Amicus Curiae Brief for Communication No. 47/2012 before the UN Committee on the Elimination of Discrimination against Women

Transformative Equality and Violence against Women and the Girl Child

Introduction

1. We are Professor Christine Chinkin and Keina Yoshida, both from the London School of Economics and Political Science and respectfully seek to present this amicus curiae brief to the Committee on the Elimination of Discrimination against Women in the case of Ángela González v Spain. Christine Chinkin, FBA, is currently Professor in International Law at the London School of Economics and a William C Cook Global Law Professor at the University of Michigan Law School. She is an academic member of Matrix Chambers. She is the co-editor of M. Freeman, C. Chinkin and B. Rudolf (eds) The UN Convention on the Elimination of All Forms of Discrimination against Women A Commentary (Oxford, OUP, 2012) and author of the chapter on Violence against Women. She was a scientific advisor to the Council of Europe Committee for the negotiation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Istanbul, 11 May 2011. Keina Yoshida is a doctoral candidate in the Law Department at the London School of Economics. She has been called to the Bar of England and Wales.

2. This amicus curiae brief is submitted with the purpose of arguing that the case of Ángela González v Spain presents the Committee with the opportunity to take into consideration the importance of “transformative equality”, both in giving its opinion and in its recommendations. In doing so, it seeks to assist the Committee by outlining how the existing international human rights framework can be used as a basis to transform gender and social relations and to end impunity for violence against women and the girl child.

3. The structure of the brief is as follows. It reiterates the principles developed by the Committee with respect to gender-based violence against women in the wider context of international law, considers more fully the issue of gender stereotyping and violence against women and the particular communication of these principles to the girl child, outlines the concept of transformative equality and respectfully makes some suggestions with respect to recommendations.
Violence against Women in International Human Rights Law

4. The acceptance of a State’s obligation to prevent, prosecute and punish violence against women is now well established, in particular through the Committee’s General Recommendation No. 19 (1992) and subsequent assertions in its concluding comments and jurisprudence under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.¹ These obligations are also established in international human rights law more generally. The Inter-American Commission and Court of Human Rights (IACtHR) and the European Court of Human Rights (ECtHR) have drawn upon the Committee’s work on gender-based violence against women, in particular General Recommendation No. 19, and in turn the Committee has referred to the decisions of these regional human rights courts. Thus there is a cross pollination of jurisprudence on gender discrimination and violence against women.² Taken together this constructs a powerful and consistent jurisprudence that provides constructive insights into the interpretation and communication of States’ obligations with respect to women’s right to be free from violence. This growing jurisprudence is supplemented by regional Conventions such as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará, 1994) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention, 2011). All this evidences a strong consensus between States on the legal standards they have adopted to combat violence against women.

5. The Istanbul Convention is especially significant as it takes account of and builds upon the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) and General Recommendation No. 19, as well as the jurisprudence of the European Court of Human Rights. When it comes into force on the 1st August 2014, it will be binding on States Parties including the State in this case, Spain.³ We respectively submit that it is therefore appropriate for the Committee to bear in mind this latest legal formulation of States’ obligations with respect to combating violence against women and that this case provides it with the occasion to do so.

² For an example of cross pollination see Jessica Lenahan (Gonzales) v. United States, Report No. 80/11, Case 2.626, 21 July 2011, para 132.
³ Spain ratified the Istanbul Convention on 11th April 2014.
6. With this international human rights legal framework and consensus in mind, in this amicus brief we respectfully submit that the Committee has an opportunity to draw on these instruments and jurisprudence in order to move beyond formal and even substantive equality “towards a real transformation of opportunities, institutions and systems” to effectively combat violence against women and children. We suggest that the Committee can do so by adding to its excellent jurisprudence on domestic violence and through its recommendations to the individual and to the State showing how the vision of equality between men and women through eradication of this violence might be made a reality.

7. The violence perpetrated against women and girls because of their gender is discrimination in and of itself. The protection of women against all forms of violence is part of States Parties’ responsibility to eliminate discrimination against women and to promote substantive equality between women and men. Violence which occurs within the family is “one of the most insidious forms of violence against women... [that] is prevalent in all societies”.

8. In addition to States Parties' obligations to prevent discrimination and to promote equality between men and women, it is well established in international law that States Parties have due diligence obligations to prevent violence against women. The due diligence obligations of States Parties to the CEDAW Convention were first set out in General Recommendation No. 19 and have been fleshed out in the jurisprudence of the Committee which reinforces the international human rights case law on State responsibility for the actions of private actors in connection to violence against women. They have been reiterated in many further instruments, including the Beijing Platform for Action.

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4 UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee), General Recommendation No. 25, § 10; Opuz v. Turkey, ECHR, appl. no. 33401/02, 9 June 2009.
5 UN CEDAW Committee, General Recommendation No. 19, UN Doc. HRI/GEN/1/Rev. 1 § 1. (1994), § 23.
9. The obligation of due diligence has been applied in the case law of the Inter-American Court of Human Rights, the European Court of Human Rights and is enshrined in the Istanbul Convention, Article 5.2. This states that “Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors.”

10. In this case, the State Party’s failure to prevent and protect the mother and girl child resulted in the death of the girl child where there had been a long pattern of physical and psychological violence by the mother’s partner and father of the child, of which the State was aware. The State authorities thus failed in their positive obligations and duties, first, to protect the applicant from domestic violence and second to protect the right to life of the girl child. The State authorities have also prolonged the mother’s psychological suffering by denying her the ‘right to truth’ over the circumstances of the child’s death by failing to carry out an inquest into her death as mandated by international human rights norms. The State has also denied her an effective remedy.

11. We submit that this case highlights the failure of law enforcement agents to live up to their human rights obligations in the face of a woman attempting to protect herself and her child. In this case, the applicant’s continuous reliance on the national law and on the judicial decisions of the national courts to allow the child’s unsupervised visitation with her violent partner resulted in the murder of her daughter. This starkly illustrates the authorities’ collusion with and perpetuation of an institutional system which disadvantages and discriminates against women and girls. The involvement of so many judicial authorities


9 Osman v. the United Kingdom, ECHR, appl. no. 23452/94, 28 October, 1998, §§ 115-116; Opuz v. Turkey, ECHR, appl. no. 33401/02, 9 June 2009.


12 Jessica Lenahan (Gonzales) v. United States, § 178-179; Article 2 of the ECHR obliges States to effectively investigate deaths. See for example Rantsev v. Cyprus and Russia, ECtHR, appl. no. 25965/04, 10 May 2010.
shows engrained structural discrimination. This collusion is further evidenced by the fact that an instance of domestic violence occurred in front of the police officers to which they failed to react appropriately, meaning that the authorities’ failed to take action in clearly violent circumstances with foreseeable consequences.¹³

12. As this case, and too many others show, the result of gender discrimination by legal authorities, including especially in their dealings with private actors, can be fatal. The figures provided in the communication and discussed further below illustrate that this problem is not only a failure in terms of the individual in this case but points to a systemic failure by the Spanish authorities to comply with the due diligence standard required by human rights law.

**Gender Stereotyping and Violence against Women**

13. The State’s failure in this case is all the more egregious given the applicant’s recourse to the law. Although the applicant had filed more than thirty legal communications with the national courts, the State authorities adopted an approach predicated on gender stereotyping.¹⁴ There is evidence of stereotyping by a number of different authorities in this case, including by the police officers who, despite having seen incidents of the violence for themselves, did not take sufficient measures to prevent and punish it. They apparently relied upon the stereotype that domestic violence is not as serious a form of assault or crime as other crimes. Similar to the misconceptions of the courts in The Philippines formed by stereotypes that the Committee observed in Vertido and RPB,¹⁵ the Spanish courts also resorted to gender stereotyping in their considerations of the issue of contact by failing to take into account the mother and daughter’s strongly expressed views about contact with the father. These decisions are predicated on stereotyping around the reliability of women’s voices and views, on the father as a caring parent rather than a violent criminal, and on the desirability of contact with the child’s father in all circumstances, which led to the courts’ negligent assessment of the risk of violence and foreseeability of that risk.¹⁶

¹³ Communication, § 5.
¹⁴ Communication, § 29.
14. The authorities' failure to take into account the best interests of the child, the mother's views, the court appointed psychologist's views and the girl child's own views, demonstrate double gender blindness, which has ultimately been fatal. This blindness relates first to the failure by the authorities to recognise the realities of the lives of women who live in situations of inter-familial violence, and second to the Spanish Government's ongoing blindness over the fact that the authorities' decision-making was tainted by stereotyping. The Committee has previously observed the harmful effects of gender-based myths and stereotypes in the context of court proceedings and employment to remind States of their obligations under CEDAW, Articles 2 (f) and 5. We respectfully submit that in this case too the Committee recognises the harmful, indeed fatal, effects of gender stereotyping.

CEDAW and the Girl Child

15. In this case, the Spanish authorities clearly failed in the State's due diligence obligations towards both the mother and the daughter. This failure, as set out in the communication, was due to gender stereotyping by the judicial authorities and other State institutions which culminated in the murder of the girl child. Although the applicant in this case is the mother of the deceased daughter, we submit that it would be a legal fiction to separate the violence perpetrated against the mother and the child.

16. The right to equality before the law necessitates that protection measures must ensure that the specific situation of the girl child is taken into account. As the Inter-American Commission has noted "Protection measures are considered particularly critical in the case of girl-children, for example, since they may be at greater risk of human rights violations based on two factors, their sex and age".

17. The international framework makes it clear that the best interests of the child must be the 'primordial' consideration in making decisions regarding contact or custody. This is affirmed in Article 5(b) of CEDAW and is reinforced by the Convention on the Rights of the Child, UNGA Resolution 44/25, 20 November 1989, Article 3 (1): "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." See also Committee on the Rights of the Child. General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration primordial, CRC/C/GC/14, 29 May 2013, www2.ohchr.org/English/bodies/crc/docs/GC/CRC.C.GC.14_en.pdf.

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18 Jessica Lenahan (Gonzales) v. United States, § 113.

19 Convention on the Rights of the Child, UNGA Resolution 44/25, 20 November 1989, Article 3 (1): "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." See also Committee on the Rights of the Child. General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration primordial, CRC/C/GC/14, 29 May 2013, www2.ohchr.org/English/bodies/crc/docs/GC/CRC.C.GC.14_sp.pdf.
Child. Further, the Committee has affirmed that the CEDAW Convention applies to the girl child in its General Recommendation No. 28.\textsuperscript{20}

18. The best interests of the child is the central consideration in matters of custody, visitation rights and safety. While there is no presumption that domestic violence negates the right to parenthood or custody under international law, it is clear that this violence must be taken into account. Article 31 (1) of the Istanbul Convention is especially emphatic that “Parties shall take the necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account”.

19. Further, in Article 31 (2) the Istanbul Convention states that "Parties shall take the necessary legislative or other measures to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children". As the communication sets out, the father had previously dragged the daughter out of the house by her feet.\textsuperscript{21} He also committed verbal abuse of the mother in the presence of the child, causing the child distress. The police had also witnessed an incident of domestic violence by the father against the mother, when the daughter was in her mother’s arms. In this case, the State clearly erred in its analysis of risk regarding the foreseeability of the violence and in failing to give effect to the legislative measures in place to prevent and to provide protection from this type of violence.

20. The Istanbul Convention also outlines in Article 45 that in cases of domestic violence sanctions and measures need to be taken to ensure that offences are punished and that victims are protected. The article suggests the adoption of measures including the “withdrawal of parental rights, if the best interests of the child, which may include the safety of the victim, cannot be guaranteed in any other way”. This suggestion is supported by a recent case of the European Court of Human Rights, in which it found no violation of the applicant’s rights, in part on the basis that the State Party had removed parental rights from the perpetrator of domestic violence. It stated that “in relation to the custody of the

\textsuperscript{20}CEDAW Committee General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, 16 December 2010, §21: “States parties in particular are obliged to promote the equal rights of girls since girls are part of the larger community of women and are more vulnerable to discrimination in such areas as access to basic education, trafficking, maltreatment, exploitation and violence.”

\textsuperscript{21}Communication, § 5.
couple’s children, the response of the authorities was also effective. The applicant was granted sole custody and her former partner's parental rights were forfeited (see paragraphs 24-26 above). The UN Human Rights Committee has similarly confirmed that denial of contact may be necessary to respect the best interests of the child and will not result in a breach of non-discrimination provisions. We submit that these cases are consistent with the Committee’s General Recommendation No. 19 and that the Committee should decide similarly in this case.

21. In the instant case, the Spanish courts failed to take account of the best interests of the child and further, failed to consider the violence previously suffered by Andrea at the hands of her father (being dragged out by the feet). The courts placed greater emphasis on the wishes and feelings of the father to have contact with his daughter and thus placed the daughter’s life in jeopardy. In doing so, the State Party also violated Andrea’s rights to be heard under Article 12, and in particular Article 12 (2), of the Convention on the Rights of the Child. The State should have taken into account Andrea’s experiences and memories of domestic violence, her views and also the fact that she was a child growing in maturity throughout the years in which this abuse occurred.

22. The failure to listen to Andrea, to protect her against inter-familial violence and to protect her right to life constituted a denial of the girl child’s rights under the CEDAW Convention and General Recommendation No. 19, paragraph 7 (a). Further, the State violated the mother's rights, in its use of stereotypes in reaching decisions regarding unsupervised contact visits and the occupation order of the house. We also submit that the failure to protect the mother and child resulted in a form of cruel and inhumane treatment contrary to General Recommendation No. 19, paragraph 7 (b). The mother was made to endure unsupervised visitation with a violent man fearing for her child and without the help of the very authorities that have the obligation and duty to protect her and her child. This cruel and inhumane treatment has been on-going given the failure of the State to issue a public apology or admit liability for the death of her daughter.

The inadequacy of the formal equality approach

22 Rumor v. Italy, ECHR, appl. no. 72964/10, 27 May 2014, § 65.
23. The facts in this communication starkly illustrate the inadequacy of formal equality and its false promise towards ending violence against women and children. Despite having numerous laws and statutes on the issue of violence against women in force, these laws have not altered or reduced the high death toll of women in Spain in situations of domestic violence.  

24. The Committee has consistently recognised that law and policies which are gender neutral, or which are gender specific but which are not enforced, do not provide for de facto, substantive equality. In order for substance to be given to these formal legal measures, laws must be implemented and enforced in a gender sensitive manner. As the communication highlights, even where a State has established a “comprehensive model to address domestic violence that includes legislation, criminal and civil law remedies, awareness raising, education and training, shelters, counselling for victims of violence and work with perpetrators” this may not be enough if it does not translate into a practical and effective application of these measures in reality. As the Committee has previously noted, having laws and a legal system in place to address the problem is insufficient, they must be put into effect by State actors who understand and adhere to the obligation of due diligence.

25. The inaction of the State in this case and its absolute failure in its due diligence obligations to protect Andrea, the girl child and Angela, the mother from physical and psychological violence, concretely and tragically show that formal equality measures are not enough in and of themselves. The death of Angela occurred in the full knowledge of the State authorities regarding the situation of violence.

26. Furthermore, the statistics exemplify that although there have been legislative changes in Spain such as the Organic Law 1/2004 of 28 December on Protection Measures against Gender Violence, the number of deaths of women in situations of domestic violence have not declined with 545 deaths of women as a result of domestic violence recorded between 2003 and 2010. Despite the CEDAW Committee’s recommendations in its Concluding Observations to adopt suitable and effective measures to combat violence against women,

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24 Communication, § 34.
25 Şahide Goecke v. Austria, § 12.1.2-12.1.3
26 Fatma Yildirim v. Austria, §12.1.2; Şahide Goecke v. Austria, §12.1.2.
27 Communication, § 34.
the situation in Spain remains unchanged, thus necessitating reforms which go further than legislative advances.

27. A further shortcoming of the formal equality model has been explained by Christine Chinkin and Hilary Charlesworth. They state that "The goal of formal equality for women when compared to similarly-situated men has a blunt edge because, across the world, women's lives differ in so many ways to men's. Reproduction, economic opportunities, education, and political and social contexts, for example, all mark women's lives as distinct to those of men. The language of non-discrimination makes it difficult to emphasise the particularity of women's lives in ways that benefit women: it compresses women's lives into cumbersome and inaccurate categories. It also precludes the possibility of special programs for women."28

28. The inadequacies of the formal equality approach have led to calls for measures to ensure substantive equality. Substantive equality between women and men requires not only redressing the disadvantageous practical impact of apparently neutral laws and practices but also focusing on the "asymmetrical structures of power, dominance and disadvantage at work in society".29 As noted above by Chinkin and Charlesworth, substantive equality is also different from the notion of non-discrimination, which rests on a commitment to formal equality – treating people in the same situation in the same way.

29. While measures adopted to give effect to notions such as formal equality and equality of opportunity have led to some gains, they have had "little effect on the structures of discrimination more broadly. They allow women access to a world already constituted by men and do not challenge gendered structures, such as workplaces and politics". Rebecca Cook has urged an approach that focuses on those who are especially vulnerable. She urges attention to disadvantage, that is "a law or policy that maintains or aggravates the disadvantage of a persistently disadvantaged group is discriminatory."30 This perspective “requires [decision-makers] to look at women as they function in the real world to

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determine whether women’s abuse or deprivation of power is due to their place in a sexual or gender hierarchy”.

30. We submit that in order to effectively combat violence against women, which is a form of gender discrimination, in addition to the changes to the law, structural and systemic changes must be made which subvert and tackle this pervasive discrimination. In the section below we outline how the Committee’s work on transformative equality and reparations is a powerful tool in this respect.

Transformative Equality

31. The idea that equality must be transformative has been recognised by a number of international bodies, including this Committee and has been taken up by bodies such as UN Women. Professor Sandra Fredman has argued:

Transformation requires a redistribution of power and resources and a change in the institutional structures which perpetuate women’s oppression... It aims to facilitate the full expression of women’s capabilities and choices, and the full participation of women in society.

32. Professor Bob Hepple QC has argued in a different context that transformative equality means going beyond “paper tigers, fierce in appearance, but missing in tooth and claw”. It means going beyond formal and substantive equality in order to transform the structures in place which create and foster the conditions which allow violence against women and girls to take place. We submit that in the context of violence against women, transformative equality means giving effect to the necessary changes in institutional structures and systems in a way which responds to women’s capabilities and rights to be free from discrimination and gender-based violence.

33. The CEDAW Committee has been a driving force behind the notion of “transformative equality” having recognised its importance in General Recommendation No. 25. In that recommendation the Committee stated in paragraph 7 that “States parties’ obligation is to

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address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal societal structures and institutions”. Later in paragraph 10 the Committee uses the words “a real transformation of opportunities, institutions and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns”.

34. General Recommendation No. 25 thus recognises that in order to dismantle and address stereotypes, States parties must transform their institutions, including courts, police services and law enforcement agencies and that temporary special measures are an appropriate tool to engage to do this.

35. More recently, the CEDAW Draft General Recommendation on Women’s Access to Justice emphasises that equal access to justice implies that every component... “is independent, impartial effective, efficient, available, accessible, gender sensitive, of good quality and adaptable and responsive to women’s diverse needs as rights holders” (paragraph 1). In paragraph 2 the Committee recognises that “transformative remedies form integral components of access to justice”.

36. The Committee has recognised within the context of Access to Justice, that for remedies to be transformative, gender discrimination must be combatted through, inter alia, the overcoming of sex and gender stereotyping, and education and awareness raising. Further, in its responses to the murders and disappearance of women and girls in Ciudad Juárez, Mexico the CEDAW Committee indicated how States might respond differently to fulfil their obligations including through "specific policies on gender equality... and a gender perspective integrated into all public policies"; other means are through education, public information programmes and awareness campaigns, the use of media, popular music, theatre, art, film, and working with civil society, including women’s organisations.

37. The need for transformative measures has also been emphasised by the Special Rapporteur on violence against women, its causes and consequences. In her 2013 report Rashida

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Manjoo outlines how due diligence obligations are both individual and systemic. The Special Rapporteur has explained:

Systemic due diligence refers to the obligations States must take to ensure a holistic and sustained model of prevention, protection, punishment and reparations for acts of violence against women. At a systemic level, States can meet their responsibility to protect, prevent and punish by, among other things, adopting or modifying legislation; developing strategies, action plans and awareness-raising campaigns and providing services; reinforcing the capacities and power of police, prosecutors and judges; adequately resourcing transformative change initiatives; and holding accountable those who fail to protect and prevent, as well as those who perpetrate violations of human rights of women. Also, States have to be involved more concretely in overall societal transformation to address structural and systemic gender inequality and discrimination.36

38. The message here is clear. States parties must adequately resource transformative change initiatives. The idea that change must be transformative is repeated later in her report when she states:

The due diligence obligation in respect of remedies cannot be just about returning women to the situation they were in before the individual instance of violence, but instead should strive to have a transformative potential. This implies that remedies should aspire, to the extent possible, to subvert instead of reinforce pre-existing patterns of cross-cutting structural subordination, gender hierarchies, systemic marginalization and structural inequalities that may be at the root cause of the violence that women experience.37

39. The Committee further explains in its Mexico Inquiry that overall, what is sought is “a global and integrated response, a strategy aimed at transforming existing sociocultural patterns, especially with regard to eradicating the notion that gender violence is inevitable”.38 The idea that strategies have to be transformational is linked to the issue of reparations. As the Special Rapporteur on Violence against Women, its Causes and Consequences has explained:39

24. Since violence perpetrated against individual women generally feeds into patterns of pre-existing and often cross-cutting structural subordination and systemic marginalization, measures of redress need to link individual reparation and structural transformation. Additionally, women who experience violence have

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37 Ibid., at § 75.
38 Ibid., at §§ 159 and 287.
traditionally encountered obstacles to accessing the institutions that award reparations.

31. Even in non conflict scenarios, acts of violence against women are part of a larger system of gender hierarchy that can only be fully grasped when seen in the broader structural context. Therefore, adequate reparations for women cannot simply be about returning them to where they were before the individual instance of violence, but instead should strive to have a transformative potential. Reparations should aspire, to the extent possible, to subvert, instead of reinforce, pre-existing structural inequality that may be at the root causes of the violence the women experience before, during and after the conflict.

62. Guarantees of non-repetition offer the greatest potential for transforming gender relations. In promising to ensure non-recurrence, such guarantees trigger a discussion about the underlying structural causes of the violence and their gendered manifestations and a discussion about the broader institutional or legal reforms that might be called for to ensure non-repetition. A gender-sensitive reparations programme should seize this opportunity to advance, as part of the venture of constructing a new and more inclusive democratic order, a society that overcomes the systemic subordination of women.

40. The need for systemic and transformative changes is further illustrated by the case law of the Committee. Cases such as RBP v The Philippines illustrate the ongoing inadequacies of legal systems which do not change and take into account the need to eradicate gender stereotypes in order to transform gender relations. Myths and stereotypes embedded in judicial systems call for systemic due diligence duties and reforms.

41. The work of the Committee and the Special Rapporteur illustrate that in order to combat violence against women structural and transformative changes are necessary. The measures must address legal shortcomings but also must go further to engage with other spheres of socio-cultural influence in order to bring about real change to the context in which this violence takes place.

Transformative Recommendations

42. Alongside the remedies and reparations requested by the applicant and the remedies and compensation available under General Recommendation No. 19, in line with international developments in the field and the Committee’s own work, we would like to suggest the Committee recommend the following measures for the State to implement:
a) **To carry out an effective investigation and inquest into the death of Andrea as mandated by international human rights standards.**

These standards have been confirmed in the similar case of *Jessica Lenahan (Gonzales) v. United States*, where the Inter-American Commission held:

178. The Commission also considers that when there are State failures, negligence and/or omissions to protect women from imminent acts of violence, the State also has the obligation to investigate systemic failures to prevent their repetition in the future. This involves an impartial, serious and exhaustive investigation of the State structures that were involved in the enforcement of a protection order, including a thorough inquiry into the individual actions of the public officials involved. States must hold public officials accountable - administratively, disciplinarily or criminally - when they do not act in accordance with the rule of law.

179. The State should undertake this systemic inquiry on its own motion and promptly. A delay in this inquiry constitutes a form of impunity in the face of acts of violence against women and promotes their repetition.

Their purpose has also been fleshed out by Rashido Manjoo, the Special Rapporteur cited above. She states that:

The State has an obligation to investigate all acts of violence against women, including systemic failures to prevent violence against women. Where a specific incident of violence takes place in the context of a general pattern of violence against women, there is a wider scope required to comply with the due diligence obligation. The investigation should also be conducted with a gender perspective and consider a victim’s special vulnerability. The investigation element has two aims: to prevent future repetition as well as to provide justice in individual cases. This should address both State structures and the actions of the specific public officials involved. Such an investigation must be impartial, serious and exhaustive and hold public officials accountable either administratively, disciplinarily or criminally where the rule of law is contravened. The due diligence requirement is not limited to the way in which an investigation is conducted, but also encompasses a right for victims to access information about the status of an investigation.⁴⁰

We therefore request the State to carry out a serious and exhaustive investigation of the State structures involved and to apologise for the delay in carrying out this investigation. The on-going failure by the State to carry out an investigation into the death of Andrea constitutes a violation of the applicant’s right to truth under international human rights law. This right to truth necessarily includes the wider and structural context of the death of Andrea. An example of this can be found in the case of *Rantsev v Cyprus and Russia*, in which the European Court of Human Rights found Cyprus in breach of its procedural obligations under ECHR, Article 2 for failing to conduct and effective investigation into Ms Rantsev’s

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death and found a violation of Article 4 of the Convention by Russia of its procedural obligations to investigate the alleged trafficking. This case illustrates that it is not only the death of the individual which must be investigated but further that there is a need for a systematic and thorough inquiry into its context.

b) **To support an ongoing public dialogue and involve media bodies in discussions about women’s human rights in general and violence against women and girls in particular.**

The media’s powerful role in dismantling social and cultural stereotypes has been recognised in connection to their right of access to justice this should be emphasised with regards to violence against women.\(^4\) This recommendation is supported by findings by the UN Committee against Torture in 2009 in which it states that “The Committee further recommends that public awareness-raising campaigns on all forms of violence against women should be broadened.”\(^5\) This public awareness and dialogue should include dissemination of information about the CEDAW Convention, General Recommendation No. 19 and also the Istanbul Convention, which Spain has ratified.

c) **To ensure that all State authorities are trained to recognise the different and diverse manifestations of violence against women and girls across the continuum, including situations such as domestic violence, human trafficking for the purposes of sexual exploitation, and forced marriage.**

d) **To provide adequate and regular training on the Convention, the Optional Protocol thereto and the Committee’s general recommendations, in particular general recommendations No. 19 and No. 28, and on the Istanbul Convention to the judiciary, law enforcement agencies and legal professionals.**\(^6\)

e) **To design and implement educational programmes educating girls and boys about violence against women, and other issues such as masculinities and gender-discrimination.**

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\(^6\) RBP v. The Philippines (Communication No. 34/2011), § 9 (iv).
These educational programmes and trainings should not be limited to State actors but should also be implemented through school curricula in order to change the socio-cultural patterns which foster a culture of violence against women.

f) To make provision for an educational fund for girls and boys in the name of the murdered child, Andrea, having regard to the wishes of the applicant, relating to education directed at the study of inter-familial violence, domestic violence or violence and girls.

In its draft recommendation regarding education and awareness-raising on access to justice, the Committee has recommended that States parties and non State actors “take steps to ensure the equal access of women and girls to education and information and to promote women’s legal literacy”. We submit that educational programmes on gender based violence should be targeted at women and men. In order to create real shifts in culture for future generations this education should start in school for both girls and boys where discussions should take place about gender stereotypes and violence.

We also believe that an educational fund is an important and valid means of giving meaning to the concept of transformative reparations. The Inter-American Court has recognised the importance of education funding in its decision in Rosendo Cantú v Mexico in which it granted a number of reparations including an order “that the State awards scholarships in Mexican public establishments to Mrs. Rosendo Cantú and her daughter, Yenys Bernardino Rosendo, that covers all the costs of their education until the completion of their higher education, whether of technical or university studies.”44


45 Beijing Platform for Action, Actions to be taken by Governments, § 239 (g).

g) To support, encourage and provide means or incentives for the creative use of programmes in the national media for the dissemination of information of various cultural forms (such as theatre, popular music and film) relating to gender equality and violence against women.45

h) To carry out public awareness campaigns about gender discrimination and gender-based violence within public sporting venues, such as La Liga football matches, to engage with
leading public figures in such venues to gain their public support and to hold a major public event, such as at a La Liga football match.

Signed

Christine Chinkin

Keina Yoshida