DUE DILIGENCE PRINCIPLE
Traditionally States are responsible for violations of human rights it committed.

Gradually international law evolved to:-

- Oblige States to protect, promote and fulfil human rights.
- Hold States accountable for violations of human rights, whether committed by the State actors or non-State actors.
- Obligates States to take reasonable action to prevent human rights abuses before they occur and to effectively respond when they occur.

This principle, known as the due diligence principle, is important in violence against women given that:

- most acts of violence against women are committed by non-State actors; and
- the public/private divide long posed obstacles to States entering the so-called private realm to end VAW.
DUE DILIGENCE PRINCIPLE

States have an obligation to:

- Prevent acts of violence against women;
- Protect the victims/survivors;
- Prosecute and investigate the incidents of violence;
- Punish the perpetrators; and
- Provide redress to the victim/survivors for the harm suffered.
**DUE DILIGENCE PRINCIPLE**

**Velasquez Rodriguez v Honduras (1988), Inter-American Ct HR**

“An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of an act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.”

**Maria da Penha v Brazil (2001), Inter-American Court HR**

The failure to prosecute and convict the perpetrator under these circumstances is an indication that the State condones the violence suffered by Maria da Penha.

Given the fact that the violence suffered by Maria da Penha is part of a general pattern of negligence and lack of effective action by the State in prosecuting and convicting aggressors, it is the view of the Commission that this case involves not only failure to fulfill the obligation with respect to prosecute and convict, but also the obligation to prevent these degrading practices.
A.T. v. Hungary (2003), CEDAW Committee

States may 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.

States must provide reparation [to A.T.] proportionate to the physical and mental harm undergone and to the gravity of the violations of her rights.

Fatima Yildirim v. Austria (2007), CEDAW Committee

The Committee considers that the facts disclose a situation that was extremely dangerous to Fatma Yildirim of which the Austrian authorities knew or should have known, and as such the Public Prosecutor should not have denied the requests of the Police to arrest Irfan Yildirim and place him in detention.

The Committee considers the failure to have detained Irfan Yildirim as having been in breach of the State party’s due diligence obligation to protect Fatma Yildirim.
- **Osman v. UK (1998) ECHR**
  - know or should have known
  - real and immediate risk

- **Opuz v. Turkey (2009) ECHR**
  - balancing right of safety and security v. right to family and privacy
  - domestic violence can approximate cruel and inhuman treatment and in certain instances, torture
**DUE DILIGENCE PRINCIPLE**

**Campo Algodonero v. Mexico (2009), Inter-American Court of HR**

Given that the State knew of the existence of a pattern of violence that has killed hundreds of women and girls, the State “did not act with the required due diligence to prevent the death and abuse suffered by the victims adequately and did not act, as could reasonably be expected, in accordance with the circumstances of the case, to end their deprivation of liberty.

**Jessica Lenahan v. United States (2011), Inter-American Commission**

The Commission underscores that the inter-American system has affirmed for many years that it is not the formal existence of judicial remedies that demonstrates due diligence, but rather that they are available and effective.

Therefore, when the State apparatus leaves human rights violations unpunished and the victim’s full enjoyment of human rights is not promptly restored, the State fails to comply with its positive duties under international human rights law.

The same principle applies when a State allows private persons to act freely and with impunity to the detriment of the rights recognized in the governing instruments of the inter-American system.
Four principles on due diligence principle (Jessica Lenahan)

1. A State may incur international responsibility for failing to act with due diligence to prevent, investigate, sanction and offer reparations for acts of violence against women; a duty which may apply to actions committed by private actors in certain circumstances.

2. This obligation may require States to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and other practices based on the idea of the inferiority or superiority of either of the sexes, and on stereotyped roles for men and women.

3. Establishes the link between the duty to act with due diligence and the obligation of States to guarantee access to adequate and effective judicial remedies for victims and their family members when they suffer acts of violence.

4. Certain groups of women are at particular risk for acts of violence due to having been subjected to discrimination based on more than one factor, which must be considered by States in the adoption of measures to prevent all forms of violence.
**DUE DILIGENCE PRINCIPLE**

**General Recommendation no. 19, CEDAW Committee (1992)**

Under general international law and specific human rights covenants, 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.

**United Nations Declaration on the elimination of violence against women (1993)**

States are urged to “[e]xercise *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”
DUE DILIGENCE PRINCIPLE

Human Rights Council Resolution, e.g. 14/12 (2010)

Stresses that States have the obligation to promote and protect all human rights and fundamental freedoms of women and girls, and must exercise due diligence to prevent, investigate, prosecute and punish the perpetrators of violence against women and girls and provide protection to the victims, and that failure to do so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms;

General Assembly Resolution, e.g. A/RES/67/144 (2013)

Also stresses that States have the obligation, at all levels, to promote and protect all human rights and fundamental freedoms for all, including women and girls, and must exercise due diligence to prevent, investigate, prosecute and punish the perpetrators of violence against women and girls and eliminate impunity.
**DUE DILIGENCE PRINCIPLE**

**Inter-American Convention of Belem do Para (1994)**

State parties shall condemn all forms of violence against women and “apply **due diligence** to prevent, investigate and impose penalties for violence against women.”

**Council of Europe’s Convention on preventing and combating violence against women and domestic violence (2010). Article 5**

1. Parties shall refrain from engaging in any act of violence against women and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation.

2. 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.
 bottoms line:

- State has a positive obligation to act;
- To prevent, protect, prosecute, punish and provide redress for acts of VAW;
- Whether committed by the State or non-state actors;
- In a holistic. Comprehensive. Integrated. Multi-sectoral manner; and
- In line with international human rights norms and standards.