

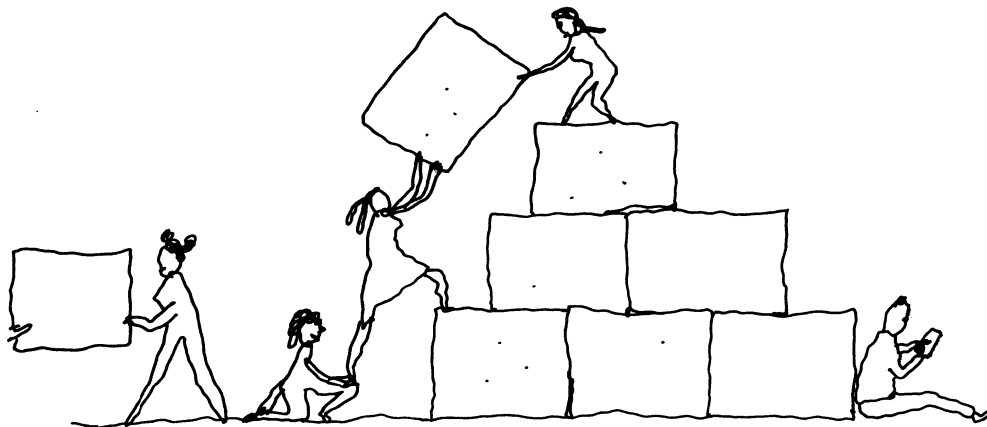
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Keynote speech by

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for the

*International Conference: Women's Access to Justice: Moving closer to full ratification and implementation of the Istanbul Convention*

1. Thank you and honour to be speaking in this first panel setting the scene on the barriers women face in accessing justice especially with respect to sexual and gender-based violence – violence has increased during the pandemic, leading to its description as a shadow pandemic.
2. Two preliminary points First – as in many other areas what the pandemic has done is to exacerbate what was already there: the incidence of sexual and gender-based violence and the obstacles women are confronted with when seeking justice have not suddenly appeared with the pandemic but

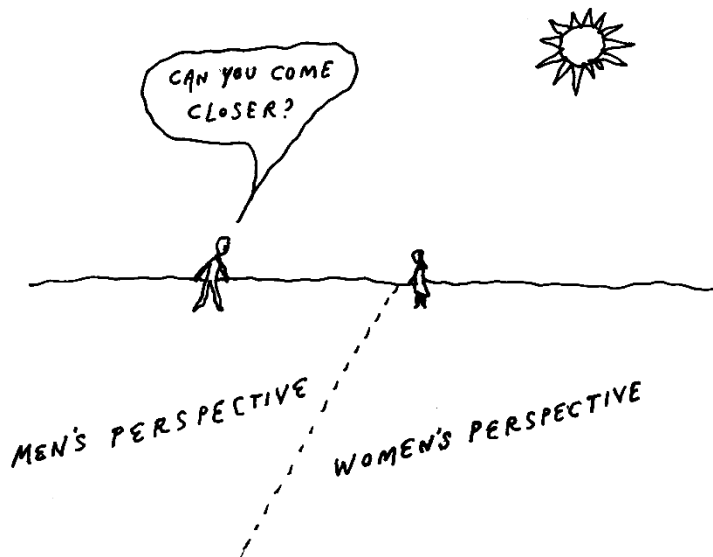
have long been a matter of concern. Further the pandemic came on top of years of austerity measures in many countries of the Council of Europe with cuts to essential services including legal and health services that have fallen especially heavily on women.

3. Second – is what is meant by access to justice in the context of gender-based violence – it can be understood in a narrow sense as seeking protection and realisation of the right to be free from such violence through legal processes with states complying with their legal obligations from the first reporting of the violence, or the risk of violence, to law enforcement authorities.
4. But legal process and justice have never been synonymous and access to justice imbues all four pillars of the Istanbul Convention that are integrated across multiple sectors and are encompassed within the state's obligation of due diligence.
5. The CEDAW Committee has emphasised that for an individual woman victim of violence to enjoy the practical realisation of equality and human rights, the political will that is expressed through legal and policy framework addressing violence against women is not in itself sufficient but 'must be supported by State actors, who adhere to the State party's due diligence obligations.'
6. GREVIO has expressed the same idea - that the due diligence obligation is an overarching principle of the Convention that requires state parties to organise and co-ordinate their responses to violence against women thereby avoiding the fragmentation across multiple service providers that undermines the effectiveness of them all.
7. Although I emphasise the breath of the concept of justice, in the interests of time I will focus on the narrower meaning and briefly outline some of the obstacles women and girls face in their encounters with law and legal proceedings, while later panels will discuss the tools provided by the



Istanbul Convention to surmount these obstacles and that can be drawn upon to address the further challenges presented by the pandemic.

8. Equal access to justice denotes judicial mechanisms that are 'physically, economically, socially and culturally accessible to all women' (GR 33). But when seeking such access women who fear or who have experienced sexual or gender-based violence are confronted by a range of legal and practical obstacles, that often overlap and intersect in ways that prevent its delivery.
9. Access to justice relates not only to being able to get into a court or tribunal but to receiving both procedural and substantive fairness once there. Equality and fairness – due process - are undermined by gender and other stereotypes that pervade the entire justice system whether the case in question is in the criminal courts against an alleged perpetrator, in the civil tribunals where protective orders are sought, or proceedings in family or administrative bodies relating to such matters as child custody or maintenance payments.
10. Gender stereotypes and prejudices are compounded by stereotypes based on other factors such as race, ethnicity, religion, sexuality, disability – factors that construct the social divisions that operate within existing structures of power that are unfair and inefficient, impact negatively on resource allocation, including the allocation of justice, and cause further disadvantage to women from these groups in ways that make it still more difficult for them to secure justice.
11. Such stereotypes and prejudice result in decision makers reaching misinformed or discriminatory judgments based on preconceived beliefs and inherent biases rather than on relevant facts, thus undermining the supposed objectivity and gender neutrality of law, the independence and competence of the judiciary and thus of the rule of law.



12. The case of Angela Gonzalez Carreno v Spain - an individual communication to the CEDAW Committee – illustrates well the pernicious consequences of gender stereotyping. It concerned long term extreme domestic violence by a husband against his wife.

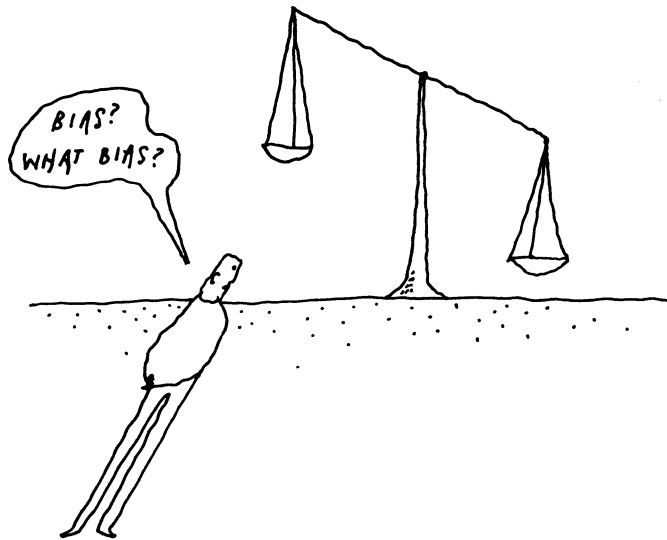
After they separated there were many further violent incidents, his disregard of protective orders with impunity and his only conviction resulted in a fine of 45 euros, He was granted access to their young daughter – sometimes in supervised visits sometimes unsupervised, despite the child expressing her fear of her father and the mother repeating her concerns. On one such unsupervised visit he killed his daughter.

13. The Committee concluded that Spain had failed to meet its due diligence obligations since no reasonable steps had been put in place to protect the mother or daughter against the foreseeable risk of further violence. The behaviour of the authorities – the judicial authorities, the social services, and the psychological experts – reflected a stereotyped conception of visiting rights, focusing on normalising the relationship between the father and daughter, itself based on stereotyped conception of such a relationship. In the pursuit of formal equality between the parents the facts in the particular case – the violence committed against the mother

and her daughter and the danger they were in – were discounted. Although the Committee did not comment on this, it is possible the authorities discounted the mother’s fears as those of a panicky woman or a vengeful former wife. The case is illustrative of embedded and institutionalised sexism across the entire system – police, judicial and social services revealing ‘patriarchal stereotypes of gender roles’ and thus constituting a barrier to justice.

14. Another obstacle is passivity on the part of the law enforcement officials, for instance through their failure to respond appropriately to reports of violence and abuse, delaying or omitting altogether to carry out adequate and effective investigations. A thorough and effective investigation into allegations of gender-based and sexual violence requires promptness and reasonable expedition, open-mindedness, and unbiased consideration by the investigating authorities of all possible leads. In a case against Bulgaria the ECtHR found that a dormant investigation and the exceptionally slow pace of the proceedings in a rape case – the domestic authorities had taken more than 15 years to complete its investigation into the rape of the applicant – meant that urgent investigative measures, such as an expert examination of the applicant’s clothes and interviewing witnesses - were taken only many years after the rape leading to the prosecution becoming time-barred.

15. Such investigative failures may arise from the view that the violence is a family or private matter or is trivial and not urgent – in another ECtHR case the police assisted the perpetrator by altering the record of the criminal complaint to treat it as a minor offence that called for no further action. In other instances, police have urged women to withdraw a complaint of violence because to sustain it would harm the reputation of the alleged perpetrator. The Court has held that passivity on the part of the domestic authorities towards women victims amounts to condoning such violence, exposing a discriminatory attitude towards a female victim as a woman, and thereby favouring the male perpetrator’s social standing. This denotes a lack of sensitivity and respect toward the



complainant and denial of her personal integrity, again compounded by other factors such as institutionalised racism within police forces.

16. Myths – for example about how a ‘typical’ survivor of domestic abuse, rape or other forms of sexual violence should behave are prevalent in many jurisdictions. Reliance upon such myths may cause secondary

victimisation in the courtroom and fearing this may persuade victims either not to report violence, or to withdraw a complaint. Recognising this obstacle to justice the CEDAW Committee has explained that the judiciary must take care not to create inflexible standards of how women or girls should behave or what they should have done when confronted with violence based on preconceived notions of what defines a victim of gender-based violence.

17. Biases and prejudice do not just emanate from law enforcement personnel but also from others within the system, for instance the interpreters that are often essential to guarantee a fair trial, especially in cases involving women from minority communities or migrant women. Failure to provide an interpreter from the outset may be a barrier to justice and, even where provided, bias and cultural prejudice in

interpretation may not be recognised – the choice of words or nuances in language can distort the case. In evidence before a recently held Women’s Tribunal on the incorporation of women’s human rights in the UK one witness stated that ‘male interpreters [can be] brought to court to interpret for women who are trying to explain extremely sensitive forms of abuse, [say] rape or sexual assault, and it is extremely difficult for them to do that anyway, without being asked questions or being interpreted by a male interpreter’. This may become a shaming and humiliating experience and an obstacle to the tribunal receiving an accurate account of the events and thus to the survivor securing justice.

18. Hard to disentangle from the impact of stereotyping is that of misunderstanding by law enforcement personnel of the breadth, severity, or consequences of gender-based violence and of the trauma experienced by survivors, perhaps especially of domestic violence. An often-repeated obstacle to women accessing justice is that women’s evidence is not regarded as credible. This may be based in a biased view of women complainants or witnesses as liars, an insensitivity to cultural differences, or ignorance as to the impact of trauma. At the Women’s Tribunal witnesses described how the trauma of violence can affect the way in which a woman presents her evidence, for instance rendering her unable to repeat facts in a clear and coherent manner, forgetting dates or times when certain events happened, or who was present at the time, appearing as ‘over emotional’ – hysterical - or ‘under emotional’ – not behaving as expected of a victim of violence.

19. A recent expert report described research from a domestic abuse service provider in the UK where staff members perceived some judges’ attitudes towards survivors as ‘this is an emotionally temperamental woman’ rather than ‘this is an abused and traumatised woman’, dismissing either the allegations, or their relevance’.

20. The survivor’s evidence may then be contrasted with that of the accused perpetrator who presents evidence in a logical, ordered, and coherent



manner which applying a stereotype of responsible and rational male behaviour appears more truthful to the judge.

21. The Istanbul Convention's requirement that states parties seek to eradicate prejudices and practices that are based on stereotyped roles for women and men is developed through the 2019 Committee of Ministers' Recommendation on Combatting Sexism. It is thus key to equal access to justice and underpins recommendations that states put in place training programmes for all those working with victims **and** perpetrators of gender-related and sexual violence, in particular to 'ensure regular and adequate training for all judges and magistrates on human rights and gender equality, the harms caused by gender bias and the use of sexist language. Such training should also encompass mandatory anti-racism training and an understanding of the white male privilege in the culture of law enforcement and the administration of justice.
22. Turning briefly to some other forms of obstacle to accessing justice – legal obstacles include jurisdictional deficiencies, discriminatory procedural and evidentiary requirements. Some are either written into the law or are omitted altogether from the law. An example of the former is a time limit – a statute of limitations - after which a claim is extinguished, and which may come into play because of delay on the part of the authorities as discussed above, or again because of trauma – the survivor's inability or unwillingness to act earlier.
23. The latter – a failure of the legal system - occurs when certain forms of gender-based violence are not criminalised, or are inadequately defined, or protective restraining orders are not provided for or are subject to unrealistic or financially prohibitive conditions. Even definitions that seek to give effect to the reality of a woman's experience of the violence committed against her for instance a consent-based definition of rape rather than one that limits the offence to where the rapist has used force or threats of force, or where the woman must show physical resistance, a failure to understand sexual consent properly, the impact of fear and trauma, gender and other power imbalance and social pressures all



contribute to the widespread under-reporting of rape and low conviction rates.

24. This has further implications and the failure to introduce age appropriate, evidence-based, and scientifically accurate and comprehensive sex and sexuality education for girls and boys into school curricula can be understood as a barrier to access to justice.

25. A major barrier is lack of financial support for legal assistance throughout the process. Legal aid and assistance have been drastically cut in some

countries throughout austerity. Cuts to legal services are compounded by those to other support services - refuges and other escape mechanisms, as well as in inequality in access to and delivery of economic and social rights, especially health and counselling services and social security.



26. Lack of legal assistance may be especially harmful to the commencement of civil cases including those relating to protective orders, child custody and immigration rights following violence. Without legal aid a survivor may lack knowledge of the procedures and her rights to special measures and may have no option but to be a litigant in person – possibly faced by lawyers representing the perpetrator,

27. The pandemic has exposed and intensified the inequalities and strains in the justice system that already presented significant obstacles to women

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victims of violence seeking justice. The situation is aggravated by the diversion of resources away from the justice sector towards more immediate public health and security measures. Justice institutions have introduced different ways of operating including prioritizing "exceptionally urgent" cases and placing restrictions on in-person appearances. The trivialisation of domestic violence reduces the likelihood of these cases being recognised as exceptionally urgent. Other innovations have involved the use of technology such as email, mobile phones, and videoconferencing for filing and hearing of cases by both claimants and judges. This has facilitated the continuation of hearings but disadvantages those without access to such technology or those less able to use it readily for instance elderly women or women with disabilities, or those where the available outlets – tablets, mobile phones - are controlled by male members of the household.

28.They will continue in its aftermath – in addition to the exhaustion and mental stress felt by so many – unless steps are taken to redress the situation. The IC was not drafted with a pandemic in mind, but it is a robust instrument that provides regional standards grounded in international human rights law that remain relevant in changed situations and can be adapted and implemented at the national and local level by state decision and policy makers, professionals, practitioners, and activists.

29.It is also crucial that women are not viewed as passive victims of gender-based violence but are supported as agents in their own decision-making, given the appropriate information to enable them to make pertinent choices and provided with services and safe spaces where decisions can be made and put into effect in physical, emotional, and financial security.

30.And above all the barrier presented by the lack of political will to provide the adequate and continued resources to ensure access to justice for women victims of gender-based and sexual violence must be redressed. Without this such violence is normalised, perpetrator impunity is



normalised, and women victims and survivors are denied the justice to which they are legally entitled.