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**AD HOC COMMITTEE ON PREVENTING AND COMBATING
VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE
(CAHVIO)**

The Duty of Due Diligence

Document prepared by

**Ms Christine Chinkin
Professor of International Law, Department of Law
Centre for the Study of Human Rights,
The London School of Economics and Political Studies**

Scientific expert to the CAHVIO

The duty of due diligence under international law evolved from the principles of diplomatic protection whereby a state incurs international responsibility for the commission of an international wrongful act against a non-national person. It has been applied in the context of human rights violations since the landmark case of *Velasquez Rodriguez v. Honduras* (1989). In this case (which concerned disappearances) the Inter-American Court of Human Rights held that a state must take action to prevent human rights violations, and to investigate, prosecute and punish them when they occur. The Court determined that the state's failure or omission to take preventive or protective action 'itself represents a violation of basic rights on the State's part. This is because the state controls the means to verify acts occurring within its territory.' (para 136).

1. The requirement of due diligence has been adopted in a number of instruments with respect to violence against women. These include:
2. The Committee on the Elimination of Discrimination against Women, General Recommendation 19, para 9: 'States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.'
3. The UN General Assembly Declaration on the Elimination of Violence against Women, 1994, article 4: 'States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should: ... (c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons'.
4. The Convention of Belém do Pará (OAS Convention on the Prevention of Violence against Women), 1994, article 7: The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: (b) apply due diligence to prevent, investigate and impose penalties for violence against women' (applied by the Inter-American Commission on Human Rights in *Maria da Penha v. Brazil*, Case (2000).
5. The Council of Europe Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence: 'II. Recognise that states have an obligation to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons, and provide protection to victims'.
6. The European Court of Human Rights has adopted the obligation of due diligence. In *Opuz v Turkey*(2009) (a case of domestic violence against a woman and her mother)the Court stated in para 131:

On the above understanding, the Court will ascertain whether the national authorities have fulfilled their positive obligation to take preventive operational measures to protect the applicant's mother's right to life. In this connection, it must establish whether the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of the applicant's mother from criminal acts by H.O. As it appears from the parties' submissions, a crucial question in the instant case is whether the local authorities displayed due diligence to prevent violence against the applicant and her mother, in particular by pursuing criminal or other appropriate preventive measures against H.O. despite the withdrawal of complaints by the victims.

And in para 146 onwards:

146. The legislative framework preventing effective protection for victims of domestic violence aside, the Court must also consider whether the local authorities displayed due diligence to protect the right to life of the applicant's mother in other respects.

147. In this connection, the Court notes that despite the deceased's complaint that H.O. had been harassing her, invading her privacy by wandering around her property and carrying knives and guns (see paragraph 47 above), the police and prosecuting authorities failed either to place H.O. in detention or to take other appropriate action in respect of the allegation that he had a shotgun and had made violent threats with it (see *Kontrová*, cited above, § 53). While the Government argued that there was no tangible evidence that the applicant's mother's life was in imminent danger, the Court observes that it is not in fact apparent that the authorities assessed the threat posed by H.O. and concluded that his detention was a disproportionate step in the circumstances; rather the authorities failed to address the issues at all. In any event, the Court would underline that in domestic violence cases perpetrators' rights cannot supersede victims' human rights to life and to physical and mental integrity (see the *Fatma Yildırım v. Austria* and *A.T. v. Hungary* decisions of the CEDAW Committee, both cited above, §§ 12.1.5 and 9.3, respectively).

148. Furthermore, in the light of the State's positive obligation to take preventive operational measures to protect an individual whose life is at risk, it might have been expected that the authorities, faced with a suspect known to have a criminal record of perpetrating violent attacks, would take special measures consonant with the gravity of the situation with a view to protecting the applicant's mother. To that end, the local public prosecutor or the judge at the Magistrate's Court could have ordered on his/her initiative one or more of the protective measures enumerated under sections 1 and 2 of Law no. 4320 (see paragraph 70 above). They could also have issued an injunction with the effect of banning H.O. from contacting, communicating with or approaching the applicant's mother or entering defined areas (see in this respect Recommendation Rec(2002)5 of the Committee of the Ministers, § 82 above). On the contrary, in response to the applicant's mother's repeated requests for protection, the police and the Magistrate's Court merely took statements from H.O. and released him (see paragraphs 47-52 above). While the authorities remained passive for almost two weeks apart from taking statements, H.O. shot dead the applicant's mother.

149. In these circumstances, the Court concludes that the national authorities cannot be considered to have displayed due diligence. They therefore failed in their positive obligation to protect the right to life of the applicant's mother within the meaning of Article 2 of the Convention.

The due diligence standard, has been widely used in the reports and work of a range of UN bodies. These include the reports of the special rapporteurs of the UN Commission on Human Rights (now Human Rights Council), for example those on torture, on extrajudicial, summary and arbitrary executions, and on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self determination, and in reports by representatives of the Secretary-General, for example the Representative on internally displaced persons.

An especially significant and excellent analysis of the obligation of due diligence is that of the UN Human Rights Council's special rapporteur on violence against women Annual Report, 2006, Standard of Due Diligence E/CN.4/2006/61. The report examines the due diligence standard as a tool for the effective implementation of women's human rights, including the right to live a life free from violence. It explains the development of due diligence in human rights law, especially in the context of violence against women and also provides '(a) a focus on State obligation to transform the societal values and institutions that sustain gender inequality while at the same time effectively respond to violence against women when it occurs, and (b) examine the shared responsibilities of State and non-State actors with respect to preventing and responding to violence and other violations of women's human rights.'