



**3rd International Conference
on Public Policy (ICPP3)
June 28-30, 2017 – Singapore**

T06P9

Learning from abroad

**The role of the CEDAW Committee in the implementation of
public policies on gender issues. Spain in the face of CEDAW
Committee decisions: the case of young girls**

Ruth Abril Stoffels, Universidad CEU-Cardenal Herrera, Spain

rabil@uchceu.es

1-6-2017

Introduction:.....	2
The Individual Communication system.	3
Spain and the Decision adopted by the Committee on the so-called Angela González Carreño Case4	
Discussion.....	7
State party Reports: Spain and girl issues	9
Discussion.....	14
Conclusion	15

The role of the CEDAW Committee in the implementation of public policies on gender issues. Spain in the face of CEDAW Committee decisions: the case of young girls

Introduction:

The Convention of the Discrimination against Women (CEDAW) is the most widely ratified convention in history. The Committee on the Elimination of Discrimination against Women (Committee) is a body of independent experts that monitors the implementation of the CEDAW. This Committee is mandated to help States to fulfill their obligations through concluding observations (including observations and recommendations) to periodic reports of State Parties, decisions to individual communications against States and general recommendations on issues related to women rights.

As a consequence, we can assume that its influence on public policies should be very large.

Furthermore, as an international body that guarantees the fulfilment of the Convention in all countries around the world, we can boast that it will ask for the minimum standard of implementation of the obligations contained in this Convention in all of the countries. Otherwise we would assume that depending on the concerning State, the perspective in examining its behavior will be different.

Finally, as there is a legal obligation to accomplish the CEDAW provisions and a political commitment to accomplish all of the decisions taken by its Committee, we can assume that the States will take steps to improve women rights as they are enshrined in CEDAW.

We will try to see if and how Spain follows these decisions. We will seek if the decisions of this international body have any real impact on the Spanish public policies.

In order to reach an answer to this issue we will study the reaction of Spain to those CEDAW decisions which set out that Spain has violated some rights of the Convention. We will also study, the different reports presented by Spain to the Committee.

To sum up we will see in detail the following:

- If the CEDAW Committee has a real impact on the Spanish public policies relating gender issues.
- If and how this international body reflects and promotes the elimination of gender discrimination in Spain.
- Whether the same answer could be applied to other States or it is due to a specific attitude of Spanish authorities towards these CEDAW decisions
- How the “best interest of the child” (BIC) as a cross principle of Human Rights Law can be found in the narrative of both, the Committee and the State, when dealing with topics affecting girls as target group

The Individual Communication system.

The CEDAW Committee is the body created by the Convention “For the purpose of considering the progress made in the implementation of the present Convention” (Art 17 CEDAW)

The Optional Protocol to the Convention on the Elimination of Discrimination Against Women allows individuals or groups of individuals claiming to be victims on any of the rights set forth in the Convention by that State Party to present a Communication to the Committee. After testing that the communication meets the necessary requirements (e.g. exhaustion of domestic remedies; that the complaint has not been examined by the Committee previously or under another procedure of international investigation or settlement; State signature of the Optional Protocol is incompatible with CEDAW; or that is ill founded and not sufficiently substantiated), the Committee will examine the allegations of the alleged victim.

If the Committee considers that there has been a violation of any of the articles of the Convention, it will make some recommendations to the State Party. Usually, some recommendations are addressed directly to ensure the end of the violation along with the reparation of the victim and other to avoid new violations of the convention on these grounds through public changes in legislation, or in public policies.

It is very important to underline that: “The Committee's views and recommendations will be transmitted to the parties concerned. The State Party has six months to consider the views of the Committee and provide a written response, including remedial steps taken. The Committee may request further information from the State Party, including in subsequent reports” (Article 7 OPCEDAW). The Committee’s views are public in OHCHR webpage and the States are encouraged to give to publicize them.

It means that in principle these views and recommendations are not binding for the States, but there is a political commitment to follow them. And I said “in principle”, because one should remember that this Committee is the body created by the Convention “for the purpose of considering the progress made in the implementation of the present Convention” (Art 17 CEDAW) and in order to specify the tasks, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OPCEDAW) states

“7.4. 4. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.”

The meaning of “give due consideration” is quite vague, but if one adds the obligation to submit a written response of the actions taken in the light of the views and recommendations given, it becomes clear.

Spain and the Decision adopted by the Committee on the so-called Angela González Carreño Case

The decision on Angela Gonzalez Carreño case was adopted the 16th July 2014. It was the first Decision of the Committee that establishes that Spain has violated the Convention on the basis of the domestic violence, child visitation rights and child support . And here, as we will see later, the so called quasi-jurisdictional system caused no real change in Spanish position towards the victim and the situation of those in similar situations. In fact, Spain argued that there was no obligation to fulfill the decision.

The facts are the following:

Angela González Carreño suffered violence from his husband during and after her marriage. This violence was reported to the authorities by her. Once divorced, she got the custody and guardianship of her daughter, Andrea, but the father obtained a limited regime of supervised visits. The violence continued and Andrea often witnessed those events. When visiting Andrea, the criminal father questioned her about her mother’s private life, insulted her and had such a behavior that Andrea began to be afraid of his father and didn’t want to visit him. After a long process, Angela got protective orders from her husband but not for her daughter. The criminal father violated several times the protective orders with no real legal consequences. At one point, and after the divorce judgement, a supervised system of visits was granted. Unfortunately this regime was gradually relaxed regardless of Angela’s opposition and appeals, and despite many violent incidents perpetrated by the criminal father during the period of supervised visits, in April 2003, he killed Andrea and committed suicide. Angela failed to get declared F.R.C. criminal liability for the murder because, the Courts said that death extinguished responsibility on account of his suicide. She failed to get compensation in Spanish Courts for miscarriage of justice based on the negligent behavior of

authorities in their obligation to protect Andrea, despite they were aware of the danger that Andrea was facing during non-supervised visits to her father.

The decision: Angela submitted a communication to the CEDAW Committee claiming to be a victim of violation of some of the rights set forth in the CEDAW. The Committee made the following recommendations to Spain:

- (a) With regard to the author of the communication:
 - (i) Grant the author appropriate reparation and comprehensive compensation commensurate with the seriousness of the infringement of her rights;
 - (ii) Conduct an exhaustive and impartial investigation to determine whether there are failures in the State's structures and practices that have caused the author and her daughter to be deprived of protection;
- (b) In general:
 - (i) Take appropriate and effective measures so prior acts of domestic violence will be taken into consideration when determining custody and visitation rights regarding children and so that the exercise of custody or visiting rights will not endanger the safety of the victims of violence, including the children. The best interests of the child and the child's right to be heard must prevail in all decisions taken in this regard;
 - (ii) Strengthen application of the legal framework to ensure that the competent authorities exercise due diligence to respond appropriately to situations of domestic violence;
 - (iii) Provide mandatory training for judges and administrative personnel on the application of the legal framework with regard to combating domestic violence, including training on the definition of domestic violence and on gender stereotypes, as well as training with regard to the Convention, its Optional Protocol and the Committee's general recommendations, particularly general recommendation 19.

One year later the Spanish Government answer to all of this was to reject making any kind of change or action to comply with the recommendations:

- (a) Regarding to Angela Gonzalez Carreño:
 - (i) there is no formal procedure ("There is no basis in law") to grant the author appropriate reparation and comprehensive compensation.
 - (ii) there has already been an exhaustive and impartial investigation, and it is impossible to initiate a new investigation;
- (b) In general:

- (i) There is already a good legislation where prevails the best interests of the child and the child's right to be heard these ones must rule in all decisions taken in this regard. Anyway there are some normative developments dealing with the exercise of visiting and custody rights of the minor in cases of gender violence that need to be taken into consideration.
- (ii) The Spanish authorities have already strengthen the application of the legal framework to ensure that the competent authorities exercise due diligence to respond appropriately to situations of domestic violence. Anyway there are some regulations in process that will have an impact in this issues.
- (iii) There is already mandatory (and volunteer) training for judges and administrative personnel on the application of the legal framework with regard to combating domestic violence.

The answer to the first point is quite disturbing because it means that Spain grants no force to the Committee Decision. Of course, one could agree that this is just a "recommendation" and not a legally binding decision. But it is a recommendation that asserts that Spanish behaviour has been inconsistent with the CEDAW and it must have some consequences. The Government should settle a mechanism to give a compensation to the victim; otherwise there will be no consequence to the Spanish breach of the CEDAW and its effects on the victim.

To the second recommendation, Spanish government asserts that, in spite of what was said by the committee, there is no structural or systemic failure in the Spanish juridical o legislative order. Spain adds that there is no lack of capacity or personal resources that can foresee any repetition of such events and that there is nothing to investigate. In other words, Spain is challenging the decision of the Committee.

According to what was said in Art.7 OPCEDAW, the State has the right to choose what, how and when to do it, but it has to "give due consideration to the views". And this entails, from my point of view, that the State cannot challenge the views but has the right to decide only the ways in which the recommendations are followed.

Of course, one could argue that there is no legal force for the recommendations, but one cannot forget that it is the body that has been mandated to consider the progress made in the implementation of the CEDAW , therefore its views and recommendations cannot be ignored, especially, when in the procedure to answer to communications the State has already had time to defend their position. Furthermore we must accept, as S. Cusack reminds us, that "Where State Parties have engaged in wrongful gender stereotyping [...] or failed to address gender stereotyping [...] they are required under CEDAW to remedy their violation. "Without reparation" —the Committee has explained— the obligation to provide an appropriate remedy is not discharged" .

Regarding the general recommendations made in the decision, we should say that there were already some legislative initiatives before and while the procedure before the Committee took

place. But this initiatives didn't get legislative and administrative mechanisms at the level of what was asked by the Committee as we can see in the Concluding Observations to the 7-8 Spanish Periodic Report and the opinion of the 48 of the most renowned women Organisations asking for the withdrawal of the law due to the wrong treatment of the regime of custody and visit of the minors by their criminal fathers in cases of gender violence .

Discussion

To sum up, the Committee establishes that Mrs. Gonzalez Carreño has been a victim of a violation of some of the rights enshrined in CEDAW. As a consequence, some of the actions and omissions of Spain cannot be considered lawful in the light of some of the provisions of the CEDAW. As I have already mentioned, one can argue that recommendations are not legally binding but it is impossible to maintain that CEDAW is not legally binding, and therefore, as soon as we accept the interpretation given by the Committee to the Convention is the right interpretation, (which is something in the spirit of the Convention since it has been configured as the guardian of the Treaty). One could say that the State has not the obligation to comply exactly with the recommendations of the Committee, but Spain cannot remain inactive, something should be done in order to ensure that that country complies with its international obligations. That is why there is a follow up of the decisions.

But we should not single out Spain. From the beginning of this mechanism of Communications, in 1999, the Committee has decided in over 24 cases that there has been a breach of the Convention. The Follow Up working group (formed in 2009) has decided to put the follow-up dialogue to a close in three cases, in ten cases and it is still working in the dialogue with the States (Spain is today between those States under the follow up dialogue). In the rest of the cases, the follow-up is done through the reporting system .

To sum up, we should conclude that the situation in Spain is not exceptional and that the States do not really believe in this communication system to improve their performance of the Treaty Obligations.

Therefore is this a useless mechanism? Let us see it from a different point of view. In words of S. Cusack, the most important specialist in public interest litigation in gender questions "A woman might use the Optional Protocol to CEDAW because she wants to seek redress for human rights violations, but there are no further means of obtaining redress domestically; to hold a State Party accountable for its actions; draw international attention to her case; mobilize support and apply pressure on the State Party to act; bring about structural change; prevent similar violations in the future; bringing her case to a body of gender equality experts that can scrutinize the State Party's actions; strengthen jurisprudence on women's human rights; establish an international legal precedent that would compel state action; provide a focus for national advocacy on women's rights issues".

And let's remember the aims of Women's link worldwide with this so-called "high profile litigation": "High-profile litigation is highly visible public interest litigation with broad media coverage. From the start of a case, we seek to promote the broadest possible public debate and social mobilization. The case thus becomes a means of promoting a more democratic and diverse discussion of the human rights issue at stake. In this sort of litigation, the outcome of the legal process matters less than the quality of the public debate generated" . One of the members of the Committee Hayashi Yoko stated that "it is important that the CEDAW Committee's views are exposed and subjected to analysis and/or criticism from the outside world" .

In this case this organisation determined that "Decisions issued under the individual complaints procedure of the CEDAW Committee are a recommendation, but States are under a duty to report on their compliance. On the other hand, although the decision refers to the specific circumstances of the case, it should be borne in mind that the Committee's decisions establish authentic interpretations of CEDAW that become part of the Convention itself and therefore determine how all States Parties should interpret and implement the Convention within their respective jurisdictions.

The *González Carreño v. Spain* sets a tremendously important precedent when it is the first time that a case of domestic violence against Spain, a country recognized positively by its legislation to fight against gender violence, is examined. With this decision, the CEDAW Committee recalls that the positive obligations of States parties to the Convention go far beyond the establishment of a broad regulatory framework, and effective implementation by the administrative and judicial authorities is required. This implementation must be free of stereotypes and preconceived notions of what constitutes domestic violence, expanding what has already been maintained by this Committee in previous communications (see for example *V.K. v. Bulgaria*)" .

In other words, the decision had not the obvious expected results. The State neither made anything to get the reparation for the victim nor initiated an impartial investigation of the facts. Additionally, it didn't pass any law or promote the eradication of stereotypes in public servers. It is true that some law have been modified but, first, the legislative procedure to change the law that protects the women victim of violence and her minor children, started before the decision of the Committee, and secondly the laws didn't arranged suitably the problem as the Committee itself said in a subsequent document .

If one should conclude from a legal perspective, one would say that the results of the procedure are discouraging since the individual recommendations have not been followed and the general ones only partially.

But if one should analyse it from a wider perspective, as an strategic litigation, one should say that it has served as a moral reparation for the victim, visualizing the problem, giving solid legal reasoning to advocates for subsequent disputes and giving strength and arguments for human and women rights activists and NGOs to demand public policy changes all around the world.

State party Reports: Spain and girl issues

Every Human Rights Treaty envisages the obligation of the States to submit periodically (every four years in CEDAW) a report on how they are implementing the substantive provisions of the Treaty. These reports shall inform about the legal, administrative and judicial measures taken by the State in order to implement the treaty, and should also mention any factors or difficulties met in the implementation of these rights .

The drafting and preparation of the report enables the State to reflect upon the state of women discrimination within their jurisdiction for the purpose of policy planning and implementation. Along this process the State should be able to detect problems and challenges and to use the information collected for improving the planning and coordination of future policies . The more open the process is, the better information they will get.

The participation of civil society and NGO in the process contributes to a critical view that will help the State to improve public policies in order to avoid women discrimination.

In addition to these State parties' reports, the Committee may receive information from other sources, such as United Nations agencies, National Human Rights Institutions (NHRI), non-governmental organizations (NGO), both international and national, and professional groups and academic institutions.

Once the Committee receives the report and the rest of the information, it would submit a list of different issues asking the State party for those data or questions omitted in the report. From the Committee's point of view, the reception of this information seems essential to examine correctly the progress of the State in implementing the CEDAW.

In general, the State submits a new document trying to answer every question asked by the Committee But sometimes the States answer those questions directly during the session where the Committee considers the periodic report.

During these sessions the States are invited to present their reports and to provide the Committee with additional information. Subsequently, they start on the so-called "constructive dialogue" between both. This constructive dialogue wants to stress that the aim of the procedure is not to blame or judge in any way the behaviour of the State, but to assist the States in their efforts to implement the treaty.

After the above mentioned "constructive dialogue", the CEDAW Committee approves the concluding comments which points out the factors and difficulties affecting the implementation of the Convention for that State party (positive aspects, principal subjects of concern and suggestions and recommendations to enhance implementation of the Convention).

If we focus on Spanish reporting attitude, we can confirm that Spain has usually presented every reports on time . The last one is the only one that join the 7th and the eight ones because

the previous one was presented in 2008 but the numbers and information was from 2007 and backwards, so the information contained in the report included seven years. It is usually leaded by the “Oficina de Derechos Humanos del Ministerio de Asuntos Exteriores” with close relations with the Ministry of Social Affairs and when there was any, the Ministry of Women Affairs.

We shall admit that the Spanish reports are quite detailed and cover every field, but one could assume that there is more self-indulgency than critics on them, even with such intricate topics as gender violence or human trafficking.

Along this paper, we are dealing with the girls issues in these reports.

To start with, I would like to place a general critic, because too little attention is paid to girls. There are four perspectives where girls are mentioned:

Firstly, girls are as vulnerable to some harmful behaviors as other persons “women, girls and boys” for instance to human trafficking. As a consequence, they are mentioned when dealing with these topics, but no special mention is done on their specific vulnerability

Secondly, as minor, but with no gender differences, girls may suffer some discrimination that is consequence of the discrimination suffered by her mother, for instance, when the girl loss the nationality because her mother did it too.

Thirdly, girls and boys are sometimes mentioned as they are linked to the vulnerability created to their women-mother because the latter is the one to take care of them. But in this case the focus is not on the minors but on the mothers of the minors.

Finally, there are some mentions to the girls as a specific vulnerable group when dealing with some topics, as education, reproductive health or abortion.

I would like to underline that these four perspectives are present too in the General Observations of the Committee and the Concluding Observations to Spanish Reports. As a consequence, we cannot find a driving force in the Committee in dealing with girl questions by States. Girls are quite invisible for both the Committee and the States.

If we focus on education from a temporal perspective, we should admit that there have been several progressive advances in some questions. These questions are usually pointed out by Spain, showing that they are working in solving them, and the Committee recommends some new steps to work in. In general, the Committee asks to go deeper in the direction adopted by Spain and endorses some of the ideas contained in the so-called “shadow reports”.

At the beginning they focused on the limited number of girls-boys mixed schools. They underline also the low number of girls studying at the secondary schools. But these questions disappeared soon from the Spanish reports of and from the Concluding Observations of the Committee. In fact, the Committee welcomes the progress achieved in this area along the subsequent Observations.

A second area of concern in this field, is the existence of stereotypes under the Spanish educative system and the tendency of girls to decide studying what is called “feminine sectors”. All of the State Reports and Concluding Observations emphasize these topics. The first one telling what is done and the second one asking for stronger efforts.

Finally, the Committee highlights the low presence of roma girls in schools, especially in Secondary Schools. These questions appeared from the beginning and they remain in the agenda of both entities. Several actions have been done against this problem but they are not the required to eradicate the problem. For instance, in the last Concluding Observations, the Committee picks up what was said on this topic all along the previous Concluding Observations, recommending “to intensify its efforts”, “to ensure that all gender stereotypes are eliminated, “To provide mandatory comprehensive an appropriate education on sexual al reproductive health and rights...” , “to take effective measures to retain Roma girls in school”

There is one question left, which does not appear at the beginning. But once it appears its importance increases progressively, and I would say, with a more stressing language and with a growing demanding attitude from the Committee to the State. It is the question of the sexual and reproductive health. At the beginning it was the topic of “sexual education” . “Sex education and hared family responsibilities” , with a soft language “recommends that sex education be widely promoted and targeted at adolescent girls and boys Sexual and reproductive health” that is little by little more demanding “recommends to provide mandatory, comprehensive and age-appropriate education on sexual and reproductive health and rights” .

This last question is very interesting not only in the frame of the educations, but also linked to the area of social services and legislation, for instance the abortion. The abortion for girls has been covered only by some of the Reports of the State. On the other side, initially, the Committee only demanded for information about the legislation , afterwards, the wording was more direct: “265. The Committee is concerned at the significant increase in abortions among adolescents aged 15 to 19 years old.266. The Committee recommends that abortion among adolescents be addressed by a multiplicity of means, including age-appropriate sex education in primary and secondary schools”. But this topic has been recently addressed by the Committee in a very strong way by demanding Spain for some changes that the government is not willing to meet. In fact its policy goes to a different perspective. “31... The Committee recommends that the State Party: (b) Ensure that the bill on the right to abortion for girls between 16 and 18 years of age is not adopted” · As we can perceive there is a strong confrontation between the State position and the position of the Committee. Spain passed a law in 2015 with a clearly opposite perspective to the one asked by the Committee .

Leaving aside the question of stereotypes in education, Spain informs the Committee continuously on the measures adopted to reduce gender stereotyping in media, labor market, family relations, politics, sports and other fields of social life. And The Committee welcomes the measures taken and the progress achieved in this field, but stresses the necessity to go further and urges Spain to work harder on more areas since the persistence of these

stereotypes is high in all of the mentioned fields . Nothing in the report of Spain or in the Concluding Observations of the Committee is addressed directly and exclusively to violence against girls, except what is said about roman girls and about stereotypes.

When Spain and the Committee address the problem of violence, or they focus directly on women, or they group together girls, boys and women as if they were similarly vulnerable to violence and, as a consequence they don't deal with the specific situation of girls violence. They only mention girls in the Concluding Observations to 7 -8 Periodic Report, the Committee urges to "To put in place comprehensive measures to prevent and address violence against women and girls and ensure that women and girls who are victims of violence have access to immediate means of redress and protection and that perpetrators are prosecuted and adequately punished" . With regard to the rest of the Concluding Observations analyzed, they do not even mention the violence against girls.

A significant topic for Spain and for the Committee is human trafficking. In fact, if one compares the different Spanish Reports and the Concluding Observations of the Committee, one could observe the increasing significance given to this subject. At the beginning, Spain gave very little information on prostitution and girl trafficking , but the Committee asked for more data, for a comprehensive approach to the problem and for the adoption of more effective measures. The Spanish Government worked hard in reducing these behaviors but the results were not sufficient. Spain is the first European country in demand for prostitution. As a consequence several girls and women that have suffered from human trafficking end up working in Spain. We must admit that unlike other fields, the documents that deal with human trafficking focus on both girls and women. Girl is not invisible, but there is no significant differences between what is said about one and the other in prevention, treatment, support, punishment...and even the recognition of the status of refugees to the victims. So what is invisible is its special vulnerability.

The first two Reports gave information about prostitution and provided information on some measures to assist and help the prostitutes and their families and the Committee asked for more details on it . The third Report showed us the changes adopted in legislation to punish some behaviors linked to prostitution that were considered unacceptable . From that Report on, these questions will appear linked to human trafficking

As of 2003, and in parallel to the appointment, by the Commission on Human Rights, of a Special Rapporteur on trafficking, especially women and children , the Spanish authorities reports specifically on human trafficking of girls and women, and the Committee puts this topic into its principal areas of concern "While commending the State party for its legal and other measures against trafficking in women and girls, the Committee expresses its concern about increasing incidence of trafficking in women and girls. It is concerned about the situation of trafficked women, particularly those who claim refugee status on grounds of gender-based persecution" .

As a consequence the Committee asked the State to take measures in different levels, international cooperation, police action, protection of victims and witnesses, change of laws

and protection of victims, inter alia, granting asylum on grounds of gender-based persecution to trafficked women. From this moment on, Spain informs on the measures taken in the legislative, executive and judicial levels, and the Committee recommends to adopt new measures to improve the efficiency of Spain in this field. In fact, in the next report, Spain recognized that “Although important progress is being made in the collection of data on the trafficking in women and girls for the purposes of sexual exploitation, it is believed that the true extent of this grave offence in our country remains unknown”. And presented us a whole battery of measures to fight against human trafficking and to protect and assist to the victims (integration of immigrants vulnerable as a result of being victim of sexual exploitation or human trafficking, funding specific programs aimed to help the victims of these crimes inter alii). Of course, the Committee welcomed the progress achieved in undertaking the legislative reforms but was still concerned with the prevalence of these crimes in Spain and the absence of comprehensive anti-trafficking legislation alongside the failure to criminalize all forms of trafficking. It firstly recommended the adoption of new legislation the intensification of international cooperation, the adoption of a comprehensive approach to address the phenomenon of exploitation of prostitution. Secondly, it urges to collect data and to undertake a deep analysis on it; it encourages the supply of sufficient shelters, crisis centers and exit and reintegration programs, as well as the development of alternative income-generating opportunities for women who wish to leave prostitution; and the adoption of appropriate measures to reduce the demand for prostitution. And finally, it asked for a comprehensive definition of pimping.

It should be noted that there were no interest for roma women till the 5th report, where in fact there is no specific question on girls. But In the Concluding observations to this report, the Committee includes the situation of roma girls, focusing on the fields of education, especially about the early dropout rates from school. It recommends intensifying the efforts to avoid it and advices to provide incentives to roma parents to encourage girls to attend school. From that moment on, roma girls and their problems with education, health and employment are present in every Report and Concluding Observations. Furthermore, we can see different “shadow reports” dealing with it, and reports of Spain showing the measures taken, but nevertheless, the Committee recommends more efforts and more information about roma girls.

To sum up, Spain brought out the subject and the Committee picked up the gauntlet asking for further information, recommending more efforts and supporting Spanish policies in this field.

There is no reference in Spanish periodical Reports, to the situation suffered by female asylum seeker, until the 6th one, and even in that Report and the following one there is no specific reference regarding girls. This invisibility is quite surprising if we consider that there are some causes for granting asylum directly linked to girls, for instance, arranged marriages, female genital mutilation, girls trafficking, recruitment of soldier girls, slavery or sexual violence. In fact, the only references we get in those reports are changes in legislation, for instance “extending the right of asylum to foreign women who are fleeing their countries of origin because of justified fear of persecution on the grounds of gender”. The Committee started to worry about this problem in the Concluding Observations to 3th and 4th Reports

expressing its “concern” about the “situation of [...] asylum seekers [...]. The Committee concern was that these women may lack adequate protection from violence and abuse” . In the Concluding Observations to the 5th report the language was much stronger and the Committee: “further urges the State party to afford full protection under the 1951 Geneva Convention on Refugees, inter alia, to trafficked women who seek asylum on grounds of gender-based persecution in line with the latest developments in international refugee law and the practice of other States” . Only in the last Concluding observations to 7-8th Report we can see a specific preoccupation for girls that claim asylum, specially of those coming from Ceuta y Melilla and the Committee calls upon: “To improve protection for women and girl asylum seekers in the autonomous cities of Ceuta and Melilla by ensuring that no violence is used at border controls, by ensuring access to asylum procedures for all claimants, regardless of their country of origin or mode of entry, by establishing a fair and efficient asylum procedure and by improving reception conditions and ensuring that gender is taken into account;[...]To provide adequate treatment for women and girl asylum seekers with specific needs and adopt a gender perspective when developing programs for assistance” . As we can see, only in the last Periodic Report and Concluding Observations a special interest and concern for girls can be appreciated.

Discussion

We shall start by stressing that the concern of both the Committee and the Spain for the situation of girls is present only in the field of education. For other fields, the girls are almost invisible. Something changed with the approval of the Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices. It seems that from that moment, the CEDAW Committee becomes aware of the multiple vulnerability suffered by girls because they are females and also minors. It seems that both began to perceive that the he intersection of both statuses multiply the vulnerability of girls, but even though, girls are still quite invisible to States and CEDAW Committee.

As we can see from the facts presented, if we consider the report system to be a contradictory procedure, where the inputs shall come from a judgement to the State, shaming him for its behavior or its lack of action against some discriminations, then, this is not the right mechanism. It is simply a mechanism where the State informs about what has been done to implement the Convention and gives some numbers about the situation of women in the country. On the other side, the Committee establishes a “Dialogue” trying to advice the State, visualize some problems or reminding him that something has to be done in areas where discrimination is serious or has serious consequences (as violence).

The different topics underlined by the State are more or less the same as the ones pointed out by the Committee. In fact, as we could see with the human trafficking and roma girls education, both the Committee and the State can raise an issue, with no real condemn or

punishment to the State. And sometimes is the State itself which informs about a challenge or a problem to the Committee.

The State doesn't behave as if recommendations were legally binding resolutions but only a motivation to work on some items and guidelines to be followed.

We have seen with the abortion that the recommendation to take some measures is not followed by the State, even if there is consensus between the shadow reports in dealing with it. Civil Society Organizations will use these recommendations as an instrument to push legislative changes.

From my point of view the problem here is that what is asked by the Committee is not really accepted by all countries and NGOs. In fact, it is a very delicate question where usually the States try to flee when they think that the point of view of the Committee doesn't get a broad consensus in the International Community. For instance, regarding the problem of teenage pregnancy, States agree that they have to deal with the problem, but not by following the recommendation given by the Committee. In fact they don't even answer to it.

However We have seen other fields, where there is a political consensus in Spain and in the International Community, as with the education or the human trafficking questions, where there is an alignment between what the Committee says and what Spain makes, maybe the difference can be found in the resources allocated: The Committee wants more and the States can't or doesn't want to spend more resources.

At the end, the virtue of this mechanism is the data collection, the arrangement of policies and in general the reflection process conducted by the State. If we add that the shadow reports can contribute to this process with a more critical approach and that the Committee establishes a frank and open dialogue, we can conclude that this proves to be a very useful mechanism for improving the fulfilment of the obligations of the State towards the CEDAW.

Conclusion

If we approach the issue from a strict and classic legal perspective, we must say that there is not usually immediate and convulsive changes in the policies dealing with gender questions. There is not furthermore any real consequences for the State that doesn't follow the Committee view or recommendations. If we were in the frame of a judicial problem it would be an enormous failure. Judgments should be enforced completely and as soon as possible.

But we are not in a punitive process but on a collaboration process. From this point of view the communication system and the Report system have to be differentiated. In the first one the Committee establishes that there is a violation of the CEDAW and it requires changes, otherwise, the State will remain in a situation of illegality. Not because it doesn't follow the recommendations, but because it doesn't repair the victims and because the causes of the illegality are still in the system (laws, policies, programs, attitudes and so on). Let's remember that the Committee "may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation! (ART.5 OPCEDAW). In

the second one the aim of the Committee is not to establish the real and present violation of the State but to help the State to implement the Convention and to consider the progress done.

Finally, the NGOs, lawyers and women associations can use the Concluding Observations to lobby the state directly and through the media in a similar way as they do with the decisions in the Communication systems. The only difference that we should find is that in this one, the Committee decides that there has been a violation of the CEDAW, and in the Report System there is not such statement and there, the measures to take are more concrete and individualized than the ones recommended in the Concluding Observations.

To finish, both mechanisms are useful, the former specially for the thinking process that the State has to do and the information it has to collect that visualize some problems. And the Communication System is effective to detect a violation of the CEDAW, giving a moral reparation to the victim and suggesting changes in different levels of State to prevent the violation, protect and compensate the victims and encourage some developments in different areas for the fulfillment of the CEDAW commitment by the State. Finally the reasoning and decisions or recommendations adopted by the Committee are very useful to Civil Society to lobby public authorities to adopt a law, initiate a policy or fund a policy aimed to promote the accomplishment of the international Obligations of the State to prevent all forms of discrimination against women.