women. The author is represented by counsel, Mr. Michel Arnold Collet. The Convention and its Optional Protocol entered into force for the State party on 22 August 1991 and 22 August 2002, respectively.

The facts as presented by the author

2.1 The author was born on 3 March 1986 in Shichuan province, China. She has led a harsh life in China. She has little education. When her grandmother died, she began to live on the streets. She has been subjected to abuse and rape and forced into prostitution in China.

2.2 The author was trafficked together with several other persons into the Netherlands for purposes of prostitution. They were brought to a house from which they escaped. Ms. Zheng stayed with a young man for one night. Then a Chinese woman took her into her house and made her do heavy housework. When, some eight months later, her

pregnancy began to show, she was put out on the street. On 22 June 2003, the author gave birth to a daughter.

2.3 Ms. Zheng applied for asylum on 28 April 2003, when she was pregnant. During the second hearing, Ms. Zheng talked about the abuse that she had suffered; that included intimidation and rape.

2.4 The Immigration and Naturalization Service (IND) denied her request for asylum on 1 May 2003 because she could not give details about her trip from China to the Netherlands, did not have identity documents and waited for eight months before applying for asylum. On 27 May 2003, the District Court of The Hague, residing in Zwolle, declared her appeal unfounded and that she would be in no danger if returned to China.

2.5 On 1 May 2003, IND also decided to refuse to grant her a residence permit as a minor or on grounds of her motherhood because China offers sufficient care to minors and has sufficient and adequate reception facilities for single mothers and their children. The author's application for review was declared unfounded on 19 August 2003. An appeal was lodged with the District Court on 16 September 2003. On 13 February 2006, the Court found her administrative appeal unfounded and denied interim measures. The Court based its finding solely on a publication of the Ministry of Foreign Affairs, which states that China provides enough care to minors and single mothers. On 13 March 2006, the author appealed to the Council of State. Her appeal was rejected on 24 July 2006.

2.6 On 17 August 2006, the author filed a new application with IND based on special circumstances (such as length of time spent in the Netherlands, adjustment to the Dutch culture). The author lodged an appeal against the decision of 26 September 2006 denying her a residence permit. Her appeal was rejected on 16 May 2007. The author's application for judicial review, which was lodged on 11 June 2007, is still pending before the District Court.

The complaint

3.1. The author complains that she is a victim of a violation by the State party of article 6 of the Convention on the Elimination of All Forms of Discrimination against Women. She contends that that provision protects women from trafficking and from being forced into prostitution. She claims that, although the State party is aware of this to a certain extent and wants to do everything it can to fight this crime, it tends to forget the nature of the crime and acts in a manner that breaches article 6 of the Convention.

3.2 The author claims that while it is common knowledge that many women are trafficked in China, it is difficult to uncover how the traffickers operate on account of the enormous network of persons working underground in secrecy. She maintains that it is difficult, if not almost impossible, to prosecute perpetrators, whose whereabouts are unknown; the testimony of one individual is not enough to shut down a network and prosecute perpetrators.

3.3 The author indicates that, according to Dutch law, it is possible for a woman to obtain a residence permit if she contacts the police and informs them that she has been a victim of trafficking. The second condition that must be fulfilled for a residence permit is that the police start a criminal investigation to find the perpetrator(s).

3.4 The author asserts that IND failed to inform her of the possibility of reporting the abuses to the police and of obtaining a special permit to remain in the country in such cases. The author also asserts that IND should have realized during the second hearing that she had been a victim of slavery and prostitution; her medical records showed that she had been traumatized. Moreover, they should have questioned her about the telltale signs of oppression.

3.5 She maintains that it is important to keep in mind that, once a victim informs a public institution, such as the immigration service, about her situation, the woman concerned becomes very vulnerable, especially because of the great risk that someone in the trafficking network will hear that she has gone to the authorities.

3.6 The author asserts that the State party breached article 6 of the Convention by its careless treatment of her application for asylum when she was still a minor and its failure to provide her with specialized legal aid and adequate protection and support. She further asserts that immigration officials did not take Ms. Zheng's low level of education into account and the fact that she was a minor. As a result, she was unable to give any detailed information about the trip to the Netherlands or where her home had been in China. They also did not suggest to her to go and report what she had undergone to the police.

3.7 Due to the negligence of the State party, the author was traumatized during the asylum procedure and suicidal as a result of the insecurity of her situation. She claims that the State party's immigration policy places blame on a victim of trafficking for being unable to give any information about the places she has been or to furnish identity documents.

The State party's observations on admissibility and merits

4.1 By its submission of 7 August 2007, the State party challenges the admissibility of the communication, arguing that the author failed to exhaust domestic remedies and that the communication was not sufficiently substantiated.

4.2 As regards exhaustion of domestic remedies in the asylum proceedings, the State party alleges that the author could have appealed the judgment of 27 May 2003 by the District Court of The Hague to the Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State*). It also alleges that the author had failed to raise the alleged violation of article 6 of the Convention in substance before the domestic courts, thereby denying the State party the opportunity to remedy the alleged violation. The State party refers in this regard to the decision of the Committee in the case of *Constance Ragan Salgado v. United Kingdom of Great Britain and Northern Ireland* (communication No. 11/2006).

4.3 The State party also notes that the author's appeal against the decision of 26 September 2006 denying her a residence permit was rejected on 16 May 2007 and that the author's application for judicial review, which was lodged on 11 June 2007, is still pending before the district court.

4.4 The State party further alleges that the present communication has not been substantiated for the purpose of admissibility. The author refers in very general terms to article 6 of the Convention and fails to indicate how the article was violated in the concrete case.

4.5 For the reasons set out above, the State party submits that the communication is inadmissible under article 4 (1) and/or article 4 (2) (c) of the Optional Protocol.

4.6 Without waving its right to make additional comments on the merits at a later stage, the State party submits that there is no basis for the contention that IND acted without due care by not notifying the author of the possibility of reporting an instance of trafficking in persons to the law enforcement authorities and consequently claiming rights under the special scheme for victims and witnesses/informants (the "B9 scheme"). The State party indicates that the "B9 scheme" is the scheme under which victims of trafficking in persons who have reported to the law enforcement authorities may — for the duration of the investigation and criminal proceedings against the suspect(s) — be granted a temporary residence permit which may subsequently be converted into a permit for continued residence on compelling humanitarian grounds. It argues that the author has not substantiated the account she gave in support of her asylum application either orally

or by providing documentary evidence. The State party notes that the author was able to provide little, if any, information about her identity and members of her family, her past or her journey to the Netherlands. It further notes that she was unable to give the names of her parents and grandmother, by whom she claims to have been raised, to indicate the town she departed from in China, the countries she travelled through or the modes of transport she used on her journey to the Netherlands. Nor was she able to give any information about the people who accompanied her on her journey or where and with whom she resided for about eight months prior to submitting her asylum application. The author provided no supplementary information later in the procedure, i.e., when she had an opportunity to express her views on the notification of intent to reject her asylum application of 1 May 2003, or in the notice of objection submitted on 7 May 2003 in the context of the procedure to obtain a residence permit. The State party therefore concludes that there was no element in the author's statements which should have prompted IND to notify the author of the possibility of reporting an instance of trafficking in persons to the law enforcement authorities. Should the author have notified the authorities, it would have been unlikely, for the same reasons, that this would have triggered any investigation.

4.7 The State party underlines that the author was assisted by a legal adviser in the domestic proceedings and that if there had been any reasons to do so, it is likely that he or she would have informed the author that it was possible to report her situation to the law enforcement authorities and to claim protection under the "B9 scheme".

4.8 Finally, the State party points out that, despite the fact that the author has now been informed of the possibility of doing so, she has not reported in the meantime her case of trafficking to the law enforcement authorities.

4.9 The State party concludes that, should the Committee decide that the case is admissible, the decision would be ill-founded.

The author's comments on the State party's observations on admissibility and merits

5.1 By her submission of 20 September 2007, the author contends that she has exhausted domestic remedies. She explains that there is a clear split (also called "watershed") between *asiel* and *regulier*, the first group dealing only with refugees asking for asylum and claiming they would fear for their life if returned in their home country, and the second group dealing with claims for resident permits, such as the

ones based on human/woman trafficking. The Jurisdiction Division of the Council of State is said to apply this rigid watershed. The author therefore contends that the question of exhaustion of domestic remedies, as far as it relates to the asylum proceedings, is irrelevant and that, with the decision of 24 July 2006 by that body, all domestic remedies have been exhausted with regard to the residence permit procedure.

5.2 The author submits that she has clearly indicated in her communication how article 6 of the Convention was breached. She had told during her second hearing before IND that she was forced to sleep with men, was raped several times and was locked in a house. She reiterates that the State party's failure to do anything with the information that she had provided was in breach of the State party's obligations under article 6 of the Convention. The State party has specialized teams dealing with the very sensitive issue of trafficking and IND should at least have informed the author that she had the option to report the case to the police.

5.3 The author claims that she was not in a position to provide detailed information about what had happened to her because of her low level of education and the fact that she was traumatized by what she had endured. She further argues that, in any event, it is not up to IND to decide whether there is enough evidence to start an investigation about alleged trafficking but a task for the public prosecutor. She reiterates that she should have been given special care by specialized teams who should have investigated whether there were enough grounds to start a "B9 procedure".

5.4 The author disputes the State party's interpretation, according to which the reasons why her former lawyer did not start a "B9 procedure" was because of the lack of necessity to do so. There are many reasons which might explain why her former lawyer did not do so, one being that some years ago, many lawyers were not familiar with this specific procedure.

Additional comments of the State party on admissibility and merits

6.1 While noting the author's contention, according to which the fact that she did not exhaust all legal remedies in the asylum procedure is of no significance as the "B9 procedure" is not part of the asylum procedure, it is the State party's view that the above has no bearing on the fact that she did not exhaust domestic remedies in the asylum procedure.

6.2 With regard to the procedure for obtaining a residence permit, the State party reiterates that the author has not substantiated her complaint under article 6 of the Convention. It further reiterates that the new procedure the author introduced to obtain a temporary residence permit based on human trafficking is still pending, that the author has still not reported human trafficking to the police and that consequently the “B9 procedure” could not be followed.

6.3 With regard to the merits of the communication, the State party reiterates the author’s failure to provide evidence to support her asylum claim. As a result, IND had no information that would have prompted it to advise the author to report to the police that she was a victim of human trafficking. The State party admits that it is not for IND, but rather for the police, to decide if the available information might trigger an investigation. It notes that in the present case the author did not argue that IND made such a decision. With regard to the author’s contention that many of those providing legal assistance are not aware of the possibility of reporting human trafficking, the State party notes that the author, who is now fully aware of this option, has still not reported her case to the police.

Consideration of admissibility

7.1 In accordance with rule 64 of its rules of procedure, the Committee shall decide whether the communication is admissible or inadmissible under the Optional Protocol to the Convention. Pursuant to rule 72, paragraph 4, of its rules of procedure, it shall do so before considering the merits of the communication.

7.2 The Committee has ascertained that the matter has not already been or is not being examined under another international investigation or settlement procedure.

7.3 The Committee notes the State party’s argument that the communication ought to be declared inadmissible under article 4, paragraph 1, of the Optional Protocol for non-exhaustion of domestic remedies both in the asylum proceedings, because the author did not appeal the decision of 27 May 2003 by the District Court of The Hague to the Administrative Jurisdiction Division of the Council of State, and in the residence permit proceedings because the author’s application for judicial review, lodged on 11 June 2007, is still pending. The Committee recalls that article 4, paragraph 1, of the Optional Protocol precludes the Committee from declaring a communication admissible unless it has ascertained that “all available domestic remedies have been exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective

relief". It observes that the only article of the Convention relied upon by the author relating to the facts of this case is article 6. It also observes that the author has not raised the issues under this provision before the State party's authorities, that the author admits that human/woman trafficking can be a basis to obtain a resident permit and that the author has not taken advantage of this possibility by reporting her case to the police. The Committee refers to its jurisprudence according to which the author must have raised in substance at the domestic level the claim that he/she wishes to bring before the Committee² so as to enable domestic authorities and/or courts to have an opportunity to deal with such a claim³. The Committee further notes that the author's application for judicial review is still pending and that the author has not put forward any convincing argument which would demonstrate that this remedy is unreasonably prolonged or unlikely to bring effective relief. The Committee refers to the Human Rights Committee jurisprudence according to which mere doubts about the effectiveness of the remedies do not absolve an individual from exhausting domestic remedies. While sympathising with the author for her inability to explain how she made her way from China to the Netherlands, her illiteracy and the difficulties she encountered since being left an orphan at an early age and the harsh life she has led since finding herself in the Netherlands, the Committee is precluded from examining the case as long as the author has not availed herself of the procedure set out under Dutch Law. For this reason, the Committee on the Elimination of Discrimination against Women finds the present communication inadmissible under article 4, paragraph 1, of the Optional Protocol for non-exhaustion of domestic remedies.

7.4 The Committee therefore decides:

- (a) That the communication is inadmissible under article 4, paragraph 1, of the Optional Protocol on the basis that all available domestic remedies have not yet been exhausted;
- (b) That this decision shall be communicated to the State party and to the author.

² See Communication No. 8/2005, *Kayhan v. Turkey*, Decision of 22 January 2007, para. 7.7

³ See Communication No. 10/2005, *N.S.F. v. United Kingdom*, Decision of 30 May 2007, para. 7.3

INDIVIDUAL OPINION

Individual opinion by Committee members Mary Shanthi Dairiam, Violeta Neubauer and Silvia Pimentel (dissenting)

- 8.1 We are of the view that the communication is admissible. We note the State party's argument that the communication ought to be declared inadmissible under article 4, paragraph 1 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women for non-exhaustion of domestic remedies both in the asylum proceedings, because the author did not appeal the decision of 27 May 2003 by the Hague District Court to the Administrative Jurisdiction Division of the Council of State, and in the residence permit proceedings because the author's application for judicial review, lodged on 11 June 2007, is still pending. We recall that article 4, paragraph 1 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women precludes a communication from being declared admissible unless it has ascertained that "all available domestic remedies have been exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief". We consider that the complaint revolves around the issue of trafficking and that neither the asylum procedure nor the resident permits procedure both initiated by the author on other grounds than trafficking, are relevant. We consider that it is incumbent upon the State party to protect victims of an international crime such as trafficking in persons and to have law enforcement officials adequately trained so as to identify victims of such crime and inform them of the avenues under which they can seek protection. We further observe that victims of trafficking find themselves in a very vulnerable situation and that they should receive guidance on the use of the appropriate remedies.
- 8.2 We considers that the author's allegations relating to article 6 of the Convention, have been sufficiently substantiated for purposes of admissibility, and we declare them admissible.
- 8.3 We have considered the present communication in light of all the information made available to it by the author and by the State party, as provided for in article 7, paragraph 1, of the Optional Protocol.
- 8.4 According to article 6 of the Convention, "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution in women".
- 8.5 With respect to the claims that the State party violated article 6 of the Convention, we note the State party's argument that the author did not at any time give sufficient substantiation of having been trafficked nor did she raise violation of article 6 in substance before the domestic courts denying the state an opportunity to remedy the violation and that she only made very generalised reference to article 6. We note that the State party states

that she gave no information, either at the time she applied for asylum or later on in the procedure, which could have led the IND to believe that she was a victim of trafficking and prompted it to notify the author of the possibility to seek protection under the B9 scheme. We also note the State party's assertions that, in the event the author would have reported her case to the police, an investigation would unlikely have been conducted for lack of information. We further note the State party's argument that the author, despite having been informed by counsel, has still not availed herself of the B9 scheme.

8.6 We however note numerous elements from the author's interviews reports annexed to her communication which should have led the officers of the Immigration and Nationalization Services (IND) to suspect that she had been the victim of human trafficking. For example, as the author asserts, IND should have realized during the second hearing that she had been a victim of slavery and prostitution; she was forced to sleep with men, was raped several times and was locked in a house. These are clear signs of the author having been trafficked as per the definition of trafficking provided for in article 3 (a) and (b) of *The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (The Palermo Protocol) to which the Netherlands became a State party on 27 July 2005. . We also note the author's very limited level of education, including her inability to explain how she made her way from China to the Netherlands, her illiteracy, the fact that she was an orphan from a very early age and was abandoned and left destitute when her grandmother passed away. We further note the medical report annexed to the author's communication which further corroborate the telltale signs of a victim of trafficking.

8.7 In light of the nature of the crime of trafficking and the difficulty for victims, who are often uneducated and traumatized, to report precisely and with great details their experience, we are of the view that the IND did not act with the due diligence the author's situation required by failing to recognize that she might have been the victim of trafficking in human beings and accordingly inform her of her rights, including the possibility to avail herself of the B9 scheme. Under the Palermo protocol, such a duty is clearly established under article 6. Furthermore, we wish to recall that in the concluding observations issued to the State party in 2007, the Committee urged the State party to provide all necessary benefits to victims of trafficking regardless of whether they are able to cooperate.⁴

9.1 Acting under article 7, paragraph 3 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, we are of the view that the facts before it reveal a violation of article 6 of the Convention and makes the following recommendations to the State party:

⁴ CEDAW/C/NLD/CO/4, paragraph 24

-- provide for extension of temporary protection visas, reintegration and support services to all victims of trafficking, including those who are unable or unwilling to cooperate in investigation and prosecution of traffickers

I. Concerning the author of the communication: take steps in order to determine whether the author is indeed a victim of trafficking and, if so, provide her with measures of protection as provided for under article 6 of the Palermo Protocol.

II. General:

- Take measures to ensure that border guards, police and immigration officers are appropriately trained so as to develop the requisite skills to adequately interview and recognize victims of trafficking at an early stage. Provide guidelines for interview techniques that should take into account the vulnerable status of trafficked persons suffering from post-traumatic stress disorder.
- Establish requirements that persons having been identified as presumably trafficked are referred for services and counselling and informed about the procedures under which they can seek specific protection.

9.2 In addition, we would like to point out to the State party that an important purpose served by the Optional Protocol under the CEDAW Convention, when it is used by women, is that it provides States parties the opportunity to assess the weaknesses in the procedures, the legal and administrative institutions and implementation processes of the legal system that does not allow women to obtain the benefit of the law as intended and to take remedial action.

(signed) Mary Shanti Dairiam

Violeta Neubauer

Silvia Pimentel