

# VICTIMS AND CORPORATIONS

Implementation of Directive 2012/29/EU  
for victims of corporate crimes and corporate violence

## Needs of Victims of Corporate Violence: Empirical Findings

2017



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**Needs of Victims  
of Corporate Violence:  
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**Comprehensive Report**

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and Katrien Lauwaert

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2017



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## FOREWORD

**Directive 29/2012/EU** carries the potential for a significant change within European criminal law systems: it introduces a set of minimum standards on the rights, support and protection for victims of crimes, and their participation in criminal proceedings, without prejudice to the rights of the offender.

Within the scope of the Directive and its definition of ‘victim’, though, there is a relevant group of victims who have not yet received enough consideration, and whose access to justice may be at stake. They are the **victims of corporate crimes, and particularly of corporate violence**, meaning those criminal offences committed by corporations in the course of their legitimate activities, which result in harms to natural persons’ health, integrity, or life.

Previous researches, a summary of which the reader will find in our first report (*Rights of Victims, Challenges for Corporations*, December 2016: see <http://www.victimsandcorporations.eu/publications/>), show how corporate violence is at least **as prevalent as violent criminality**. There is ample evidence of the vast and trans-boundary nature of this victimization and, moreover, the number of victims of corporate violence will grow dramatically in the future, facing increasingly complex claims for justice, also due to long latency periods typical of exposure to toxic agents (see also our *Individual Assessment of Corporate Violence Victims’ Needs. A Practical Guide*, April 2017, also available on the project’s website).

The project ‘Victims and Corporations. Implementation of Directive 2012/29/EU for victims of corporate crimes and corporate violence’ focuses on three main strands of corporate victimization: environmental crime, food safety violations and offences in the pharmaceutical industry. Thus, much of the **empirical data** we collected and which provided the **ground for the elaboration of the present comprehensive research report** were drawn from interviews with victims of these kinds of corporate crime. Corporate violence, however, is always a complex phenomenon, so that episodes of work safety violations, for instance, often happen to intertwine with other kinds of corporate crime in the cases we have studied.

More specifically, a deep and inter-disciplinary preliminary research (whose results, as previously mentioned, the reader will find summarized in

the report on the project's first findings) has preceded the more operational stages of our work. Building on the results of this preliminary analysis, a set of **interviews and focus groups** with victims of corporate violence, as well as with other people professionally dealing with this kind of offences and victims, were designed and performed, leading to the collection of precious information on corporate violence victims' needs – information indispensable to guide the delicate operation of «**individual assessment**» that **art. 22 of the Directive** establishes as a fundamental and primary duty when working with victims of crime – an issue that the reader will find specifically addressed in the aforementioned *Practical Guide*, as well as in its national adapted versions (for Italy, Germany and Belgium respectively: see <http://www.victimsandcorporations.eu/publications/>).

Due to the extreme sensitivity of victims' personal stories and circumstances, a set of **ethical guidelines**, which the reader can consult in the **Annex** to the present report, was designed (by *Claudia Mazzucato*) to ensure that interviews and focus groups were performed with maximum respect for each person's dignity, freedom, privacy and individual needs. Building on our previous desk research, a set of **guidelines for interviews and focus groups** was designed (by *Katrien Lauwaert* and *Claudia Mazzucato*) to help conducting the empirical research 'in the field'. Such research resulted, after the analysis of the collected information (coding tree by *Katrien Lauwaert* and *Alexandra Schenk*) in three national reports reflecting the outcomes of **26 individual interviews** and **8 focus groups** carried out in **Italy (§2.I;** report by *Stefania Giavazzi*, *Claudia Mazzucato* and *Arianna Visconti*; data coding by *Eliana Greco* and *Marta Lamanuzzi*; interviewer and focus group moderator *Claudia Mazzucato*; assistants *Stefania Giavazzi*, *Alessandro Provera*, *Arianna Visconti*), **Germany (§2.II;** interviews and focus groups, coding, analysis and report by *Marc Engelhart*, *Carolin Hillemanns* and *Alexandra Schenk*) and **Belgium (§2.III;** interviews and focus groups, coding, analysis and report by *Katrien Lauwaert*)<sup>1</sup>. To ease the reader's path, a **summary** of the methodology, objectives and main findings of the national researches will precede the detailed national reports (§1). Amongst the professionals participating in interviews and focus groups there were public prosecutors, judges, lawyers, victim support staff, staff of a national compensation fund for victims of intentional violence, mediators, medical doctors, a representative of a human rights non-governmental organisation and an ombudsperson.

Our empirical research confirmed that victims of corporate violence appear to have an extreme need – quoting from art. 1 of the Directive – to

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«receive appropriate information, support and protection», and to be made «able to participate in criminal proceedings», as they reveal themselves as a further category – together with more ‘traditional’ victims of family violence, abuses, human trafficking, terrorism etc. – of **extremely vulnerable subjects**, due to the extreme severity of the **harms** suffered (on which, see more specifically **§§3.2, 3.3 and 3.4 of each national report**), as well as (and often mostly) to a lack of (public as well as personal) awareness about their victimization.

To tackle this complex issue, and building on the research results here reported, the already mentioned *Practical Guide* for the individual assessment of corporate violence victims’ needs was developed, aimed at providing any professional having to assist corporate violence victims with a tool that may help them to better understand and assess these **victims’ needs** (on which, see more specifically **§§3.5 of each national report**), as well as to identify and deal with the specific problems they may experience in **accessing justice** (**§§3.6.4** of the reports), in engaging with the involved **corporations** (**§§3.6.6**), in dealing with **public authorities** often perceived as indifferent or even hostile (**§§3.6**) and in confronting **the media** (**§§3.6.2**). Finally, an assessment of corporate violence victims’ needs would not be complete without giving due consideration to their capacities for **resilience** (**§§3.7**), as well as to the role potentially played by formal and informal **victims’ associations** (**§§3.7.2**), which are often the sole or, at least, principal source of support for this specific group of victims – also considering the usually widespread nature of victimization related to corporate crime –, as well as to the importance of **informal social networks** victims could be able to rely upon (**§§3.6.1**).

The interested reader will also find a complement to the present report in a set of **video testimonies** from victims and professionals available on the project’s website (*Victims and Corporations. Digital Stories*, 2017). The current report, together with the national versions of the guide on the individual assessment of corporate violence victims’ needs, also provided the starting point for a further debate with experts and professionals, which in turn is leading to the development and publication, for each of the three involved countries, a series of **specific guidelines for professionals and corporations**, aimed at providing further, more tailored tools to grant an effective implementation of Directive 2012/29/EU for victims of corporate crimes and corporate violence.

For **updates** about the Project’s next steps and results please refer to our website: [www.victimsandcorporations.eu](http://www.victimsandcorporations.eu).





## SUMMARY

### **1. The 'Victims and Corporations' project: objectives, methodology and cases**

Corporate violence takes place when corporations in the course of their legitimate activities commit criminal offences which result in harms to natural person's health, integrity or life. The project 'Victims and Corporations' is a project coordinated by the "Federico Stella" Research Centre on Criminal Justice and Policy, Università Cattolica del Sacro Cuore (CSGP-UCSC) and funded by the conjunct programme "Rights, Equality and Citizenship" and "Justice" of the European Commission. The project was implemented in three countries: Italy, Germany and Belgium. It started in January 2016 and will end in December 2017. Three major activities were carried out: study and research, drafting of guidelines and good practices, and training of professionals and court staff.

One of the main objectives of the project was to map and understand the experiences and needs of victims of criminal offences committed by corporations. If these experiences and needs are understood well, a better implementation of the European Victim's Directive 2012/29/EU can be achieved and the development of good policies and practices in the protection and access to justice of victims of corporate crime and corporate violence can be fostered. For this purpose, among the project's outputs were the drafting of guidelines and training activities for public prosecutors, judges, court staff, enforcement agencies, lawyers, victim support and social services, and the civil society in general. The project focused mainly on the transgression of rules protecting the environment and the transgression of product safety rules, especially in the fields of food and drug safety.

In terms of **methodology**, the empirical data was collected through interviews and focus groups with victims and professionals including lawyers, public prosecutors, judges, victim support staff, staff of a national compensation fund for victims of intentional violence, mediators, medical doctors, a representative of a human rights non-governmental organisation and an ombudsperson. More specifically, a set of guidelines for interviews and focus groups was designed to help conduct the empirical research 'in the field'. A set of ethical guidelines was also employed to ensure that the interviews and focus groups were performed with maximum respect for the interviewees' dignity, freedom, privacy and individual needs. In total, 26

individual, semi-structured interviews and 8 focus groups were carried out in Italy (9 interviews and 3 focus groups), Belgium (8 interviews and 2 focus groups) Germany (9 interviews and 3 focus groups).

Various **cases** of corporate violence were used by interviewees to illustrate the needs of victims of corporate violence. The following specific cases can be placed in various categories. A first category represents **accidents at work**, such as the fire of the textile factory Ali Enterprises in Karachi Pakistan where 260 workers died because the windows were barred, the emergency exits locked and only one door leading out of the building was accessible. Another category are **disasters**, such as the gas explosion in Ghislenghien where an accidental gas leakage in a high pressure gas pipe caused an enormous explosion at a construction site. The disaster resulted in 24 fatalities and wounded 132 others. **Pharmaceutical cases** like the Thalidomide cases in Germany and Italy represent another category. Thalidomide is a drug that was used in the 1950s to combat nausea and to alleviate morning sickness in pregnant women. At the time, the drug was considered safe, however, shortly after many reports of malformed infants emerged. The drug remained on the market in Germany, even though the company was aware of those reports. It was only after a newspaper article linked the company to the issue of malformations of infants that the company withdrew their product. Another category are **environmental cases**, such as the Eternit case in Belgium and Italy. Thousands of people contracted asbestos-related diseases caused by Eternit, a fibre-cement used for the preparation of tiles, sheets for building construction and water pipelines. Production and lobbying of asbestos continued until the 1990s (1992 in Italy and 1996 in Belgium), even though studies as early as in the 1960s showed the harmful effects of asbestos for the people who worked at the facilities, for their families and people who lived in the neighbourhood of asbestos facilities. In Belgium one (civil) trial has taken place against the company. The latter was convicted to pay a compensation of 2500 EUR, while other victims signed a confidentiality clause with the company to get compensation which prohibits them to start a legal procedure against the company. In Italy, two criminal trials were started. One has been closed with a sentence of no prosecution due to limitation of time, the second one is still ongoing. Finally, **product safety cases** like the one involving a wood protection agent in Germany form a broader category. The substance in question was sold as an adequate wood protection agent for interior surfaces. The people in authority did not react to the 4000 written complaints by consumers and continued sales, even though contact with the substance led to physical suffering. The criminal proceedings ended without conviction (due to poor health condition of the accused), and no decision on victim compensation was taken. For this overview of categories, it is important to note that victims of less publicised

cases involving a smaller number of victims do exist and must not be forgotten.

## **2. The project's main findings in a nutshell**

### *a) Effects and impact of the victimisation*

In terms of **findings**, the **overall observations** derived from the research confirm typical features of corporate violence victimisation like: 1) the severity and pervasive impact of the harm caused by corporate violence; 2) the collective nature and dimension of corporate victimisation; 3) the complexity of corporate victimisation and vulnerability of victims of corporate violence; 4) the deceitful nature of corporate violence; and 5) the persistence over time of corporate violence.

However, it should be noted that on some points the results varied between Italy, Belgium and Germany, even though similar interview guidelines were used during the data collection. The uneven distribution of findings is mainly due to the choice and availability of respondents and the national context. Some points were discussed more than others, depending on the local situation.

The **harm** caused by corporate violence is diverse and impacts upon different life domains. Corporate violence crime, in contrast to conventional crime, commonly involves long latency periods before the harms appear. Also, in many cases it reaches a large number of people, therefore involving collective victimisation. The harm either hits people at a particular moment in time (disasters) or slowly poisons the life of a large group of people who are often unaware of the harm.

**Physical harm** usually represents the immediate effect of the corporate violence (death, disability and disease), however due to long latency periods the causal link can sometimes become unclear. On the other hand, **economic loss** and **emotional harm** (mental problems) tend to be more of a by-product. **Financial harm** is a result of permanent or temporary disability of the victim caused by the corporate violence. In cases of the loss of a family member, the financial impact is huge when the deceased was the family's breadwinner. **Psychological harm** related to physical harm was also reported by victims. They mentioned pervasive anguish and fear for the long-term harmful consequences on their health. **Social stigmatisation** due to physical deformities and **social consequences**, such as the strain victimisation puts on relationships, resulting from corporate violence, were also reported as harmful.

Victims did not realise the scope, seriousness and cause of the harm immediately. This was due to either a lack of medical knowledge or long

latency periods which characterised the illness. This was for instance the case with the asbestos related diseases or the deformities in the Thalidomide cases.

The majority of victims describe the suffered harm as severe, either physically or at least mentally. The latter is true when the cause of the harm is unclear and victims have to explain themselves over and over. This refers to the significant discrepancy between the personal experience of the victims and the public perception and acceptance of victim identities.

When victims were employed by the corporation that victimised them, two types of reactions emerged. In the asbestos case, some people felt betrayed and lied to by the corporation, when they realised that the corporation had knowledge about the harmful effects and risks of asbestos. Others stated that the corporation provided employment, a good career and compensation to the victims, and therefore more or less protected the corporation.

Based on the types of harms, long-term and life-changing **consequences** are experienced by the victims of corporate violence. Due to temporary or permanent disability, financial problems can result from the harm. Mental and emotional difficulties are also experienced when victims are not being heard in combination with the exclusion from the social informal network or other important areas of life. Another consequence is how the **personal quality of life** is affected such as daily difficulties of dealing with diseases that affect the victim's professional, social and private life.

#### *b) Victims' needs*

Victims of corporate violence's **needs** are often intertwined and reflect the need for recognition, protection, information and support. Those needs are all part of their more fundamental need for recognition of their wrongful suffering and of their human dignity. Considering that the corporate violence victims' needs are manifold, they must be tackled through different avenues. Therefore, criminal justice is necessary to meet the victims' justice needs, yet tackling victims' problems from a legal perspective is insufficient.

Public **recognition** of the wrongful behaviour is a key need of victims. Acknowledgement for their suffering, their dignity and humanity by the corporation and by public institutions is important, especially considering that in the public perception they are often either not recognised as victims of crime, or not seen as victims at all. The absence of recognition is a source of frustration and feeds further victimisation.

The need for **protection** represents protection against retaliation and intimidation such as being dismissed by the corporation for persistent health problems, or threats of relocating the company thereby taking away

a great number of employment possibilities. Findings in Italy also point to the expectation that they, the victims, should have been protected by public institutions against the suffered harm before it occurred, in the sense that it should have never occurred. Protection against repeat victimisation represents another type of protection. Continuing exposure to harmful factors is a given in many cases of corporate violence; for instance asbestos and Thalidomide were used for many years after the effects were known by the companies. Lastly, indifference and inactivity of public institutions can lead to secondary victimisation. Moreover, in Germany, some participants reported negative experiences such as poor treatment and not being believed by competent authorities.

The need for adequate **information** on different levels was also expressed. Victims require correct, complete and understandable information about their health status, their perspectives and the nature, causes and future developments of their conditions. They also want to know who carries the responsibility for their suffering. In this sense victims expressed a need for knowledge of all the facts which led to their victimisation. A need for correct, complete and understandable information about the legal options open to them, and about effective and possible outcomes of judicial proceedings was also expressed by professionals as important. This allows victims to make informed choices and to participate in the proceedings in the legal sphere, which tends to be complex for victims without the necessary information.

**Support** needs touch upon different domains. A first area is medical support, which needs to be tailored to the rare pathologies and complex clinical situations inherent to corporate violence. Continuous and specialised psychological support and counselling represents another area of support. Considering that direct economic loss is recurring in many cases, economic support is an equally important area for victims. According to a lawyer, victims also require support to get access to justice. More specifically, they need support to be enabled to get organised. They need access to justice as a collective, as a group. And, they need professional support to dig out the case, because the collection of proof is complex and difficult in many of those cases. Quality legal information and support are important here, especially considering that the relation between the victim and the corporation in proceedings is one of David versus Goliath. Support for people victimised at the workplace is needed because those victims are in isolated and delicate positions. Support would help their reintegration at the workplace. Also, German workplace victims expressed the need for an independent regulatory body to handle accidents at the workplace. More generally, the need for victim support services is important where those do not exist.

The **social informal network** (friends and family) of a corporate violence victim has been reported to be a crucial part in the coping process. However, due to the victimisation these relationships can become tense and difficult.

The findings about the role of the **media** show mixed results. In Belgium interviewees demonstrated how the media can be a powerful ally. The same is true for Germany, with the exception of one participant that noted that the media is not sceptical enough towards competent authorities, and that local press is reluctant to criticise powerful local corporations. In Italy, however, interviewees mostly reported a difficult relationship with media, portraying them as neither sensitive nor supportive of victims' problems and needs due to their superficiality and sensational approach. When episodes of corporative violence were not sensational ('newsworthy'), there was a lack of interest resulting in a superficial and simplistic report of the facts.

The general findings about the role of **politics** and politicians in the German and Italian study is that they are often described as being uninterested, indifferent, inactive and reluctant to stand up to corporations. Only when, if at all, the political sphere is put under pressure by associations and media would they start to take notice of the events. Yet, attention by the highest authorities has been found to act as an immense symbolic recognition for victims. The Belgian findings show that there is special treatment for sudden collective victimisation, such as disasters. They attract more political intervention and goodwill, offering recognition to victims, and addressing their needs swiftly and adequately. However, as time goes by, political interest fades away. Moreover, some politicians act purely for political gain, without showing any sincere sensitivity for the victims' plight. Lastly, the findings in all three countries show some form of collaboration between corporations and politicians, and local or national authorities.

#### *c) Judicial proceedings and compensation*

From the three countries involved in the research Italy has most experience with bringing corporate violence to **criminal proceedings**. In Belgium criminal procedures are started up for disaster type of cases, which are often in the media and followed by the public eye. In other cases of corporate violence public prosecution authorities take a more passive attitude. Cases of corporate violence create enormous challenges for the criminal justice system. Justice professionals stress the difficulty to timely and correctly identify corporate victims. Also, often big groups of victims are involved which poses practical problems to adequately provide information on the possibility to access justice, and to organise victims' participation in the trial.

Victims of corporate violence face huge difficulties in criminal proceedings. As investigations and criminal proceedings take often place a long time after the harmful activities, memories may have faded and the crime may become time-barred by a statute of limitation. Proving the causal link between the harm and the corporate activities is often difficult and/or requires (costly) technical, medical or scientific expertise. Corporations are in an advantageous position, as they often hold key information on the case, and are financially able to appoint the best lawyers and experts. Victims need committed professionals to embrace their often complex case and continuity of action. Due to all these difficulties, the outcome of the case can be disappointing for victims involved and there can be a huge gap between expectations and outcome. The exposure of victims and their privacy during the criminal trial is experienced as problematic. Despite these difficulties the criminal trial has important functions for victims of corporate violence. Victims want to participate in the investigations or at the trial to prevent further harm. Moreover the criminal trial is an opportunity to raise interest and attention for the case, it is a useful instrument to collect evidence and to ask for compensation when other systems fail. More than obtaining information, victims want a public establishment of the truth and recognition of responsibilities through the criminal trial. In Germany criminal justice professionals appeared to be quite critical of the criminal proceeding reforms in favour of victims' rights.

**Civil proceedings** are not only pursued out of financial interests. Victims want to see justice done, assign responsibility and at times ensure that structural changes are made towards the future. However, both in Germany and Italy (this point was not discussed in the Belgian study) civil proceedings tend to be problematic.

**Compensation funds** can in some cases provide effective compensation and immediate help for victims. All EU member states have implemented national compensation funds for victims of violent crime in general. In Belgium, the National Compensation Fund for Victims of Intentional Violence was created in 1985 to cater to the needs of victims of crime who were not able to get compensation through other channels. The compensation is organised as a collective solidarity from all offenders. However, an interviewee who was a key player at the Fund, feels that it has been treated shabbily from the start. Additionally, the interviewee never heard of any cases of corporate violence at this particular fund. Possible obstacles relate to: 1) a lack of publicity of the Fund; 2) certain conditions of admissibility that compromise the access of victims of corporate violence; and 3) other factors such as the legal character of the offender (legal entity vs natural person) and expiring time limitations. Within these procedures, 'an act of violence' is often understood in a very 'standard' way, according to a classic conception of crime and criminal justice. The requirement of

'direct causality' can be problematic too, as well as the requirement for the damage to be 'intentional'. All these factors make it difficult to admit access to victims of corporate violence.

Other types of specific compensation funds, next to a general, national compensation fund, exist on a permanent or ad hoc basis. In any case, arguments are made in favour of such funds. They provide victims with recognition and make sure that victims do get compensation, and thus that social peace is fostered. However, it should be noted that when compensation depends on many conditions, victims are restricted in their choice and therefore experience the procedure as an interference with their autonomy. For instance, when the compensation is tied to a waiver of the right to initiate criminal or civil proceedings against the company, this is experienced as a buy off and puts victims before a moral dilemma. Therefore, compensation funds should be organised in a way which also implies the corporation taking its responsibility.

#### *d) Victim support and mediation*

Both in Italy and Germany, no institutionalised professional **victim support services** exist. Even though victim support is well developed in Belgium, victims of corporate violence do not seem to find their way to victims support services. These victims represent a marginal part of victim support services' caseload, even in clearly identified cases such as the gas explosion at Ghislenghien. There are however, no formal obstacles for this group of victims to profit from those services. Working with victims of corporate violence contains the same pillars of victims support as for conventional crime, which are emotional/psychological support, legal support, practical support and referral to more specialised services. It should also be noted that professional victim support service often have no tradition of collaborating with victims associations. Also, whilst in contacts with victims associations, it was found that bringing about change for the future is key for these victims (preventing further harm). This, however, is not a dimension that is directly visible in the above-mentioned pillars of professional victim support services. Also, when victim support services signal structural problems, the impression is that their information is not adequately transferred to the policy level.

No restorative justice or **mediation** process has taken place in Italy in case of corporate crimes to this day. In Germany, the Eschede train accident led to the instalment of an ombudsperson to mediate between the victims and the company. Interviewees mentioned an unequal power distribution considering that the ombudsperson was appointed by the company, but also reported that it at least provided a permanent contact person. In Germany, in general, professionals report that mediation is not very common, however, they consider it a useful alternative.



In Belgium, both **penal mediation** and restorative mediation staff were interviewed. The former is offered by the public prosecutor to victims and offenders of less serious crimes. In case an agreement is reached and correctly implemented, the case is dismissed and doesn't go to court. Formally there are no conditions which exclude corporate violence to go penal mediation. However, the interviewees could not think of any corporate violence cases and suspected that corporations are rather approached with proposals for 'penal transaction', another diversion mechanisms next to penal mediation offered by the public prosecutor. Nevertheless, justice assistants have experience in dealing with collective victimisation stemming from vandalism cases.

**Restorative mediation** professionals – able to intervene at all phases of the criminal justice process and for all degrees of seriousness of the crime - reacted, initially, with surprise and hesitation to the idea of mediation in cases of corporate violence. They pondered if cases of corporate violence concerned their type of work. This was reflected by the fact that only one mediation case came to mind that fitted the definition of corporate violence. Nevertheless, mediators agreed that corporate violence is an unexploited field in which mediation would make perfectly sense and could even be very interesting as these cases are surrounded by commotion, many questions, strong emotions and needs for communication, recognition and restoration. However, some characteristics of the cases would require specific attention such as minimum recognition of the facts and taking responsibility, adaptation of the practical organisation of mediation for collective victimisation, paying close attention to the balance of power between victim(s) and corporation, clarification in terms of which parties would take a seat at the mediation table and introducing mediators to the fields relevant to the cases (of corporate violence).

*e) Other types of support and action*

**Legal aid** is important for victims considering that they find themselves often in a difficult financial situation. In Italy, legal support is not offered by the State, therefore the system is felt as inefficient. In Germany, it is not well-known that legal aid is possible, and even in the one case it was offered, it played only a minor role. Similarly, in Belgium, the mechanism for pro bono lawyers is problematic in the context of corporate violence.

The victims' comments towards the received support by the **medical sector** in Italy were mixed, but generally positive. They experienced the interaction as attentive, sensitive, supportive and helpful. In Germany, however, obtaining medical advice was often difficult and doctors were in some cases unwilling to help or further examine causes of illness. Yet, the involvement of doctors in the case is regarded as having the potential to initiate serious discussion and political reaction.

Comments on the attitude and involvement of the **concerned corporations** in the cases of corporate violence were generally negative in Italy and Belgium. A lack of assuming responsibility for the harm suffered by victims was a main characteristic. The attitudes were mixed depending on the event. When victimisation was clear like the train accident in Eschede or the gas explosion of Ghislenghien (both disasters), companies would take action in favour of the victims through financial support or ad hoc compensation funds. However, these actions seem mainly to be driven to prevent further loss of image by the companies. The attitude of the gas company involved in the gas explosion of Ghislenghien alludes to this, as the company hired batteries of lawyers that tried to divert criminal responsibility away from the company during the criminal proceedings. Yet, at the same time, the corporation negotiated with the responsible magistrates on possible compensation for victims.

In Germany, unclear evidence and lack of scientific knowledge led to trouble with **insurance providers**. In Belgium and Italy, no data emerged on this topic.

Another **relevant issue** that was highlighted during the interviews is **memorialisation**, which is an integral and important facet of dealing with the aftermath of collective corporate violence victimisation. It represents a delicate topic which can ease pain or exacerbate frustrations depending on the way it is handled. Another issue that was discussed during the interviews concerned the importance of developing **scientific research** about various issues related to corporate violence. These include establishing best practices for medical professionals in dealing with rare pathologies related to corporate violence, and the training of lawyers and public enforcement agents to develop a more victim-sensitive approach.

**Victims** have shown to be **resilient** through both individual and collective initiatives. As for **individual initiatives**, victims have shown resilience at many levels and in different ways. Some victims have participated in procedures against the corporations, both civil and criminal. Others are fully engaged in victims' associations and campaigns. Another victim has written a book in which he provides meaning to his personal situation through the more structural battle against the cause of his family's suffering. Some victims have also refused lump sum compensations by corporations.

In terms of **collective initiatives**, victims' associations play a fundamental role, especially in countries where institutionalised victims' support services do not exist. They play an important role in connecting victims and presenting a common approach toward corporations, authorities and the public. Examples are exerting political pressure in order to obtain public forms of compensation, or raising awareness about specific dangers and harmful products. Moreover, victims' associations provide an important

place for victims to be recognized in their suffering. They also act in the interest of victims, and provide all sorts of advice and support.



**“VICTIMS AND CORPORATIONS”**

**Implementation of Directive 2012/29/EU  
for victims of corporate crimes and corporate violence**

**Needs of Victims  
of Corporate Violence:  
Empirical Findings**

**National Report:  
Italy**

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# 1.

## METHODOLOGY

### **1.1. The national approach to the empirical research**

Consistent with the project's goals, a qualitative research concerning the needs of victims of corporate violence has been conducted in Italy, resulting in an overall of 12 empirical activities comprising individual interviews and focus groups, as further described, and followed by qualitative data analysis consistent with the criteria and methodology the project's staff has agreed upon.

The Italian research team has intended the qualitative research as a unique opportunity to access the project's field of investigation, after having completed a thorough desk study of both literature and case law. Interviews and focus groups have therefore allowed the project staff to get directly in contact with the individual and collective experiences of a few of the many victims of corporate violence and with the expertise and points of view of various professionals having dealt with them (judges, prosecutors, lawyers, medical doctors, trade union members).

The staff tried to get in contact with the victims of the Italian landmark cases, having or not those cases resulted in criminal judgments. The response by the victims, victims' associations and professionals that the staff managed to approach has been extremely positive. Their availability and collaboration have been impressive. Yet, the goal of reaching victims of all the major cases has been achieved only partially: practical obstacles, such as the tight timescale of the project and the numerosity of persons involved in these cases, prevented the staff from actually and timely meeting with all the persons it came across with, all over the Country. Nonetheless, interviews and focus groups did give voice to the victims and associations involved in some of the most significant cases for the scope of this study, and to some of the most experienced professionals in the field.

### **1.2. Ethical issues**

Participation in interviews and focus groups has been completely voluntary, subject to previous, thorough, information on the purposes and scope of the project and of the research, and subject to the participant's written informed consent.

Particular attention has constantly been paid to the ways victims were approached, contacted, informed, interviewed and followed up. No victim

was approached without a prior ‘filter’ by a contact person or a support person (a member of the victims’ association, a lawyer, etc). Ethical issues concerning privacy, respect of victims’ dignity, prevention of secondary or repeat victimisation have been a major concern. The Italian team strictly complied with the project’s ethical guidelines. Throughout the research, the project personnel has done its very best to ensure a respectful, confidential and sensitive contact with all the subjects involved. Feedbacks received from participants during informal follow-ups are reassuring to this regard: almost all the interviewees and participants to focus groups have reported that participation to the activities resulted in a positive experience and in a form of recognition.

Ethical issues concerning data protection have been dealt according to national regulations and to the Italian “Code of conduct and professional practice applying to processing of personal data for statistical and scientific purposes”. The principle of minimisation of data has been constantly guiding the staff during transcriptions and data coding.

### **1.3. Research activities**

#### *1.3.1. Interviews*

9 semi-structured, face-to-face, individual interviews have been carried out. Interviews involved: 3 victims\*, one family member\* (daughter) of a deceased victim, 2 trade union representatives who are active members of a victims’ association and who have been indirectly affected by the collective harm caused by the corporate crime, 3 professionals (1 medical doctor, 1 former public prosecutor, 1 lawyer). In total 7 men and 2 women participated in the interviews. The average age of the interviewees is 60. The youngest interviewee is a medical doctor aged 44, the oldest interviewee is also a professional aged 76 (magistrate). The age of the interviewed victims ranges from 50 to 74 years old. The average duration of the actual interviews has been of approximately 1 hour and 45 minutes (minimum duration: 83 minutes; maximum duration: 2,5 hours). Interviews have been carried out from July 2016 till January 2017.

Interviews took place in safe, confidential and comfortable places, agreed upon by the interviewees and the researchers, precisely: a) rooms within the Università Cattolica facilities; b) victims’ associations facilities; c) professional interviewee’s workplace.

All the interviews have been conducted by the same interviewer, a senior, experienced and qualified researcher from the project staff in charge of the coordination of the empirical research. Other senior, experienced and qualified researchers from the project staff and one younger researcher from the project’s national Organisation took

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\* Following the definition of Article 2 Directive 2012/29/UE.

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alternatively part in the interviews as ‘interviewer assistants’, in order to share an external point of view and therefore better assess relevant issues and important topics discussed by the interviewees.

### *1.3.2. Focus Groups*

Three focus groups were carried out. They took place in October 2016, January 2017, February 2017, and each one involved small groups of people.

A ‘one moderator’ type of focus group was followed. The same moderator conducted the three focus groups. Moderator assistants were alternatively members of the project staff or of the project’s Organisation.

Overall, 16 persons – 9 men and 7 women – involved themselves in the three focus group meetings. Two focus groups involved victims\* (or mainly victims: a spouse of a living victim and a lawyer also took part in one of the meetings); one focus group involved various professionals (judge, public prosecutor, medical doctor). The selection of the victims followed a ‘case’ criterion, gathering people having experienced victimisation in the same harmful circumstances. Instead, the group selection of professionals followed the criteria based on their recognised competence, direct experience and/or deep knowledge of the issues raised by Italy’s leading cases of corporate violence.

As of the age, 43 is the age of the youngest victim participating in the focus groups, and 78 the age of the oldest one. They are both family member of deceased persons. All the victims of the Thalidomide focus group are of nearly the same age (54-57), because of the defective drug being sold to and used by pregnant women in the same elapse of time. Professionals who took part in the focus group are aged between 58 and 74 years, with a long working experience.

The average duration of the focus groups has been of approximately 3 and a half hours (minimum duration: 2 hours; maximum duration: 5 hours).

Focus groups have been organised in places agreed upon by the participants and the researchers. One focus group with victims took place at the victims’ association headquarter; interestingly, this also enabled the researchers to visit some of the actual places where victimisation occurred. The second focus group with victims was arranged in multiple sessions, partly at an hotel/café meeting room and partly at the office of the victims’ lawyer: this focus group, in fact, took place as a side event of the national assembly of the members of the victims’ association. Nonetheless, the group discussion was safely and confidentially carried out. The focus group with professionals was hosted in an adequate facility within the Università Cattolica campus.

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\* Following the definition of Article 2 Directive 2012/29/UE.

### 1.3.3. General information

All the participants in individual interviews and focus groups have been informed about the contents of the Directive 2012/29/UE and have been given a paper print or a digital copy of the Directive, together with other EU information materials concerning victims' rights (EU Commissions flyers and factsheets).

Interviews and focus groups have been video- and audio-recorded (except for the first interview which has been audio-recorded only), then transcribed *verbatim* by the project staff's trustful collaborators. All transcripts underwent a subsequent anonymisation process. Since three senior members of the Italian team of the project have been directly involved in contacting victims and professionals and in conducting all the interviews and focus group meetings or in co-assisting the interviewer/facilitator, the involvement of a more 'neutral' staff in the coding process has been deemed useful to ensure a clearer interpretation of the many empirical findings. Therefore, data coding and a preliminary data analysis have been entrusted to two qualified (younger) researchers. Transcripts, coding, and data analysis have then been discussed among the members of the research team in order to minimise biases.

The researchers opted *not* to resort to qualitative analysis computer software packages. Rather, the data were coded manually and organised in grids summarising and organising the participants' stories.

## 2.

### THE CASES

#### 2.1. Categories of cases

- Pharmaceutical (product safety)
- Environmental (pollution or contamination having caused death or serious diseases)
- Occupational safety

#### 2.2. Specific cases

##### **THALIDOMIDE CASE** (Pharmaceutical)

Thalidomide is a drug that was originally prescribed as a ‘wonder drug’ for the treatment of morning sickness, headaches, coughs, insomnia and colds. Thalidomide was also used to combat nausea and to alleviate morning sickness in pregnant women. The drug was largely sold in the ‘50s as safe. Shortly after the drug had been placed on market, thousands of infants all over Europe were born with *phocomelia* (a malformation of the limbs). Almost 40% of them died.

The first cases of *phocomelia* emerged in 1960. Thalidomide was pulled from the Italian market in 1962, one year later than in all other European Countries.

A complete identification of victims is only partially possible in Italy.

A criminal proceeding against the pharmaceutical corporations never started. Even today it is unclear how many and which corporations were involved in the distribution, as well in the production, of the drug. It seems that at least seven pharmaceutical corporations placed the drug, with different names, on the Italian market. Furthermore, victims found it difficult to collect their medical records and files in order to get the evidences necessary to suit a legal action.

Italian victims never received a compensation from any of the pharmaceutical corporations involved. Also the German corporation Grünenthal, which developed the drug, never recognized and compensated the Italian victims.

Only in 2008, with the Law n. 244/2007, the Italian victims (but only those born between 1959 and 1965) obtained a compensation fund from the State. The criteria and requisites which allow the access to this fund are

very restrictive and not clear. The associations of victims, still active, asked to review the Law, at least to see recognized the compensation fund also to infants born in 1958 and 1966.

#### **ETERNIT CASE** (Environmental)

The case concerns thousands of people who contracted asbestos-related diseases caused by Eternit, a fibre-cement used for the preparation of tiles, sheets for building construction and water pipelines. As early as in the 60's, various studies demonstrated that the asbestos dust could cause 'asbestosis', as well as a serious form of cancer, named pleural mesothelioma.

The facilities opened in Italy at the beginning of the century, in 1907, and the commercialisation of Eternit lasted until 1992.

The Italian case involves thousands of victims, including the workers of a number of plants, as well as the residents living in the area where plants were located, as a result of the wide spread of the material in the cities and in the buildings of infrastructures. All the victims' diseases are asbestos related (lung cancer, pleural mesothelioma, etc.). Many of them have already died. Even today, a complete identification of all victims is only partially possible due to the long latency of these kinds of diseases.

The first criminal proceeding against the corporation started in 2009 and closed in 2015 with a sentence of no prosecution due to limitation of time. The outcome of the trial clearly generated discontent and disbelief. The participation of victims and their associations into this first criminal proceeding was massive. A second criminal proceeding concerning the same facts is still ongoing.

Many of the victims identified during the first criminal proceeding entered into an extra-judicial agreement with the corporation, obtaining a partial compensation of damages.

#### **INFECTED BLOOD** (Pharmaceutical/product safety)

The scandal of infected blood took place in the '80s and '90s. Contaminated haemophilia blood products caused large numbers of people to become infected with HIV and hepatitis C and B. The diseases were spread through concentrate of blood product made from large pools of donated plasma, much of which was collected in prisons or among drug users prior to routine HIV testing. In 1983, the Bayer corporation declared that there was strong evidence to suggest that AIDS was passed on to other people through plasma products.

The test of HIV was available in 1985 and the one for the hepatitis C in 1989. Despite this, in 1993 the Italian Ministry of Health allowed to sell products in stock, still not tested, and therefore not safe.

Official data on the precise number of victims in Italy are unavailable. Italian victims' associations report that about 120.000 persons have been infected by HIV, hepatitis C or B due to contaminated blood. Almost 4500 of them already died. Categories of victims are: haemophiliacs, thalassaemics, and persons infected by occasional transfusions.

The Italian case represents a long history of denegation of justice and compensation for victims.

In the '90s, a criminal investigation started in Trento against the Minister of Health (also condemned for having been corrupted by pharmaceutical corporations in a separate criminal proceeding) and some Italian and foreign pharmaceutical corporations. After 7 years of investigation, due to the limitation period, the accusation against the foreign corporations lapsed. The criminal proceeding was then transferred to Naples but just for a small part of the original count of indictment, and charging only an Italian pharmaceutical corporation. The trial is now ongoing, even if for many cases of victims who brought the civil action into the criminal proceeding the limitation period has already been sentenced.

In 1992, with the law n. 210, the Italian State recognized to almost 30.000 victims a monthly refund to cover medical assistance.

In the following years, thousands of administrative and civil proceedings have been suited against the Italian State to obtain a compensation for damages. In 2003 the Italian State entered into an extra-judicial agreement to compensate the victims who suited the first 700 civil actions. In 2007, the laws n. 222 e n. 244 recognized the right to obtain a compensation fund based on each damage suffered by the victim. But criteria and requisites to obtain the compensation were so restricted that most of the requests have been rejected. Furthermore, in 2008 the negotiation between State and victims aiming to close the ongoing litigations ended and thousands of requests for damages remained pending before the Courts. Some Courts ordered the Health Ministry to pay damages to victims, recognizing that the Italian State was too slow to introduce measures to prevent the spreading of the virus through donated blood, and did not establish proper checks on plasma and plasma-derived products. The State appealed and after the *res judicata* did not pay. For this reason, in January 2016 Italy was condemned by the ECtHR to pay more than 10 millions of Euros to the group of victims (371) who brought the action before the Court.

In 2014, a new Law recognized a lump sum of 100.000 euro as compensation to some categories of victims.

## 3.

# FINDINGS

### 3.1. Overall observations

The main output of the empirical research, as conducted in Italy, is a substantial confirmation of the project's initial assumptions, their relevance and justification, especially with regard to:

- the *specificity* of corporate violence victimisation, its European and national, social and juridical relevance;
- the *lack of recognition and protection* of victims of corporate violence, resulting in an insufficient consideration of these victims compared to others, despite the often collective dimension of corporate victimisation which should make victimisation more 'visible';
- the *lack of awareness* among regulatory agencies and many practitioners, resulting in the lack of a timely recognition and subsequent protection of victims, and in the lack of an adequate, if any, access to justice and to compensation;
- the *need to foster the implementation of the Directive 2012/29/UE* in Italy, principally in relation to victim support services and victims' assistance, and to *tailorize* the implementation of *the Directive to the specific needs of victims of corporate violence*, who appeared to be a particularly vulnerable group.

The research, in fact, has offered a *qualitative* feedback from various persons (direct victims, family members, victims' association representatives, professionals) on the Directive-sensitive topics that will be presented and discussed in the next paragraphs. As a brief introductory overview, a few more outstanding features, stemming from the empirical research, are selected below and supported by some paramount quotes from interviews and focus groups and by basic references to the Directive 2012/29/UE.

#### a) *Severity of corporate violence*

Article 22(3) of Directive 2012/29/UE prescribes to pay particular attention, when assessing the individual protection needs, to 'victims who have suffered considerable harm due to the severity of the crime'. Corporate violence affects human life, human health and the environment, causing harmful and often deadly consequences on present and future generations. The narratives of the interviewees and focus groups' participants are impressive in this regard:

«[In Casale Monferrato] every week there is a new diagnosis of mesothelioma, and every week there is a funeral of a villager who dies because of this disease. [...] More and more often the disease strikes young people. [...] In Casale people know that this disease has no cure and that no one ever survived» (professional: medical doctor, Eternit case)

«The entity of the catastrophe is [unimaginable]... Hundreds of people died, out of a population [of Italian haemophiliacs] of three thousands. It was a catastrophe...» (victim of infected haemoderivative drugs).

Many interviewees referred to their case using words like ‘catastrophe’, ‘carnage’, ‘massacre’, ‘war’, etc. Due to the extreme consequences reported and the number of people involved, several victims from various cases even compared the severity of their victimisation to the effects of the terroristic bombings occurred in Italy during the so called ‘years of the lead’ (victims quoted: Milano, ‘piazza Fontana’, 1969; Brescia, ‘piazza della Loggia’, 1974; Bologna railway station, 1980)

«This carnage is not different from the one in ‘piazza Fontana’ or ‘piazza della Loggia’. There has been less clamour and the reason is threefold [...]: first, there was no outburst, no explosion, and therefore it was not heard; secondly, the harm has concerned people who were already sick, and sick from a genetic disease [...]; and third because it was a blood infection [...] there is always that ‘but’ [...] a suspicion...» (daughter of a deceased victim of infected haemoderivative drugs).

#### *b) The collective dimension of corporate victimisation*

According to Article 18 of Directive 2012/29/UE, measures should be made available ‘to protect victims and their family members’. Corporate violence involves individuals, families and entire communities and this topic stands out in this research.

Examples of victimised families and communities with which researchers came in contact are those of the inhabitants of Casale Monferrato (Eternit case) and of the Italian haemophiliacs who perceive themselves as a community.

The whole town of Casale Monferrato has been environmentally exposed to asbestos during decades: this affected Eternit’s workers first; then, silently, the harm outreached their immediate family members, including children, and then slowly all inhabitants were exposed through the polluted environment, where asbestos was ubiquitous. During interviews and focus groups, participants told stories about workers’ wives washing their husbands’ working clothes full of asbestos fibres, which were therefore unknowingly inhaled without any precaution; or about young siblings or cousins playing in the courtyard with asbestos powder as if it was sand, and then being diagnosed, one after the other, during the same week, twenty years later. Medical doctors reported that the peak of the disease in Casale Monferrato is yet to come.

«Victims are not only the sick persons or the dead because of asbestos-related cancers or of asbestosis, victims are also the family members and all the inhabitants of Casale and its surroundings: those who are not sick live in the constant terror to become sick. [...] They have post traumatic stress disorders like the Vietnam veterans or the atomic bomb

survivors, who live in constant anxiety and daily fear to die [...]. Villagers in Casale who have cough do not go to the doctor to get a prescription for antibiotics, but they directly go to get an Rx» (professional: medical doctor, focus group, Eternit case).

«My uncle and my father died of mesothelioma. None of them worked at the Eternit implant [...]. It is something you carry inside yourself forever... for the fear that it may happen to you. All the times you have backache, you tell yourself: 'this time it's my turn'» (family member of deceased victims, focus group, Eternit case).

In the Thalidomide case, mother-child bonds were at the heart of victimisation, having pregnant mothers been involuntary carriers of the harm caused by the defective drug *they* took. In the Thalidomide case, furthermore, corporate violence has even 'created' a whole new, unintentional 'community' nationwide, but, in fact, worldwide. This community is composed of the hundreds people all over Italy, who, at the beginning of the '60s, were born with a 'typical' disability named after the teratogenic drug taken by their mothers during the pregnancy. These victims' life falls together with their victimisation: they were *born* 'victims', and their victimisation started even before the birth. Their collective identity carries the name of the actual cause of their deformities and disabilities: they are the ones affected by the 'Thalidomide Syndrome'; they are the 'Thalidomide babies', or – in Italian – 'i talidomidici'. The mothers of the Thalidomide babies are an invisible group of victims, since the case has been perceived and treated as a problem concerning only foetuses and born children, not mothers, who besides perceived themselves as the guilty party.

*c) Complexity of corporate victimisation and vulnerability of victims of corporate violence*

The Directive's Recital 56 stresses the need to 'take into account the personal characteristics of the victim such as his or her [...] health, disability, residence status, communication difficulties, relationship or dependence on the offender'.

These aspects are recurrent in the interviews and focus groups. Corporate violence in the pharmaceutical sector, for instance, may often hit people who are already sick and in constant need of pharmaceutical treatment. But corporate violence victims may become sick as a result of the harm suffered.

«Mesothelioma is a rare tumour. You are a victim twice. You are a victim of the disease, and you are a victim of the therapeutic protocols» (professional: medical doctor, Eternit case)

«There were people there who were f... furious; their rage did not spring only from a medical condition induced by curing another one – a iatrogenic harm -, but rage was springing from having been ignored until that moment» (victim of infected haemoderivative drugs).

As of *communication difficulties*, interviewees reported, almost invariably, their need to be supported in facing the corporation's informative and



organisational power and/or the legal technicalities during criminal and civil procedures or during out of court settlements.

«Back then, we needed almost everything, since we found ourselves with our feet stuck in the middle of something, without even knowing what a mesothelioma was» (family member of a deceased victim, Eternit case)

A unique form of *dependence* on the corporate offender emerged from interviews and focus groups, which entails the need of victims to be supported in rebalancing – or interrupting (when possible) – the relationship with the corporate offender. This dependence, for instance, is related to survival in the case of the haemophiliacs, whose life *still* depends on the pharmaceutical companies. In the Eternit case, the dependence on the corporation is related to the employer-employee relationship, but also to the economic impact of a big implant on a whole territory and to the environmental and territorial link between the factory site and the places where people actually live.

«I called it a *lethal* embrace, which prevented workers and their conscience from emerging» «This firm gives me so much [...]: summer camps at the seaside for children [...], scholarships, Christmas presents, factory shops [...], good wages... How possibly could workers protest? It was impossible, impossible... [...]» (trade union representative and member of the victims association, Eternit case).

As of *residence status issues*, the three major cases addressed thoroughly during the research (asbestos, infected haemoderivatives, Thalidomide) share common features: a) the international, European and national dimension of the victimisation (victims are present in several Countries; victimisation occurred in several Countries); b) the involvement of multinational corporations that have their headquarters outside the Country of residence of the victims; c) the involvement, locally, of national subsidiaries or separate national firms, which resulted in corporations and local firms trying to shift their responsibilities, if not even trying to ‘pass the buck’; d) the obstacles in accessing compensation due to the succession of different, multinational and national, corporations in the production and/or the selling of defective products.

«Some of the members of our Victims Association and some other non-member victims claimed a compensation. The constant response from the [multinational] corporation was ‘icy’: ‘we have nothing to do with Italy. We are sorry, but the drug was not sold by us in Italy [...] and therefore we have no responsibility towards you...’» (victim, focus group, Thalidomide case).

«This is the famous drug produced by the Austrian corporation, a corporation we have never managed to reach because of the international letters rogatory» (victim, infected haemoderivatives).

#### *d) The deceitful nature of corporate violence*

Almost invariably, participants to interviews and focus groups reported a sort of tragic deception and a form of delusion: this is due to the ‘promise’

of a better life associated to the corporate activity or product, and, even more tragically, to the *initial* experience of an *actual* improvement of life conditions. Hailed as scientific progress, advanced technological products, ‘wonder pills’ or the ‘new’, up-to-date factory which would have entailed welfare and economic growth, corporate activities and products, instead, had an inner, and hidden, negative nature which caused opposite consequences. What should have brought about social and/or economic improvement, well-being, better health conditions revealed progressively its lethal or harmful nature. And when things were clear... it was too late.

«They were called the ‘magic drugs’. And in fact they were [...], it’s crazy but they were so effective» «This was a revolution in the life of the haemophiliacs, because haemorrhages could finally be treated» (victims of infected haemoderivative drugs).

«... the fascination of the big factory, of the secure workplace [...], of the new factory...» (trade union representative and member of the victims association, Eternit case).

#### *e) The persistence over time of corporate violence*

Corporate violence is neither a new phenomenon, nor a problem that can be considered overcome. The cases examined during the empirical research show this clearly: the Thalidomide and infected haemoderivatives cases date back a few decades, and yet victims had to struggle until recently in order to receive some forms of indemnisation and/or compensation. Long latency periods typically related to asbestos exposures impact with access to justice and ways to claim it. Furthermore, asbestos clearing treatments are far from being completed in Italy, not to mention the fact that the ban of asbestos is not a concern worldwide. Other environmental cases, approached during interviews and focus groups, show how corporate violence is ongoing (such is the case, for instance, of pollution related to the ILVA implant in Taranto).

### **3.2. Typologies of harm**

All participants reported a heavy toll in physical harms, including deaths, long-term illnesses and invalidating diseases.

In the cases referring to contagion by HIV and/or HCV through contaminated haemoderivative drugs, more specifically, harm ranges from the acquisition of an infection requiring constant monitoring and further pharmaceutical treatments (not always covered by the National Health System), to the development of the related disease (AIDS and/or consequences of HCV), implying long and painful sufferings and, in hundred of cases, death. Actually, about 80% of the Italian haemophiliacs treated between the Sixties and the first half of the Eighties were infected with HCV, while about 50% of the same patients were infected with HIV; consequently, in the following years, about five hundred Italian haemophiliacs have been killed by the diseases spread through the contaminated drugs (many of them children or young adults). In some

cases, mainly due to the lack of information during the first years of this 'epidemic', other people – spouses and partners – got infected, developed the diseases and died, thus increasing the psychological sufferings of the victims.

«Hundreds of people died in a community of three thousand. [...] This was a catastrophe in every respect. Not just an epidemic disaster, which it certainly was, but a social catastrophe too» (victim of infected haemoderivative drugs).

Exposure to asbestos also generated an 'epidemic' of harm to health going from asbestosis to lung cancer and, eventually, death. Thousands of premature deaths in the locations of asbestos-producing factories are reported, and thousands more are expected, due to a very long latency period. The affected people were workers employed in the factories, but also family members – particularly spouses, exposed to asbestos while washing their husbands' overalls – and, more generally, residents in the areas surrounding the plants (about 80% of the annual new diagnoses concern people exposed to environmental contamination), including children exposed to asbestos' dusts dispersed in the environment (also due to unsafe transportation and disposal methods), who have afterwards developed, or are now developing, the related illnesses (at an age generally far younger than the workers). Asbestosis, mesotheliomas and other related harm to health imply long, invalidating and painful sufferings for the affected, and the certainty of death, as there are no cures for them.

In the case of Thalidomide-induced foetal malformations, the consequence was phocomelia, a severe pathology affecting the normal development of the body, so that the interviewed victims were born lacking one or more limbs or parts of them. Therefore, they struggled with this handicap for the entire life, and so did their families.

A wide range of psychological and social harm are related to the physical ones.

Victims reported pervasive anguish and fear for the long-term harmful consequences on their health, in several cases (particularly for people exposed to asbestos or infected haemoderivatives) made worse by the hurt, anger and impotency due to having seen fellow workers/patients and/or family members undergoing the same path of illness and death.

In particular, people inhabiting the areas surrounding asbestos facilities live in constant fear of developing the related diseases, suffering a huge amount of constant stress, and, once affected, knowing they will certainly die. Professionals dealing with this kind of patients in particular report high levels of anger, frustration and rumination, to the extent that often a proper PTSD (Post Traumatic Stress Disorder) can be diagnosed, to both patients and their relatives, who, in several cases, are one and the same.

In one case, a victim infected with HIV through haemoderivatives drugs reported having unknowingly passed on the disease to the partner, who ultimately died: in such a case, the suffering and bereavement of the loss

are exacerbated by the feeling of being to some extent responsible for another person's death, and can last for decades.

In some cases – particularly for people infected with HIV – the disease also affects the victims' (and their families') social status, because of the strong stigmatisation related to HIV and, after the contagion on a large scale of haemophiliacs was made known to the public, also to haemophilia itself. Parents of infected children particularly fear for their future, both because of the disease itself, and of the social reaction to it; more generally, infected people (or just haemophiliacs) and their relatives also experience, on occasions, social stigmatisation and exclusion, and in any case, constant fear of it, because of public opinion's fear of HIV, and because of the social stigma that such a disease carries.

Social stigmatisation was also reported by victims of Thalidomide, due to the physical deformities they are were born with and which, one victim reported, for long years they have struggled to conceal and failed to integrate in their self-image:

«I was quite apt at concealing [my malformation], I was a real artist, so much so that many people, after having known me for several years, told me: 'It's not possible, I've always seen you with two hands, I can't believe [...]'. I was really good at it. [...] This aunt of my boyfriend's realized [I lack one hand] and told all the village [where we were on holiday]. I got up and the procession started: people were coming to have a look at the weird beast. They made gestures [the interviewed mimics a person staring at her arm] and asked 'How do you manage to wash your face?'. These kinds of things. At the third person I packed» (victim of Thalidomide).

But also in the asbestos cases, one family member of a deceased victim lamented a sort of social stigmatisation of people having developed an asbestos-related illness, who were to some extent 'blamed' for their condition.

In the haemoderivative case, the contracted infection also heavily affects sexual and family life, which has to adjust to the always present risk of contagion and to the constant need for precautions:

«The limitation that my father [an haemophiliac who got infected with both HIV and HCV] felt the most [...], which brought him the greatest suffering – I actually believe he thought about suicide because of this – was that he really could not conceive to live feeling unsafe when hugging his daughter. And then the illness took over [...], it was extremely invalidating, [...] on a daily basis it was like precipitating into hell» (daughter of a victim of infected haemoderivatives).

Parenthood is also severely limited or impossible, as a natural pregnancy would be too dangerous, a medically-assisted one is often too costly and difficult, and adoption is generally denied because of their precarious health condition.

More generally, due to the long-term effect of harm to health occurred in all the analysed cases, families of victims see their life heavily disrupted: every aspect of it revolves around the malady of the affected person/persons, often for long years or even decades; when the person

affected is a child, worry and anguish for the future, as well as practical issues, are constant and dominating elements in the parents' life.

When the affected person died, as it has often happened, bereavement, rage, anguish, and long-term traumatising due to the premature loss were reported. Some relatives reported their inability to ever get over their bereavement and rage, which impact all aspects of their lives.

Illnesses and deaths also brought with them economic consequences, such as impossibility or reduced ability to work, loss of income, huge medical expenses. In the cases of exposure to asbestos, the closure of implicated facilities left hundreds or thousands of people without a job, while the environmental contamination was still to be dealt with.

Community life was also affected, particularly in asbestos cases – where local population was slowly but steadily decimated, NHS got under stress and proved unable, at least for some years, to deal with the 'epidemic', and local economy was disrupted – and in haemoderivatives cases – where the solidarity within the haemophiliac community (a feature indispensable to effectively fight against a rare and invalidating disease) was disrupted by social stigmatisation attached to HIV as well as by the fragmentary and irrational distribution of compensations.

### **3.3. Perception of harm**

Perception of harm was generally deferred, for longer or shorter periods. While in Thalidomide cases the harmful effects were perceived at the end of the pregnancy, with the birth of the affected children, haemophiliacs took generally years to realize they had developed one or more further illnesses besides their original one, also because of an initial lack of medical knowledge on the involved viruses (HIV and HCV). And while haemophiliacs were, however, generally screened for contagion as soon as their doctors realized the risk they had been exposed to (through potentially contaminated drugs), in the asbestos cases, even if the dangerousness of asbestos' dust had been known for a long time, no systematic screening of the potentially affected population was planned and medical screening on the workplace was practically non-existent; thus, people realized they had been affected only at the manifestation of the first symptoms, years or even decades after their exposure. Currently, there is a sort of reversal of this situation, as people living (or having lived) in areas surrounding asbestos plants tend to connect any physical malaise to an asbestos-related disease, living in fear of developing mesothelioma, and having to subject themselves to specific medical checks far more frequently than the general population.

Also the scope and seriousness of harms were generally not immediately realized. On the one hand, several related health and practical problems only emerged through the years, as the diseases developed and/or, in case of affected children, they grew up and had to face new life's challenges; on the other, especially in asbestos and haemoderivatives

cases, a lack of medical knowledge made impossible for years to realize the full scope and the exact future development of the harm suffered (for instance, HCV was not, initially, exactly distinguished from other forms of hepatitis and studies on HIV were just at the beginning when the contagion started to affect haemophiliacs), so that, for some years and till the first deaths, the new disease was just perceived as a sort of ‘complication’ of the already existing, ‘more serious’, haemophilia.

Slowly, full consciousness of the real scope of the harm emerged, either through direct experience (worsening of symptoms, deterioration of health), or through knowledge of other peoples’ cases, or through better medical information, and generally through a mix of all these. This generally brought an all-encompassing, life-changing effect, as this kind of harm to health heavily affects (see above, § 3.2 and below, § 3.4) every aspect of a person’s (and usually also of their family’s) life, from working abilities to social and family interactions.

Partly for the same reasons, the victimisation was, quite often, initially not perceived as such, and only slowly the affected people started to realise that their sufferings might be due to the responsibility – and even the criminal responsibility – of someone.

For instance, in the haemoderivatives case, while the connection between HIV/HCV contagion and the drugs assumed to control haemophilia was immediately apparent, it took years for the victims to realize that the drugs contamination was due to failures, of a potentially criminal nature, in the collection and processing of blood on the corporations’ part, as well as to a lack of control and intervention by public authorities.

In the asbestos-related cases, for decades asbestosis was accepted as a ‘normal’ professional illness for workers involved in that production, and the public was not aware of the connection between asbestos and lung cancer (mesothelioma), nor of the possibility of developing asbestos-related diseases in ways other than working in factories where asbestos was employed (the first registered cases of workers’ relatives developing fatal asbestos-related diseases emerged in the Eighties). Only slowly victims realized that hazards related to asbestos were far more widespread, that the business had known about them long before public opinion, and that asbestos production and commercialization had been managed in a very negligent, or even reckless, manner.

In the Thalidomide case, while the harm was immediately perceptible at birth, for a long time parents were unable to realise it actually was an harm (and not an ‘act of God’), as the link with the use of the drug that had actually caused the phocomelia was largely unknown. Even after information on the possible teratogenic effect of Thalidomide started to circulate, it was strenuously denied by the pharmaceutical industries involved and it took years of legal battles to have the harm acknowledged.

### **3.4. Consequences of harm**

As already suggested (see above, § 3.2) the suffered harm implied, for all victims of corporate violence participating in the research, long-term and life-changing consequences.

Those who are still alive, albeit approaching their malady with different attitudes (see § 3.7.1), highlight the daily difficulties of dealing with diseases that affect, in different degrees, their professional, social and private life. Family members of deceased people also generally had to struggle with their loved ones' health problems for a long time before they were taken from them, and afterward underwent dramatic bereavement (children having lost a parent at a young age and parents having lost a child appear to be the most traumatised), and also, in many cases, a significant loss of income after the death of the family 'breadwinner'. These kinds of long-term, severe illnesses developed by the victims require them and, generally, their family members too, to entirely rebuild their lives around the malady, because of time-consuming medical analysis and treatments (in some case not even available near the place of residence), invalidating symptoms and related increased needs for support and assistance, precautionary measures to be taken to avoid contagion (for HIV/HCV infected haemofiliacs), fear of social stigmatisation (particularly for the latter group).

In asbestos cases, in particular, the entire community's life was progressively rebuilt around the harmful consequences of environmental pollution, as the population affected even today lives in fear of developing asbestos-related diseases and generally feels the need to get medically checked and tested at the slightest symptom of physical malaise. Medical experts and professionals particularly pointed out the need for the local NHS involved to develop new strategies and find adequate resources to deal with an unprecedented cancer epidemics, with respect not only to medical treatments, but also to psychological support for patients with no hope of recovery and their families, who often appear to need help in managing anger and frustration (which are often vented on the doctors themselves), and often suffer from forms of PTSD (see also above, § 3.2). One relative of a deceased victim lamented such high levels of stress and fear that they assumed that a severe, though not asbestos-related, oncologic disease they had developed was causally linked to those feelings.

«Thirty years have passed since [the factory] was closed and we are still dying. Actually, there are more and more deaths. What really characterises [our community] is the extreme worsening of quality of life which, paradoxically, widespread information [about asbestos dangerousness] to citizens [...] increased. Paradoxically, information eventually increased fears: the more a community member is informed, the more they fear that their symptoms, which, as they have heard about, are a warning of an incurable, fatal illness. One of the things we are still unable to really accept and handle is this collective fear to live in a city different from others, a sort of plague-stricken city that still can see no way out from this epidemic» (doctor, asbestos case).

More generally, uncertainty about the future (one's own future and/or that of the affected family member) weighs heavily on these victims, with respect both to illnesses' forthcoming developments, and to related practical issues (work, income, assistance, family relationships, etc.).

In the asbestos cases, a further source of uncertainty, worry and moral dilemmas for all the affected parties (victims, families, trade unions, local communities) was the tight relation between the source of the harms – factories dealing with asbestos – and the victims and their community dependency on those same productions for their economic survival.

The realisation, often quite long in coming (see above, § 3.3), of the possibly illegal, and even criminal, nature of the harms suffered, and the heavy difficulties in getting any kind of acknowledgment, recognition, redress and punishment (see below, § 3.6), were generally reported to have had heavy consequences on victims' lives and attitudes. Under this respect, the length, bureaucratic attitude, and lack of effectiveness of judicial proceedings, together with the uncooperative or hostile attitude of the involved business, the extreme difficulties in getting adequate information, and the lack of preventive controls, first, and of adequate support and effective remedies from public institutions, later, appear to have undermined the victims' confidence in the State and its agencies, eliciting feelings of betrayal, mistrust, and anger.

Victims appears angered at, but also disillusioned in, corporations (particularly, one victim of Thalidomide expressed their anger at feeling they had been treated like 'guinea pigs' by the pharmaceutical industry), but their anger is generally as great or even greater against the State, which, they perceive, failed them at a deeper level, firstly by not adequately protecting them even after dangers were known or knowable to public authorities, then by failing to support them, to make corporations and corporate agents accountable, to provide timely and/or sufficient redress (for details, see § 3.6 below). Several family members of people deceased because of asbestos-related diseases openly stated they felt victimised three times: once because of the crime suffered, a second time because of State's lack of support, and a third time by the constant fear of getting ill as a consequence of exposure to Eternit.

One aspect that elicited feelings of frustration and anger, and a lack of closure for many interviewed victims was the lack of one or more identifiable individual 'culprits' (within either the business or the public institutions deemed involved in the offences for various reasons) and the consequent perception of having to fight against giant, impersonal, opaque organizations with no hope of ever getting any kind of admission of responsibility.

### **3.5. Victims needs**

During interviews and focus groups victims not always expressed their needs as such, but, in several cases, they emerged through their narratives of what had occurred and of the problems they had to face. Even more



frequently, different needs appeared strictly intertwined and all part of a comprehensive urgency to get recognised in their painful vicissitudes and in their dignity of human beings (i.e., not just ‘objects’ of someone else’s action, be they corporations, law enforcement agencies, the State, or others): for instance, in the narrative of one victim of infected haemoderivative drugs who expressed a strong need for clear and understandable information, by both public institutions and doctors, this request was actually strongly linked to an intimate necessity of feeling treated like a human being and a citizen and, thus, of full recognition, which, in turn, was strictly related to a request for adequate support and compensation.

Therefore, any distinction made in the following sections is, at least to some extent, simplistic and arbitrary, and so is only meant to facilitate a more detailed and comprehensive screening, as well as a better matching with the Directive’s terminology and provisions.

### *3.5.1. Recognition needs*

The need to feel recognised emerged in all victims’ testimonies. What they felt had always been denied to them was, basically, a proper acknowledgement of their dignity and humanity, as corporations and public institutions generally appeared to consider them as mere ‘numbers’, ‘practices’ or ‘problems’. The lack of recognition for the harm suffered, of its wrongful nature, and of the heavy consequences on their lives was one of the main sources of distress for these victims.

Victims generally felt abandoned by the State and by civil society and the media, and left completely (or almost completely: see also below, §3.6) alone with their struggles, but for reciprocal support through victims organizations. Nobody – neither media and public opinion, nor public institutions, and even less involved corporations, appeared interested in hearing them out:

«And, really, when nobody hears you out, you don’t exist» (victim of infected haemoderivatives).

Several victims stated that, also because of this, they felt many times victimised: once by the perpetrators of the crime, once by the State – and, therefore, also as citizens – and public institutions, because of their bureaucratic attitude and inactivity, once by media, or society at large, because of stigmatisation or indifference.

Many of the issues raised by victims – the need to have responsibilities officially and publicly ascertained, the need to receive some sort of apologies, the need to get compensation, the need to receive timely, complete, clear and understandable information (not just on their legal standing, but on the facts of their case, on their health situation and perspectives, etc.), the need for their cases to be reported in a complete

and not sensationalist way by media, etc. – relate to a more basic need to feel recognised *as persons*. For instance, in the haemoderivatives case, one interviewed victim (who had also been for a long time a leading figure in the victims' association) expressly stated that an offer of compensation from one company was not considered receivable, albeit being quite consistent, because of the way of its presentation, as the corporation wanted to pass it as 'human aid', thus denying the basic wrongfulness of the victims' sufferings and pretending to bestow on them what was basically perceived as charity.

More generally, some victims expressed the need for a more 'dialogic' and 'human' relationship between public institutions and (citizens in general as well as, in particular) victims, so that they could be more directly and actively involved in decisions ultimately affecting them in a very direct and relevant way.

### 3.5.2. Protection needs

Protection needs expressed by interviewed victims and professionals were basically of two kinds.

One falls outside the scope of the Directive but, nonetheless, appeared very strongly felt: it was the feeling they *should have been protected* by public institutions against the suffered harm *before* they occurred, and so that they should have *never* occurred. Complaints about public institutions' failure to enact proper controls, late and little effective interventions, suspicions of connivance with the involved business and/or of public actions or inactions motivated by economic reasons weighted against the safety and health of hundreds or thousands of citizens, all relate to this kind of basic need of *preventive* protection.

As for the needs of protection *in the aftermath* of suffered victimisation, several have emerged.

The issue of protection against intimidation and retaliation specifically emerged in the asbestos case, with respect to victims and/or victims advocates who were also employees of the corporation involved, and who reported illegitimate disciplinary sanctions, professional deskilling, mobbing, etc. On a larger scale, the corporation's strategy of declaring bankruptcy and shutting down the factories without providing for clearing of the site and/or reemployment of workers was, to some extent, also perceived as a sort of retaliatory-intimidating measure or, at least, as a way to let all the weight of the environmental contamination fall on the local community's shoulders, against which the workers and the community at large should have been protected by the State:

«There is a fundamental duty to protect these workers, so as not to set them against the transformation, or reconversion, or closure of the factory, but instead to give them an alternative, because this is the duty of any society which aims at resembling a civil society» (trade union member and victims association member, asbestos case).

The issue of repeat victimisation was frequently raised.

In the asbestos case families were affected by asbestos-related diseases one member after the other, one generation after the other: in the same families, people often suffers first as relatives of one or more deceased victims, and then as people who, in turn, develop the same kind of disease. Workers had been exposed for years to asbestos, and people unable to leave the contaminated area had been exposed exposed daily for decades and, in many places where no o little clearing occurred, are still exposed daily to dangerous asbestos dusts and fibres. Protection from repeat victimisation, therefore, implies here, first and foremost, clearing of all contaminated sites in the quickest and most effective way possible.

In the haemoderivative case many victims suffered contagion from both HIV and HCV; also, they are generally unable to ascertain exactly when and by which drug they got infected, as the negligent collection and handling of blood was quite widespread and the victims received, through years, dozens or hundreds of infusions, almost all potentially infected. As the haemophiliacs community was a little and quite close one, besides, several of these victims also suffered for the loss of acquaintances, friends, relatives; a particularly painful experience was, for some of them, discovering to have infected, in turn, their partner, so that, besides being victimised as infected patients, these individuals were victimised as spouses/partners, too, in a way that also makes them feel to some extent responsible for the death of a loved one.

As for secondary victimisation, this appears basically a constant, albeit this is not always due to failures of the criminal justice system – as several of these victims never got actively involved in criminal proceedings. But the lamented indifference and inactivity of public institutions (for further details see below, §3.6.3) represents a huge factor of distress for these victims, who more than once lamented they had felt treated disrespectfully by the system on the whole and betrayed also as citizens. With specific respect to judicial proceedings – be they criminal or civil in nature – specific worries emerged with respect to unsafe drugs cases, where a big source of distress was the perceived risk (and in some cases the actual experience) of having very private details on one's health made public in the proceedings (with an added risk of social stigmatization in the haemoderivative case: see also above, §§ 3.2 and 3.4).

### *3.5.3. Information needs*

The need for adequate information was a constant in all interviews and focus groups.

On the victims' part, information needs pertained to several areas.

They expressed the need for correct, complete and understandable information about the legal options open to them and about the working and possible outcomes of judicial proceedings, which they had not always

been able to get from public institutions or, more generally, law practitioners.

As all cases implied harm to health and physical integrity, quite frequent was also the expression of a need for correct, complete and understandable information about their health status, their perspectives and the nature, causes and future developments of their conditions, to be conveyed in an empathic and considerate way.

Finally, several victims expressed a need for knowledge of all the facts which led to their victimisation and of the individual responsible, which many (especially in the Thalidomide case) lamented had been almost completely frustrated by corporations and public institutions. This need appears related not only, in some cases, to a perceived lack of 'closure', but also to a strong desire (expressed by almost all participants) to prevent similar crimes in the future.

Professionals and victim support operators who were interviewed basically agreed on the centrality of victims' need for information, and law practitioners especially stressed the need for correct, complete and understandable information about all legal options open to the victims and about the working and possible outcomes of judicial proceedings, so as not to raise unrealistic hopes; thus, feeding also feelings of bitterness and betrayal on the victims' part. In this respect, a better training of all professional figures involved – starting from police forces, lawyers and public control agencies, which are usually the first to get in touch with this kind of victims – is deemed indispensable and urgent.

#### *3.5.4. Support needs*

The deficiencies of public support were one of the issues most frequently raised by both victims and professionals interviewed and one of the main reasons adduced for the central, even vital, role played by victims associations in all the cases analysed (see also below, § 3.7.2.1).

As no specific victims support services exist in Italy, this situation appears easily understandable: victims associations and similar organizations (in the asbestos case, for instance, also trade unions played a part) are, basically, the only possible source of information and support (besides legal, medical and psychology professionals for people with the economic resources to pay them). The feelings of 'loneliness' and 'abandonment' manifested by many of the victims are largely related to the absence of adequate and specialised public structures, and the often bureaucratic attitude of the existing ones (which, anyway, have only sectorial competences, for instance: INAIL – the National Institute for Insurance against Work-related Accidents –, ARPA – Regional Agencies for Environmental Protection –, NHS, social services, etc.).

Support deemed necessary by victims and victims associations representatives pertains to several different issues.

Medical support (diagnostic and therapeutic) appeared to be a primary necessity (see also below, § 3.6.5), with a need for ‘tailored’ competences for rare pathologies (like mesotheliomas or phocomelia) and complex clinical situations (like that of haemophiliacs infected with one or more viral diseases), as well as for access to experimental therapies and, more generally, for more resources to be invested in medical research:

«Victims [of mesotheliomas] are twice victims: because of their pathology and because of discriminations in accessing the therapies. They have less options than patients with more common cancers and investments are lower» (doctor working in a local specialised unit of NHS, asbestos case).

Continuative and specialized psychological support and counselling were also felt by many as a primary need (so much so that medical professionals dealing with asbestos-related diseases stressed the importance of having built a local network of integrate medical and psychological assistance). Some victims particularly stressed the need to share their stories and feel considered, heard out and understood.

Quality legal information and support appear particularly important, as the great disparity of resources, compared to those of the involved corporations, was stressed and many victims could not afford the high legal expenses implied by complex and long proceedings, also considering the complexity of the legal system in general, as well as of the specific legal questions.

Finally, economic support would not play a secondary role: in many cases the offence involved direct economic losses, as the working and earning ability of the victim was reduced or annihilated by their health problems and/or death, as well as indirect ones, like the significant expenses shouldered by the victim and/or their family for medical treatments, assistance to disabled victims, private psychological support, and the like.

### **3.6. Access to justice, victim support and compensation**

#### **3.6.1. Social informal network**

Family and friends support has been reported as a crucial part in coping with victimisation, and sometimes the ways families managed to help victims in integrating their status in everyday life has been fundamental for survival and in overcoming social stigma: this is particularly true for Thalidomide and HIV infected victims.

«I have been lucky to be backed up by a beautiful family, otherwise this would have been much different... [...] My father took me everywhere, using up all his money, [...] even to the United States [to find ways to cure me]» (victim, Thalidomide case)

### 3.6.2. *Media*

All in all, both victims and professionals mostly reported a difficult relationship with media, which are generally considered neither sensitive nor supportive to the victims' problems and needs.

The majority of victims stressed a basic lack of media interest for the episodes of corporate violence which had affected them, which were usually reported in a very superficial and simplistic way, without giving to the public opinion a full account of their complex causes and effects; one victim perceived that the lack of individual, clearly identifiable 'criminals' was one of the main features that made these cases not 'newsworthy'. Interaction with media was reported as generally difficult, basically because journalists seemed to be more interested in stories of pitiful and sensational 'human cases' – thus making pressures on the victims to give details of their personal stories – than in giving a full account of complex cases that had a relevant collective dimension (with the exception of some individual journalists, which one victim said were 'sensitive' and 'attentive').

The superficiality and sensationalism of media's approach to news in general was in some cases reported as harmful to the victims: in the haemoderivatives case, the alarmism and stigmatising way in which the media conveyed information about HIV and AIDS in general, during the same years in which the contagion of haemophiliacs was being discovered, caused the latter a huge social harm (see also above, § 3.2), contributing to associate all the haemophiliacs community, in the public's mind, to a disease that was presented as an extremely infective 'plague' with morally negative implications; in the Thalidomide case, one victim lamented that the superficial way in which the problem was (however scarcely) covered by the media contributed to present it to the public as an 'accident' and an 'act of God' with no responsible, and even expressed the suspicion that, to some extent, the media might have yielded to external pressures in doing so.

In the case of asbestos more mixed views emerged: while interviewed professionals (prosecutors and judges) lamented the distortion of facts and the superficiality of media in reporting the cases, and their disproportionate focus on judicial proceedings instead than on causes and responsibilities for the environmental and human tragedy (so much so that the case was presented more as a failure of the judicial system than as an offence caused by individuals who had violated the law and exposed thousands of people to harm), one representative of support organizations expressed appreciation for the support that at least some media gave to their fight for recognition of the ongoing 'massacre'.

### 3.6.3. Politics

Opinions about the attitudes of politicians and public institutions are generally very negative, with a few exception with respect to local institutions and/or individual political representatives.

Basically, both victims and professionals interviewed lamented a long indifference and inactivity on the State's part in all the cases analysed; victims generally stress they felt let down and abandoned by the State, so much so that they would have been basically alone had they not managed to self-support through victims' associations; victims also stressed the bureaucratic attitude of public institutions towards them and their cases, so that they did not feel considered as 'victims' and, generally, not even 'persons', and in some cases even perceived the State as hostile:

«I always felt we were alone. Yes, our people, the young ones, the city, the community, they were with us, but basically we were alone, a fundamental element was missing, the State was not there, and this perception was always strong. I really perceived we were David [against Goliath]» (trade union member and victims association member, asbestos case).

«We experienced first-hand that the State was our enemy. It behaved like a cruel, cynical opponent» (victim of infected haemoderivatives).

Particularly in the cases of haemoderivatives and Thalidomide, some victims lamented the feeling that, in some ways, the State had been 'captured' by the corporations, so it was more on their side than on that of victims and citizens, and that it refused, in a way perceived as irrational and 'scandalous', to make corporations at least economically accountable for the harm by recovering the funds that, at least belatedly and in a partial way, had been allocated by public institutions to support victims (one victim stated that this, in particular, had offended them also as citizen, after having been offended as victim of the crime). In this respect, also in the asbestos case the impossibility to recover compensation from bankrupted firms was perceived as a huge failure on the State's part.

Victims agree that politicians and public institutions generally started to take note of victims' complaints and of the underlying sufferings and harms only because of associations and, even more, media pressure. Their reaction was, however, mostly deemed slow and inadequate; several victims lamented a sort of paternalistic and 'merciful' attitude on the politicians' part, deemed quite humiliating: they were treated more like pitiful objects of fatalities, to be paid lip sympathies and, eventually, given some charity, than as victims of a wrong to be redressed. Particularly in the haemoderivatives case, the law on compensation for infected patients, albeit perceived as an improvement on previous complete inactivity, was judged under many respects still inadequate, partial, and slowly and incorrectly applied, so much so that victims were forced to appeal to the European Court of Human Rights to get Italy sentenced to pay for the excessive length of the litigation (that had had to be undertaken by victims'

associations) on compensations' reassessment. When a joint responsibility on the State's part was perceived as a relevant feature in the causation of the harm, like in the haemoderivatives and Thalidomide cases, victims generally lamented the complete lack of assumption of responsibility on the State's part as a particularly distressing factor for them.

While national political representatives and public institutions were generally perceived by victims as distant, careless, indifferent and opportunistic, local politicians and public institutions generally got a better evaluation. The difference emerged, specifically, in the asbestos case, where local administrators – possibly because they were part of the same community affected and living under constant danger of asbestos-related diseases and deaths like their fellow citizens – are generally described as sensitive, supportive, proactive, and generally quite important in bringing the case to the attention of national public opinion and institutions.

As for the opinion expressed by professionals (particularly prosecutors, judges and lawyers), they basically shared victims' evaluation on the inadequacy of State's action at both the preventive and at reaction stages. Prosecutors and judges particularly stress the fact that the judiciary is too often required to act a sort of 'deputy' of both lawmakers and the public agencies that would be competent for preventions and specific controls, which, in turn, places an impossible task, and a far too high level of expectations, on the work of tribunals. Anyway, some progresses by public administration have been acknowledged during the last years.

#### 3.6.4. *Public sector. Access to justice*

##### 3.6.4.1 *Criminal proceedings*

l) Some participants reported the lack of information in relation to the right to *access to the justice system* in general, and more specifically, to the criminal justice system. Difficulties to inform the victims were described as strictly related to the high number of victims involved in these types of criminal proceedings.

«The most relevant problem from the victims' point of view is the information, especially at the very beginning of the proceeding... the difficulties are related to the fact that victims are so many and not necessarily connected, obtaining information even on the access to justice is a problem... when information exists, it is offered by the associations, which are private association with their interests. I've never seen a public association or entity informing victims on their rights» (professional, focus group on environmental cases).

Another obstacle in accessing justice is strictly related to *time*. Investigations and criminal proceedings start too late, when memories are confused. Victims are seldom likely to relive a past they do not want to remember.



«After twenty years I'm so tired... I don't want to tell my history again, so I wouldn't like to see the case reopened and to go to trial now» (victim of Thalidomide).

Some victims also reported about the *difficulties in managing* the interrogations conducted by the public authorities and, in general, *their relationship with the investigators*. Some participants referred that the investigators did not know the personal history of each victim, and often, they did not have the expertise to dialogue with the victims.

«I was really woozy after the dialogue with the Public Prosecutor... even worse with the police officer... because they were telling me that my doctor had prescribed me the drug in a wrong way... but they were not doctors, nor specialists of my disease, and they don't even know the history of the families and the patients» (victim of infected haemoderivative drugs).

«I was really in difficulties while being heard by the Public Prosecutor. I thought that I started that examination as a victim but at the end I could result the perpetrator. That was my impression... » (victim of infected haemoderivative drugs).

II) Many victims reported their need and desire to contribute to the *investigation phase*. They want to help the Public Prosecutor in finding evidences, and contribute to the investigation as best as they can.

Many victims also consider extremely important their role *during the trial*. They want to testify and participate into the criminal proceeding.

«N. was asked about the way they used to work inside the plant, R. told about her experience... these are heavy things to listen to, things which hurt, but, at the same time, I think that these things must be told. I could not participate in all the hearings, because I was working, but I was always there when an hearing was important. I was always there» (victim's family member, Eternit case).

In these kinds of proceedings, victim's requests blend in a kind of *collective action*.

«There is a huge difference between having a single victim or an entire theatre full of victims, or better, full of family members of deceased victims... all there for the same reasons and for the same liabilities. Impressions and requests are completely different, because when the number of victims is so high and the facts under judgment are the same, solidarity among victims raises and the request of justice become collective... a collective request of justice is stronger than an individual one» (victims' lawyer).

Therefore, victims reported the need *to organize the participation* into the trial with a collective strategy. They also highlight the importance of collaborating with the public authorities to manage their participation.

«We gained the trust of public authorities, because we never exaggerated, we never acted as extremists, we never raised our voice, we always acted in a civil way, trying to oppose to those positions which were not useful to the case and to have a common consensus. The general consensus was necessary in my opinion. I always thought it was sufficient to tell how the things were in reality» (trade union representative, Eternit case).

«We organized our participation in an incredible way. This organization guaranteed to participate in the hearings having at disposal two dedicated big room and having access to the main court hall, where we organized all these people ... » (trade union representative, Eternit case).

Professionals reported the possible distortion related to the presence of victims within the proceeding.

«Judges are not robots and therefore the personal feelings also count. The presence of victims during the trial makes the judge to feel more responsible. What do they do normally? They ask not to have the civil parties, as to work in a more peaceful environment ... » (victims' lawyer).

From the operators' point of view, victims should be informed not only about their rights but also about the defendants' rights. The operators of justice have a role in informing and educating victims.

«A criminal proceeding must be equal, equal for victims but also for the defendants. It's necessary to educate victims, make them aware about their rights, make them understand which are their rights, but also make them understand that the criminal proceeding is a drama not only for them, but also for the defendants... there is a dimension which they must consider, and it's the dimension of the defendants» (professional: prosecutor).

III) Many victims or potential victims reported they did not have the chance to access justice and claim for compensation, as they could not prove to have suffered a direct damage at the time and place where the trial took place. Relevant problems arise *in terms of evidences*. One of the most relevant obstacle is the *causation link* between the corporation's actions or omissions and the individual harm.

«We had difficulties to access to the justice system. When we started to think to suit a judiciary action, we found many difficulties to prove the causation link, because even if it was true that the drug more spread on market was one, we could not prove we had taken that particular one» (victim of infected haemoderivative drugs).

«At the beginning of the asbestos related cases we suited many, many complaints, but nothing never happened. We obtained only the dismissal of all the charges, because, the prosecutor told us that it was not possible to find the perpetrators... when I went to talk with one of the Prosecutors he told me: 'we cannot open a proceeding every time a worker dies' ... » (victims' lawyer).

The proof of causation link in these criminal proceedings often depends on the relevancy of *scientific evidences*. In fact, the role of medical science, and science in general, is clearly pointed out by all type of participants.

«The scientific question is a problem... from a judicial point of view there are thousands of possible debates, especially on the value of epidemiology, when the causes of the pathology are not recognized with an extremely high level of precision... in the criminal law we have the rule to condemn only if evidences are beyond any reasonable doubt. But when is beyond in cases such these? You are obliged to use the logic arguments and this

fact allows different solutions, in all the possible directions... there are so many ways to skirt around the truth» (victims' lawyer).

IV) Participants outpoint the *asymmetry of information* and the *different defensive means* between victims and corporations in each phase of the criminal proceeding.

«How much are you going to pay if you go against a corporation like Monsanto? I mean how much of compensation for damages you risk to pay if you accuse them and you lose the action?» (victims' lawyer).

Corporations have money to appoint the best lawyers and experts, while victims most of times may only count on legal aid offered for free. In these kinds of criminal proceedings, the opportunity to pay the best experts gives a relevant advantage to the corporations, because the evidence of causation link mostly depends on the relevancy of scientific arguments.

«We tried to suit an action against the corporations, but we immediately collided with their power. They could pay good lawyers for ten years and pay for the best experts» (victim of infected haemoderivative drugs).

«In these kinds of criminal proceedings you need high profile experts. Where can you find them? We always had this problem... you never know who to appoint, because maybe you choose a professor and then you discover that he is related or paid by the corporation... our consultants were not paid as those hold by the corporations... I remember that there were corporations' consultants paid 40.000 Euros for each hearing... our expert were paid at the end and really less » (professional: prosecutor)

V) Participants reported that often the criminal proceeding does not provide for compensation to victims, despite the evidence of the perpetration of offences harming victims. The most relevant obstacles in these kinds of criminal proceeding were *time* and, in particular, the *statute of limitation*, that is when the final judgement acquitted the defendants or stated that they should not be prosecuted due to the fact that the crime was time-barred. In case of such outputs, the victims' reaction was alternatively a great disappointment, misunderstanding, resignation (when the negative output was easily predictable), desperation and secondary victimisation.

«I didn't see justice and many victims will never have it» (victim, focus group, Eternit case).

«It's evident what happened. We are victims two times» (victim's family member, focus group, Eternit case).

«Outside the Supreme Court my husband told to the judges: 'I wish you to pass through what we are passing through' not physically, but psychologically » (victim, focus group. Eternit case).

«I saw patients who had participated into the criminal proceeding feeling really bad after the final judgement. They were, really, really sad... you could really see a huge desperation» (professional: medical doctor, focus Group, Eternit case).

«Victims are not angry anymore, they are depressed... it's a deep depression... they do not know anymore who is to be blamed, everybody is against them » (victims' lawyer, Eternit case).

«After ten years, they told us that liabilities were proved, but the crime was time-barred and therefore it was not possible to sentence. That was a kind of joke. And we did not even obtain the compensation for damages, which could, in some ways, soften the blow» (victim, Eternit case).

Victims reported also about the *difficulty in understanding the technical issues* related to such outputs.

«[...] On the other side, there were those who tried to go into details... to understand why the Supreme Court said that if the accusation would have been different, victims could have obtained justice... if the count of indictment had not been the disaster, the output would have been different... the normal people wonder why and the answer is not easy, even if implicit...» (victim and victims association representative, Eternit case).

«Too many loopholes, which allow different interpretations, and anachronistic interpretations: if the disaster is still ongoing, why do you sentence that it is time barred? This is the worst way to deny victims' rights» (victim's family member, focus group, Eternit case).

«Often victims think that the criminal proceeding and the conviction are their only option to obtain justice. Due to this expectation, it's very difficult to make them understand the judicial mechanisms, which may not lead to identify a responsible according to the criminal justice rules» (professional, focus group on environmental cases).

VI) Some participants reported a significant *lag between their initial expectation of justice and the effective output of criminal proceeding*. An investigation may create great expectations which then were frustrated by the mechanisms of the criminal proceeding and by the strictness of the criminal law. The consequence is that the confidence of victims in the entire criminal justice system became very low.

«In a first phase I was really enthusiastic, because the starting of the criminal proceeding was a conquest... a great end and starting point... But when the criminal proceeding opened, I immediately lost my enthusiasm... I thought we were alone, even if all our people, our city, the society were with us... the State was missing and that was an important element... my perception was that we were David against Goliath... the perception was a sense of loss during the final hearing before the Supreme Court... That day we felt tremendously alone...» (victim and victims association representative, Eternit case).

«A patient relates to the criminal proceeding thinking that at least justice will be done... being a victim and not even obtain justice is the worst thing that could happen... some patients seem not to be involved, because they are going to die and they felt they can't do nothing... On the contrary, there is a part of patients who hope at least to obtain justice, because this could be a way to make them feel better...» (professional, Eternit case).

The needs which seem to be more frustrated are, on one hand, the lack of someone who embraces the case with a high level of commitment and competence; on the other hand, the lack of continuity of action. This is particularly negative when the perception is that the system guarantees the defendants' rights more than victims' rights.

«I received no satisfaction at all from the justice system... the resources deputed to this aim are weak and not committed. I never saw a judge deciding and embracing our case, committing himself in taking the case until the end, as a personal aim...» (victim of infected haemoderivative drugs).

«The access to justice has been a real disaster... Even when you win, you are not sure to obtain what you had asked for» (victim of haemoderivate infected drugs).

«I still feel the need of a right sentence... if the detention is provided for a murder, and the killer is discovered and his liability demonstrated, a conviction must be ordered. I'm not a justicialist, but the judgement of the Supreme Court sentencing that all the crimes are time-barrred was destructive... the Chief of Prosecutor Office declared 'I'm in the position to recognize a right or to give justice'. As right, I intend the victims' rights... a judge could not give up the justice in the name of a right... I mean, the rights of the defendants, which are more relevant than those of victims; the rights of defendants are more valued in our country, even if they caused the death of thousands of people» (trade union representative, Eternit case).

Despite the underlined problem, the *request of punishment* or at least of the establishing of the truth, represents needs reported by many participants. It seems that more than obtaining compensation, victims request for a public recognition of liabilities.

«I've lost any expectation and hope for what concerns the conviction of the corporations involved. But I think it should be a sentence, because it's a necessity to establish a public recognition. Without this, a State is dead» (victim of infected haemoderivative drugs).

«If we had been able to get a conviction, this would have changed a lot. Everything would have changed. I have not a punitive way of thinking... but I think that a society works only if it can guarantee the recognition of liabilities and the effectiveness of sentences, not for revenge, and not only to ascertain the facts, but to empower...» (victim's family member of infected haemoderivative drugs).

«There is a common need to know the truth, it would be very important to know what really happened... and it would be more satisfactory if also who caused the damages admitted the truth... I mean to find the perpetrators and prove their liability» (victim of Thalidomide).

VII) Even when the output was negative for the victims' requests, some participants reported that the *criminal justice system was necessary and useful*. In fact, the criminal proceeding is reported as: an opportunity to raise the interest and attention to the case; an useful instrument to collect evidences when victims have not enough means to proceed alone; the only

way to obtain a compensation when all the other system failed; the only system which leads to a public recognition of victims requests.

«Criminal justice is at the top of the list in terms of needs. In my experience, the criminal justice was the instrument to affirm some important issues... it makes some difference if the fact that in a plant workers died is affirmed in the name of the Italian people» (victim and victims association representative, Eternit case).

«Despite the negative output of the criminal proceeding, due to the statute of limitation, the experience of the proceeding has not been negative. That is because the criminal proceeding allowed to bring out a tremendous case and put a light on it, so that all the world was obliged to know» (union of workers representative, Eternit case).

VIII) Many victims reported about their personal exposure due to the criminal investigation, as well as during the trial. Some victims clearly reported having suffered a *secondary victimisation* from this kind of exposure.

«Victims become an instrument, persons who show their pain. I'm not saying that it's humiliating, but I wonder... is it right to get to this point to obtain what you deserve?» (victim, focus group, Eternit case).

Some victims referred about the consequences on their *privacy* and *reputation* which are implied by the criminal proceeding mechanisms. The involvement of the personal data and the disclosure of the personal history often became a negative consequence of the publicity of the criminal proceeding.

«Our lawyer was very worried about the consequences to suit an action. He always said that accessing to the justice system would have reveal the names of victims and would have lead the investigators to come to knock at each single victim's door. He was afraid of the reputational damages» (victim of infected haemoderivative drugs).

«One of the main issue of the criminal proceeding was to be called to testify... In the presence of the press... the proceeding was placed in a small city... outside the court there were many journalists... I attended at the first hearing and I felt I was a victim for the third time» (victim and chief of the association of victims of infected haemoderivative drugs).

«Investigators knocked at patients' doors to seize their drugs... without telling you why they were performing such an invasive action... it's a violence... they notified the proceeding by publishing a list of all patients on internet... how can you trust in this justice?... why did they act in this way? Because it was too expensive... because there were too many victims... the problem is that the list remained published for many days... only later they realized it needed to be removed. You can't do such a thing. They published the list of names and the list of diseases... were they crazy? They did it... In a small town it's a problem... you should pay attention, otherwise you destroy a person» (victim and representative of an association of victims of infected haemoderivative drugs).

#### 3.6.4.2. Civil proceedings

Some victims reported that the civil proceedings cost a lot in Italy and it took too long to obtain a judgment (three degrees of judgment).

«We spent a lot of money for the civil proceeding, because the action started in 1993 and in 2000 it was still ongoing. After ten years we did not know what it would happen» (victim of infected haemoderivative drugs).

The lack of a class action is another obstacle reported by victims.

«How can you defend yourself if you don't have a class action, if the victims do not stay together in an association able to pay all the lawyers? I can pay only a mediocre lawyer on my own, who would not be even capable to read the files. A team of lawyers is necessary, because here we have a multinational corporation as counterparty» (victim, focus group, Eternit case).

#### 3.6.4.3. *Administrative proceedings*

Not applicable

#### 3.6.4.4. *Compensation funds*

Not applicable

#### 3.6.4.5. *Victim support services*

No institutionalised victim support service is currently available in Italy.

#### 3.6.4.6. *Mediation*

No restorative justice or mediation process has taken place in Italy in case of corporate crimes as of today.

#### 3.6.4.7. *Legal aid*

The Italian civil justice system is felt as inefficient, especially because the legal support is not offered by the State.

«We need assistance, also legal aid... State should provide victims with a legal assistance. Inside the office of the State lawyers there should be a section dedicated to this... because it's of public interest to assist victims of such a crime in order to ascertain the criminal liabilities and to establish the compensation of damages» (victim of Thalidomide).

#### 3.6.5. *Medical sector*

Victims' comments on support received by the medical sector were mixed, but generally positive with respect to NHS, albeit in some cases highlighting a limitation of resources that affects its functioning. Anyway, each case presented peculiarities, in this respect.

In the haemoderivatives case, all victims were already constantly monitored by specialists because of their haemophilia; these same specialists were not only the people who injected them with the contaminated drugs, but also the professionals who firstly discovered the contagion and worked hard to cure and support the infected. The victims' attitude towards these doctors was generally positive: except in one case (and even in that case, with some distinctions), they do not blame the

doctors for their condition, as they acknowledge that doctors were acting in good faith while treating a really severe, life-threatening condition with drugs which were the most advanced and effective at the time, and whose potential dangerousness (due to blood contamination) could not be fully appreciated, because of a general lack of information. Instead, these victims generally praise doctors' commitment in following the patients also through the new diseases added to their haemophilia, their closeness and humanity, their support and the quality of the professional care. Some cases of retreat or coldness on medical staff's part were also reported, but a victim with experience both as a patient and as a leading member of a victims' association basically links them to an understandable 'burn out' of medical professionals who suddenly found themselves in the midst of an epidemic with lethal consequences (also for very young patients and children), and could not bear the psychological stress.

In the Thalidomide case, while one victim acknowledged that some doctors had been attentive and supportive, the general impression expressed is that the medical class had appeared too reticent in identifying the causes of the malformations, possibly because of the fear to incur in some form of professional responsibility; in the aftermath of the harm, when the victims' association started its struggle for recognition and support, the medical class was generally perceived as reluctant to provide help.

In the asbestos cases, there is a strong difference between judgements expressed on factory doctors and on NHS doctors. While the former are generally considered 'accomplices' of the corporations, completely ineffective in providing information and support, either because of a low professional qualification or because they were paid by the firms (or as the result of a combination of both factors), the latter receive a generally positive evaluation, albeit with some distinctions. More specifically, both victims and medical professionals who were interviewed stated that, while doctors not accustomed to deal with the mesotheliomas 'epidemic' typical of locations where asbestos productions were set (and, thus, also the doctors of these same locations, at the beginning of this epidemic) often lack the required knowledge and, even more, the necessary, specific sensitivity to deal with this kind of patients, local NHS quite rapidly and efficiently adapted to the new emergency, and has developed, through years of struggle with this crisis, a more comprehensive assistance for the victims and their families, with respect both to diagnostic and therapeutic activities, and to psychological and social support. Doctors are generally quite attentive, sensitive and experienced, and this is a great help for victims.

Medical professionals, on their part, stressed the huge psychological burden placed on them, both because of the invariably lethal nature of asbestos-related diseases, and because doctors often end up being the only (or at least the first) professionals in personal and direct charge of the victims, who frequently happen to vent on them their frustration and rage for the crime suffered, as they have no other individual to focus their



feelings on. They also lamented that resources are generally inferior to what would be required and, also because of this, as well as because of the invariably deadly nature of mesotheliomas, desperate victims were, on occasions, driven to pursue 'alternative' cures offered by unscrupulous charlatans.

### *3.6.6. Private sector: the business concerned*

Comments on the corporations involved in the analysed cases were generally very negative, both on the victims' and on the professionals' part. More specifically, the indifferent, and in some cases manipulative, attitude of the businesses involved, and the lack of any availability to assume at least a measure of responsibility for the harm suffered by victims appears to have added significantly to these latter's distress, which was also fostered by the perception of having to deal with completely impersonal entities with incommensurably greater power and resources than the victims themselves.

In the asbestos case, in particular, workers involved in victims' advocacy are reported to have suffered threats and reprisals from the involved corporation, which also enacted deceitful 'information' campaigns to shift responsibility for lung diseases on any other factor but asbestos (also placing the full blame on victims who were also smokers). The asbestos industry never invested in medical research on mesothelioma, instead exerting pressure on factory doctors to conceal the problem (see also above, § 3.6.5), and both victims and professionals perceived the belated offer, on the corporation's part, of a monetary compensation for victims and local institutions as a purely opportunistic move, designed to get rid of them during the criminal proceedings, with no explicit or implicit recognition of their status of victims and no assumption of responsibility. The costs of clearing were largely shouldered by the public, also because the corporation filed for bankruptcy as soon as it became evident that the number of victims claiming compensation was going to grow exponentially in oncoming years.

In both the haemoderivatives case and the Thalidomide case, victims lamented the same indifference and bureaucratic attitude of corporations, and their unavailability to acknowledge any measure of responsibility at least for the collective harm caused, often shielding themselves after the impossibility to prove causal correlation in individual cases. In the haemoderivative case, in particular, one victim reported how even the only firm amongst the several involved in the production and commercialization of infected drugs, which got to finalize an agreement to contribute to a support fund for victims, tried almost till the end to present such a contribution as 'humanitarian aid', which was considered humiliating and unacceptable by the victims' association. In the Thalidomide case, one victim expressed suspicion of bribery and corruption enacted by the involved corporations to suppress evidence and manipulate public

institutions. More generally, in both cases, victims and professional interviewed highlighted the ambiguous relationship between victims associations and pharmaceutical corporations, with the latter constantly trying to manipulate the former to get positive reputational outcomes and visibility in the eyes of the public, and the former forced to struggle to keep their independence.

Several victims of defective pharmaceutical products also manifested anguish and frustration at having been harmed by products and businesses theoretically aimed at improving their health, while economic interdependency between affected communities and the asbestos business was reported as a problematic feature in the asbestos case (see also above, § 3.4).

#### *3.6.7. Private sector: insurances*

No data emerged on this issue from interviews with Italian victims, victim support operators, and professionals.

#### *3.6.8. Other relevant issues*

One question highlighted by some participants (respectively a haemoderivative victim and a medical professional involved in the asbestos case) refers to the importance of developing scientific research about the issues – scientific, legal, organizational – raised by episodes of corporate violence like the ones they had to deal with: currently, this kind of research appears to be almost nonexistent, while the interviewed considered very beneficial the interaction with the few interested researchers they met or got to know about.

Medical professionals involved in the asbestos case particularly stressed the need for resources to be invested in epidemiologic studies, sharing of tailored protocols and best practices in dealing with rare pathologies related to corporate violence, and psychological counselling for doctors having to deal with this kind of extremely stressful ‘epidemics’.

Legal professionals and victim support operators who were interviewed also stressed the importance of a change of mentality amongst law professionals, which should develop a more victim-sensitive approach. Both lawyers and public enforcement agents (police, prosecutors, and administrative control agencies in particular) should be trained to this effect and, within this frame, to giving victims precise, clear and understandable information about the principles and functioning of the law and the judicial system in general, and of criminal proceedings in particular, so as not to ingenerate unrealistic expectations, and so as to give them the possibility to chose the kind of legal action better suited to their needs and with the greatest success perspective.

### **3.7. Victims' resilience: individual and collective initiatives**

#### *3.7.1. Individual initiatives*

Individual initiatives and strategies to cope with victimisation vary from person to person, from case to case. Victims' resilience is highly subjective and dependent from many various individual and social characteristics: this was confirmed by the empirical research. Yet, the people who got involved in the empirical research are generally committed and engaged ones: they all found ways to 'react' to victimisation.

Reactions frequently reported by victims were: a) a sort of stubbornness in forcing themselves and their families to lead the most normal way of life, despite the severe consequences of victimisation; b) the constant participation to criminal trial hearings; c) the full-time engagement in the victims' association and/or in campaigns. And many others.

Some victims of various cases reported their refusal of lump sum compensations as a form of individual 'protest' against what they perceived as the corporation's attempt to 'get away with it', to take them out of the way, or to 'corrupt' them.

As of the professionals' individual initiatives, two in particular are worth mentioning. Medical doctors involved in assistance to victims of mesothelioma in the Eternit case reported that they soon realised that patients needed much more than just medical treatments. Communicating the diagnosis was inextricably interwoven with the information of the victimisation and with the recognition of the victim. Therefore, medical professionals soon activated an informal network comprising the victims' association, social insurance services, occupational safety agencies, in order to immediately inform victims of the many bureaucratic tasks following their new condition, and in order to timely enable them to access these services. A former public prosecutor of many of the most relevant cases of corporate violence initiated a local 'observatory of tumours' in the Nineties, asking physicians to report all the new cases of cancer diagnosis in the area, in order to track warning data and, where appropriate, to initiate criminal investigations.

Some particularly committed victims also tended to transform their personal coping into an improvement of the conditions of other victims too, nationally and even internationally. Due to the collective dimension of corporate violence, individual initiatives, in fact, often became collective ones.

#### *3.7.2. Collective initiatives*

As described in the previous paragraphs, victims and victims' associations of the cases analysed in this research played a fundamental advocacy role. For instance, the law banning asbestos and the specific laws providing forms of public compensation or indenisation to victims of asbestos, of

Thalidomide and of infected blood were passed mainly due to the initiatives and actions undertaken by victims themselves. In the Eternit case, an important role was played, from the Seventies onwards, by local trade unions activists with the support of environmentalists and a few physicians working inside the implant: they progressively set out what they called the ‘asbestos grievance’ (*vertenza amianto*), trying to involve all the relevant institutions (safety on the workplace agencies, social insurance services, the municipality, etc).

Among the collective initiatives that Eternit victims and victims’ association representatives spoke about during interviews and focus groups, the ones concerning Casale Monferrato are especially worth mentioning:

- the 1987 municipal order banning all products containing asbestos from the territory of Casale Monferrato;
- the creation, in 2012, of the ‘Unità Funzionale Interaziendale Mesotelioma’, a special multidisciplinary health care unit to promote a tailored assistance of mesothelioma patients and constant research. It spins off local hospitals and the University of Turin;
- the creation, in 2016, of the ‘EterNOT’ recreational area established in the same area – now cleared – where the Eternit implant was. The area is also meant as a memorial site.

#### 3.7.2.1. *Victims associations*

The cases analysed in this empirical research show the need of victims to come together in coping with the consequences of the multifaceted harm and economic loss caused by corporate violence (as mentioned in Article 2 of the Victims Directive, harm is physical, mental, emotional) and in facing the complex (and often unsuccessful) path of claiming compensation, accessing justice, obtaining protection and prevention of future, increased and repeated harm/victimisation.

All the cases the researchers directly or indirectly came in contact with have resulted in the birth of victims associations, who played a fundamental, and often solitary, role: associations acted in the interests of the victims, and provided practical and day-to-day advice, legal aid, medical assistance and psychological/emotional support. Associations have supported, and often organised, victims’ participation in criminal proceedings (Eternit case; cfr. Also the Ilva case or the Viareggio train accident case), and paid the costs of legal counsels and legal aid. They also played a major part in supporting access to compensation and in making political pressure in order to obtain public forms of compensation.

In a Country like Italy, where institutionalised and general victims’ support services do not exist, victims’ associations filled the gaps. Victims themselves helped each other.

Associations are reported to be mainly self-funded, but they occasionally receive(d) public or private economic support. In the infected

haemoderivatives case, a foundation has been created thanks to a lump sum out of court agreement with a liable corporation.

### **3.8. Critical issues and victims' struggles**

The paths to attain recognition, proper information, protection and compensation seem to have been (and still are) thorny for the victims of corporate violence that the research team came in contact with.

The main struggles of the victims who engaged in this empirical research concerned basically survival, medical care, social assistance, protection, prevention of future harm, which are crucial topics in the Directive 2012/29/UE too. The quest for justice was sometimes in the backstage, as a sort of illusory element or a delusory result. Among the priorities of the interviewees, the quest for justice somehow came after the achievement of the abovementioned needs deemed more essential, vital, and 'practical'.

The lack of recognition and the lack of the responsibility-taking by the corporation, though, was reported as a very painful experience, and as a sort of secondary victimisation, especially when it came in the forms of a waiver of responsibility set as a condition for a monetary settlement. Monetary settlements and monetary compensation have been often referred to as 'vile aspects' victims had to deal with. The acceptance of monetary compensation, or instead the promotion of more collective forms of reparation and remediation (environmental clearance of polluted sites, activation of social services or medical support, etc.) have provoked ethical dilemmas in victims, and tensions between victims and victims' associations.

Having to deal with legal entities, instead of physical persons, was reported as a further difficulty, because of the lack of a real interlocutor:

«I lacked an interlocutor with whom I could get angry with. I could not identify one. A corporation is an abstract entity» (victim of infected haemoderivative drugs).

Victims almost always reported to have little trust in corporations, seen as driven by business and gains only.

«While people were getting sick and dying, you [corporations] were making profits» (victim of infected haemoderivative drugs).

A peculiar struggle concerns the recurrent tension between occupational safety and environment protection, on one hand, and the employment of workers, who fear to lose their jobs, on the other. In the Eternit case, this tension affected the ways the problem was approached during the decades. Professionals in individual interviews reported that this is still a major issue, such as in the ongoing ILVA case.

A common concern is shared by both victims and professionals who took part in the research: it is the need for protection, and the consequent need for prevention. Victims especially perceive this as a duty of the State

and of public regulatory agencies. Professionals reported the need to better put regulatory bodies in network with each others in order to better assess risks, capture warning signals, adopt the necessary precautions and adequate protection measures.

«If you think of the many victims... When does rage outburst? When one thinks that something could have been done...» (victim of infected haemoderivative drugs).

A sort of relief was reported by all the interviewees and participants in recalling how their tragic experiences served as a lesson, and therefore contributed to give way to institutional initiatives aimed at preventing other such experiences and at improving the system: it is the case of the banning of asbestos law, of new control protocols for blood donors, of the changes in the haemoderivatives production, of the birth of a regulatory agency to control pharmaceutical corporations.

Professionals, especially from the justice sector (prosecutors, judge), stressed the difficulty in the timely and correct identification and recognition of corporate victims, due to scientific uncertainty, latency periods, lack of a prompt intervention by regulatory administrative agencies, lack of evidence of causation. Professionals also underlined the need of care in informing victims about their rights in criminal proceedings, in dealing with their presence at the hearings, in preparing them to attend the trial. Information to victims should be such as not to create improper expectations from criminal proceedings, whose principal and direct aim is not the protection of victims *per se* and whose fundamental safeguards in favour of the accused persons must be ensured. Adequate victim support services and ongoing medical, psychological and social assistance may properly divert victims expectations from the siege of the justice system, towards a more proper social care system.

Finally, the empirical research gave voice to some interesting proposals, coming especially from professionals, such as:

- a better networking and closer coordination among national and local occupational health and safety administrative bodies, social insurance agencies, national and local healthcare systems, enforcement agencies and the judiciary;
- a better, more efficient, organisation of the judiciary, and particularly of the public prosecutors' offices in order to promote a sounder attention to corporate violence victimisation;
- improvements in the application of corporate liability law;
- the enhancement of collective and social forms of redress for victims and for victimised communities, rather than (only) individual compensations;
- the creation of an independent public control agency devoted to corporate violence (similar to the existing national agency against bribery and corruption);
- the creation of an *ad hoc* national public prosecutor office devoted to corporate crime.

**“VICTIMS AND CORPORATIONS”**

**Implementation of Directive 2012/29/EU  
for victims of corporate crimes and corporate violence**

**Needs of Victims  
of Corporate Violence:  
Empirical Findings**

**National Report:  
Germany**

by Marc Engelhart, Carolin Hillemanns  
and Alexandra Schenk

March 2017





## 1.

### METHODOLOGY

The implementation of the European Directive 2012/29 was realised in Germany via the adoption of the Third Victims' Rights Reform Act on 21 December 2015. Since January 2017 also psychosocial assistance has been included; thus this act has been the most recent reform strengthening the already quite elaborate victim protection system.

Victims of crime in general and notably of corporate violence belong to a vulnerable group and therefore should be approached in a sensitive and respectful manner. Considering this, the potential participants were contacted through appropriate victims' associations, lawyers or other supporting organisations. The contacting was realised initially via phone to explain the overall purposes of the study and to ask for general interest in participation and / or passing the information to the members. Since in Germany most of the cases happened years ago, the victims often stated that they would not want to bring back memories, were frustrated about the outcome of the official proceedings or even were not in the medical condition to talk about their experiences. Therefore the recruitment process turned out to be even more difficult than initially expected.

To ensure that the participants were fully informed in advance, the researcher discussed the informed consent in detail with them before starting the interview. The informed consent contains the project information as well as the indication that the participation is voluntarily, anonymous, free of charge and can be withdrawn at any stage of the cooperation. However, none of the participants terminated the conversation or withdrew their consent after the interviews. In total, 22 persons participated in the study, thereof 15 males and 7 females.

The researchers conducted a total of nine semi-structured interviews using an interview guideline, which was developed by the project partners to explore the victims' needs and the obstacles they encounter. The interviews concerned four different cases, including two of the selected German leading cases. Three conversations were related to the wood protection agent case, in particular the responsible prosecutor, the current head of the victims' interest group and a medical doctor participated. Furthermore two interviews were conducted with a medical doctor and the head of a victims' association regarding the Thalidomide case. One of the interviews was realised with the Ombudsman of the Deutsche Bahn who shared his knowledge about the Eschede train accident. Also one

discussion was carried out with an experienced scholar and member of a human and constitutional rights NGO who worked with victims from a fire in a textile factory in Karachi, Pakistan. Furthermore the researchers consulted a victim attorney with experience as a public prosecutor in criminal law who gave a more general insight in his daily practice. The last interview was conducted with a public prosecutor who heads the economic crime department within a middle-sized prosecution office. The interviews were conducted between September 2016 and February 2017.

The majority of the conversations were realised face-to-face either in the office of the participant, the office of the researcher or a hotel lobby. However, three of the interviews were conducted by phone due to scheduling problems. The longest interview took about 115 minutes and the shortest one 26 minutes with an average duration of 55.5 minutes. Every interview was audio-recorded and transliterated literally along with the anonymisation of any personal information mentioned. The analysis was carried out with MAXQDA 12, a software tool to examine qualitative data using a mixed-method approach.

To also gather some experiences from recent cases, focus groups were held with security employees of a German airport and with opponents of fracking and gas and oil exploitation in Lower Saxony (the latter meeting took place in the town hall of Rotenburg (Wümme)). The third discussion involved experienced judges and one prosecutor and was organised in Freiburg. More precisely, the judges worked either in civil law or criminal law for about 20 years and therefore could also comment on the recent developments in victim protection laws. Whereas the one debate with the airport security personnel was also video-recorded, the other two were audio-recorded only. A video testimony of a victim of the gas and oil exploitation was taken. The longest focus group event lasted 139 minutes and the shortest 68.5 minutes with an average duration of 92.5 minutes. As well as the interview data the focus group material was transliterated, anonymised and analysed with MAXQDA 12. The focus groups took place in December 2016 and February 2017.

## 2.

### THE CASES

The cases included in the analysis can be subsumed under the following categories:

- |                     |                       |
|---------------------|-----------------------|
| - Accidents at work | Airport, KiK          |
| - Disaster          | Eschede               |
| - Pharmaceutical    | Thalidomide           |
| - Environmental     | Fracking              |
| - Product safety    | Wood protection agent |

#### GERMAN AIRPORT

In August 2015 the airport installed about 50 new explosive detectors in the terminals to inspect the clothes of the passengers for residues of explosives. The security employees soon reported symptoms like dizziness, nausea and headaches. In the meantime, 200 people were on sick leave, partially hospitalized. The devices were removed and several expert opinions were obtained, though alarming air pollution values were only found in one reading. Fifty two employees filed a complaint against unknown persons for negligent physical injury. The investigation was terminated by the prosecution in Landshut in November 2016 because no concrete causes for the reported symptoms could be found. Currently, the affected persons are trying to get coverage for their medical expenses via the employer's liability insurance association which denies liability, referring to an opinion of a doctor who diagnosed the claimants with a psychosomatic condition.

#### KiK

In September 2012, 260 out of roughly 1,000 workers of the textile factory Ali Enterprises in Karachi, Pakistan, died in a fire; a further 60 people were badly injured, some of them now permanently disabled. The victims, overwhelmingly men, suffocated or burnt because the windows were barred, the emergency exits locked and only one door leading out of the building was accessible. The main client of the factory was the German textile discounter KiK; between 2007-2011 75 percent of the production was destined for KiK. KiK knew or should have known about the prevailing working conditions. Every other year (2007, 2009, and 2011) social audits

were undertaken at the behest of KiK. KiK employees visited the plant as well. After the incident, KiK paid 1 Mio. US Dollars in emergency aid to the victims and the surviving relatives. The criminal investigations against the owners of the factory were terminated, however, the attorney of the victims filed complaints against the competent authorities for negligent investigation. In Germany there is an ongoing civil action against KiK before the district court (“Landgericht”) of Dortmund for violation of human rights within the supplier chain initiated by a German human rights NGO. In Italy there are criminal proceedings ongoing against the organization which conducted the social audits.

### **ESCHEDE**

On June 3 1998 at 10:57:28 the rubber-sprung wheel of ICE 844 broke due to material fatigue at the speed of approximately 200-250 km/h six kilometers south of the village of Eschede. The resulting derailment resulted in a collision with a road bridge, which collapsed instantly. Human casualties summed up to 101 people, leaving 105 severely and slightly injured. Deutsche Bahn named an Ombudsman and provided him with a 5 Mio. DM emergency fund. A department manager and a senior technician of Deutsche Bahn as well as an engineer of the component supplier for the wheels were indicted for bodily injury in 105 cases and negligent manslaughter in 101 cases. The prosecution blamed the catastrophe on them due to insufficient testing of the rubber-sprung wheels. More than 100 surviving victims and dependents were represented by a single lawyer in first instance. The proceeding was terminated according to sec. 153a StPO as the degree of the guilt of the accused was low and the accused consented to a cash settlement of 10,000 € each. The settlement was confirmed by the appellate court and the following constitutional challenge was declared inadmissible and decided without merit. Deutsche Bahn consented without a legal decision to treat victims as if the company had acted with guilt and compensated the victims accordingly, until the end of 2008 the corporation paid 32 Mio. €.

### **THALIDOMIDE**

The German drug company Chemie Grünenthal developed the drug Contergan and first marketed it in 1957 in West Germany. It soon became a popular sedative which also should help with anxiety, insomnia, nausea and morning sickness in pregnant women. Two years later, cases of peripheral neuritis became apparent and until 1961 the company already had known about more than 1,000 reports of malformed newborns. Only after a newspaper article about the relation between the drug and the

malformations did the company withdrew their product from the market. In Germany, about 5,000 children were affected by malformations due to Contergan. In 1968 several Grünenthal officials were criminally charged with negligent homicide and injury. After Grünenthal reached a settlement with the victims in 1970, the trial ended without a conviction (according to sec. 153 StPO). Grünenthal paid 100 million DM into a special foundation; the German government added 320 million DM. The law to establish the foundation included the condition that the victims waive all further claims against Chemie Grünenthal. The foundation paid victims a lump sum and still pays a monthly stipend. As the foundation was underfinanced the monthly stipends are now paid entirely by the German state. The law was considerably revised in 2009 and 2013 including significant increases in the monthly stipend.

## **FRACKING**

Citizens' initiatives in Lower Saxony reported a significant increase in the incidence of lymphoma, myeloma and leukemia in certain age and gender groups. These cancer clusters were identified in several municipalities in Lower Saxony that are located close to hydrocarbon extraction sites. For instance according to the Epidemiological Cancer Registry there is a 2.5-fold increase in the disease rate of multiple myeloma and 31 percent increase in the overall hematologic cancer rate in elder men (aged 60 -75 years) in the municipality of Rotenburg (Wümme). However, based on the available data no causal link between these cancer cases and hydrocarbon extraction has been demonstrated so far. In response to a leakage nearby to their home, a family filed a complaint for negligent physical injury against the corporation Exxon in 2011. The hospital report stated higher benzol and mercury blood values of all family members. The investigations were terminated several weeks later because of lacking public interest. Partly in response to an open letter of 212 concerned medical doctors to the Health Minister of Lower Saxony in 2015, public health authorities are still investigating possible causes drawing upon interviews and a literature review. The possible use of hazardous substances by the oil and gas industry is a major public concern along with the lack of environmental monitoring data. In addition, the increased earthquake risk as a probable result from the oil and gas exploitation causes repeated conflicts between the residents and the responsible companies.

## **WOOD PROTECTION AGENT**

“Xyladecor”, Xylamon-Braun” and “Xylamon-Echtbraun / Naturbraun” were sold since 1969 as adequate wood protection agents for interior

surfaces. These products contained pentaclorfenol (PCP) (5,4-6 %) and Gamma-hexaclorociclohexan (Lindan) (0,4-1 %) as well as dioxin and furan. The people in authority did not react to the 4,000 written complaints (received by the end of 1978) by consumers and continued sales and distribution until 1983. Although stopping the production of PCP in 1978, they continued to sell the same products with the label “for exterior surfaces”. An estimate of 200,000 people physically suffered from contact with the substances. The prosecution in Frankfurt received 2,700 complaints. The chief executive and the business executive were charged with negligent (sec. 230 StGB) [before 1978] and intentional bodily harm [after 1978] by dangerous means (sec. 223, 223a [a.F.] StGB), partly for omission. The public prosecution also accused them of causing a severe danger by releasing poison (sec. 330a StGB). After a conviction in first instance, the Bundesgerichtshof overturned the conviction on appeal of the accused and ordered a retrial. The proceedings were terminated according to sec. 153a StPO due to the bad health of the accused and the length of the proceedings. Solvay S.A. and Bayer AG agreed to spend 4 Mio. DM on a research chair at the University of Gießen called “Toxicology of interior air”. The accused paid 100,000 DM to the treasury each. As the criminal proceedings ended without judgements, no decision on victim compensation was taken.

### 3.

## FINDINGS

Due to the small sample the insights of this study cannot claim to be representative. Since neither the selection of the participants and their willingness to participate nor the interview situation itself can be completely objective the researchers have to interpret the results in a self-reflective and cautious way. Therefore they double checked their analysis (including cross-coding) ensuring the outcome to be as transparent and as valid as possible.

The following paragraphs will elaborate on the generated results of the interviews and focus groups, representing an empirical starting point to develop appropriate guidelines for the individual assessment of victims' needs.

### **3.1. Overall observations**

We draw the following general observations from the analysis: First, the project provided a valuable step to give this special group of victims the attention they need (showing a general lack of public awareness). Secondly, various different needs could be determined which have to be assessed on an individual basis. Thirdly, the unequal power relationship between the victims on the one hand and the responsible corporations on the other hand was an important aspect throughout the interviews. Fourthly, the members of the judiciary seem to be overstrained with these kinds of cases (hence further training would be a sensible option).

### **3.2. Typologies of harm**

The participants report various kinds of harms, which are not experienced separately but combined or in a sequential way. Besides apparent physical damage (ranging from death and permanent disabilities to injuries and serious damage caused to health both temporal as well as long-term including phenomena such as underweight of new born babies or unusual prevalence of the births of girls and boys) and economic loss, mental and emotional consequences of the victimization also play an important role in the victims' perception.

The physical harm usually represents the immediate effect of the corporate violence, although latencies can be long and the causal link - especially in early stages of the proceedings - difficult to make as in the Fracking case. On the other hand, economic loss and the emotional and / or mental problems tend to be more of a by-product. However, these indirect consequences do not have to be less serious. The victims' experience of the harm suffered and the potential outcomes will be further discussed in the following sections.

### **3.3. Perception of harm**

The majority of the victims describe the physical harm as severe because it has long-term effects like chronic diseases, disabilities or psychological difficulties and the harm restricts everyday life.

*"I went to the medical doctor today and yes, just all organs are already affected. And the body is just too weak." (Airport)*

Furthermore the symptoms often are unspecified and so it is common that medical doctors, employers or the informal social network assume that there is a psychological or psychosomatic condition.

*"The major problem in the case is that the symptoms can indicate anything. We do not have green spots on the face, we do not have a broken bone, which can be x-rayed, the blood and urine values are not analysed, we had to inform ourselves for months afterwards." (Airport)*

Professionals share a similar perception stating that the harm done affects the individual well-being of the victim, either physically or at least mentally:

*"Yes. The offence touches much more the personality. If you become a victim of violence you feel it either on your body or at least on your mind." (Victim attorney)*

In general, there can be stated a significant discrepancy between the personal experience of the victims and the public perception. In particular if the cause of the harm is not clearly identified, the victims have to explain themselves constantly. In combination with often serious symptoms the have to face a double burden.

### **3.4. Consequences of harm**

Based on the respective types of harms the victims have to face, their lives can be impaired in a disparate number of ways. Although the participants mainly focus on negative consequences, which outweigh the positive ones by far, some individuals also communicate favourable outcomes. As one participant of the airport-focus group emphasised, she would have never



had the courage to represent the interests of the employees to the management or competent authorities. However she now realised that they are only human and not different from anybody else. Whereas the victims themselves emphasise the mental and social consequences, the professionals give a more general perspective.

Frequently the victims are temporarily or permanently disabled, which also can cause financial problems.

*“It has already begun that you make redundancies, redundancies due to illness.”  
(Airport)*

Apart from the physical harm the experience of not being heard in combination with the exclusion from the social informal network or other important areas of life, like the workplace, cause enormous mental and emotional difficulties. For instance, increasing skepticism, distrust and self-doubt were common effects the victims recognised.

As one medical doctor reports, many victims experience abruptly changed living conditions, which they often have difficulties to adapt to.

*“That you are thrown off the tracks overnight. That is the same as if someone has a car accident and is paralysed, I would say, then he is completely reset with his life planning, his family plans, everything and needs to start all over again.” (Wood protection agent)*

Also the personal life quality is affected extensively:

*“They are so affected that everyday life is very restricted and they only have fifty percent of their quality of life, fifty percent at most.” (Wood protection agent)*

The professionals also stress the major challenge of victims who suffer the loss of a family member. Surviving dependents frequently are confronted with existential problems if they lose the provider of the family. Not only victims whose relatives died in an accident or a disaster, like the Eschede train accident or the KiK textile factory fire, face financial and mental problems (e.g., trauma). In the KiK case e.g., parents who depended on the income of their deceased sons experienced total financial and social insecurity; the wives needed to return to their own families, which meant exposing them to the patriarchal structures of Pakistani society. Moreover, also less severe cases of victimization put strains on the relationships of the affected persons and can result in the dissolution of families and other informal networks. As reported by one participant, several marriages could not cope with the birth of a disabled child in the Thalidomide case. Especially the mothers felt guilty for hurting their unborn children. The fact that some of them still have these feelings today illustrates how radical the consequences can be.

### 3.5. Victims' needs

The primary objective of victims mainly consists in maintaining their financial stability and the restoration of their health (physical and mental). Still the emotional aspects, as discussed in the following sections, should be considered equally important.

*“Thus you always have to look at it rationally; that the material harm is something which is always an important point for the victims. If persons with a maintenance obligation die, then the maintenance needs to be ensured. Also extremely important is of course an ideal restoration of health. [...] But if you look at it from the emotional side, the memorial in combination with memorial days and the apology of the [Deutsche] Bahn were very important steps.” (Eschede)*

#### 3.5.1. Recognition needs

Although many participants state material requirements as crucial, the need to be recognised as a victim of crime constitutes a very significant element as well. The victims stress that in the public perception they usually either are not recognised as victims of crime or not seen as victims at all.

At the same time victims have a strong wish for someone to assume responsibility for the harm they suffered. This expectation is met in few cases due to possible legal consequences for the corporations. For the same reason, the willingness to offer an apology or even to express sympathy is quite low.

*“The need first to be recognised [was] the most important one, prior to any material claim or hope, they [the company] did not even concede it [...] sometimes it would already help a lot if you just acknowledge a mistake and say we have made a mistake, we are sorry.” (Wood protection agent)*

After the termination of the criminal proceedings, which usually takes several years, in two cases public excuses were made. However, in the Eschede train accident the Deutsche Bahn took 15 years and in the Thalidomide case Grünenthal waited even more than 50 years to formally express their apologies. From the victims' perspective an apology after this long period of time has nearly lost its significance and seems quite implausible.

#### 3.5.2. Protection needs

Since victims, in particular victims of accidents at the workplace, are dependent on their employers, they face substantial disadvantages representing their own interests. For instance the security employees of

the airport are afraid to be dismissed because of their persistent health problems.

In the Fracking case in Lower Saxony, the citizens also rely on the corporation as important employer and on the competent authorities to control the health risk in their environment. However, the municipalities and the state government have strong interests in having a good working relationship with the oil and gas industry because of its high amount of trade taxes and royalties as well as its provision of a significant number of workplaces in the region.

*“You must see the interests. The natural gas industry pays funding. In specific areas, the subsidies are not paid to the state of Lower Saxony, but to the local farmers here in the region, per hectare; where the natural gas production stations are. This means that the local farmers get funding. The domestic farmers dominate rural areas, tend to the conservative party (CDU), and [are] mayors, these are the institutions. The communities get business tax [Gewerbsteuer]. Not insignificant. Some communities live off 50 percent of the subsidy rate of the natural gas industry. And can build kindergartens etc. etc. Ultimately the state of Lower Saxony also gets 30 per cent, 500 million subsidy interest. So you see the chain of interest.” (Fracking)*

These structural interdependencies between politics, authorities and the economic orientation of the corporations, which in many cases operate on an international level, constitute a major obstacle for victims.

Some participants also report negative experiences with competent authorities. They would treat victims poorly and would not believe them. In some cases affected persons were even threatened to be admitted to mental hospitals if they would not stop their allegations.

### 3.5.3. Information needs

The victims’ attorney states that his clients first of all express their need for information on the development of the procedure. He describes a strong insecurity of the victims about the criminal procedure in general, for instance when and how it will take place. From his perspective the competent authorities do not sufficiently inform them. This is consistent with the outline given by the focus group of professional jurists, who themselves inform primarily by sending out explanatory leaflets (see detailed below).

Furthermore the attorney identifies the access to information as essential condition for the victims to recover the control of their own life.

*“If you want to have control, you have to know and in order to know you have to receive information. Insofar it is extremely important that the victims are filled in and put in the position to decide. That is key; because if I am able to decide, I regain a certain amount of control.”*

Thus the flow of information enables victims to participate in proceedings and to make an informed choice, which improves their ability to cope with their experience.

In the KiK case there was also a great need for providing relevant information to the victims on what action could be taken and which claims promise some level of success; this was especially difficult because there was a total lack of organisation of the workforce.

#### 3.5.4. Support needs

Because of serious health consequences, victims need support from the outside, although the mutual support amongst the affected persons seems to be an important aspect, too (see also 3.7.2.1.).

*“Therefore with this consternation just someone from the outside could have helped, but by their own efforts they were not able to do more.” (Wood protection agent)*

The interviewed victims of the airport wish for an independent regulatory body to handle accidents in the workplace. They have the strong impression that their employer, who belongs to the state government of Bavaria, influences the medical doctors and other competent authorities.

In the KiK case, due to a general lack of victim support organisations, a total lack of organization of the work force and a varied level of education of the victims, they fully depended on the initiative of pro-active attorneys at law, trade union activists and NGOs to bring their cases both to the domestic courts as well as to German courts. The provision of information, coordination and financial resources to do so were instrumental.

### **3.6 Access to justice, victim support and compensation**

#### 3.6.1. Social informal network

Victims rarely mention it explicitly; however, in some cases they report a shrinking social informal network. The experiences of the affected persons can cause conflicts between them and their family, friends and neighbours if the community does not believe in symptoms or accuse them of being traitors because the allegations damage for example the image of the main employer in the region. As a victim of the fracking case explains, her family has no contact at all with their neighbours who laughed at them when they first started investigating. Very few people still talk to them. Although the personal relationships with friends and family can represent an important retreat, the victims’ attorney also gives a more critical perspective referring to tiring compassion in particular concerning the families of the victims.

### 3.6.2. Media

Throughout the interviews the media is seen as a possible and powerful ally (by professionals as well as by victims).

*“The media is an important fourth power in the state, yes? Writers, filmmakers are the ones you can still count on, still today, yes? They have the courage, eh, to make things public; again and again [...] Nonetheless they are still the very big corner stones, eh eh, in this fight of David against Goliath, eh, where one can still expect something from.” (Wood protection agent)*

In fact the victim of Thalidomide traces the massive increase in the monthly stipend in 2009 (doubling) partly to the German film ‘Contergan’ about the drug in 2006. Also because Grünenthal obtained a preliminary injunction to prevent the transmission of the film the subject regained a lot of public attention. After the annulment of the judgement the film was broadcast in 2007. A study to evaluate the living conditions and financial needs of the victims resulted in another substantial adaptation of the monthly payments in 2013 (up to six-fold increase).

One participant specifically criticises that the media is not skeptical enough towards competent authorities. Also it was mentioned that local press did not want to engage in criticism of powerful local corporations which pay large sums of tax and provide many employment opportunities.

*“We went to the local press. And they slapped our faces [analogous]. How could we imagine wanting to pee on the left hoof of the biggest taxpayer in the area. ... We [the press] do not do this, this is our club here, which promotes the children.” (Fracking)*

### 3.6.3. Politics

Politics and politicians are often described as not being interested and too hesitant to stand up to corporations.

*“Especially politicians did not care at all; also there was no politician, not even from the usually environmentally active parties, involved substantially and was not supportive in a serious way, so that one can say – in my opinion – that this is a state failure.” (Wood protection agent)*

In some cases, even collaboration of politicians with the companies becomes apparent so that victims lose trust in competent authorities.

*“...found out during the investigations that the federal health agency (Bundesgesundheitsamt) collaborated with the manufacturers. This was no control agency but a collaborator, eh, this was terrible, this experience, all the people had trusted the Bundesgesundheitsamt.” (Wood protection agent)*

### 3.6.4. Public sector justice

#### 3.6.4.1. Criminal proceedings

The professionals critically commented on the past reforms of the German criminal procedural code, about which they had been informed by the Justice Department. The increasing focus on victims' rights also through the implementation of the Directive 2012/29/EU (25 October 2012) was in their view partly pushed by feminist / interest groups and partly also resulted in the enactment of too extensive elements of crime. The reform(s) led to dissonances within the law and was seen less and less compatible with the fundamental and traditional aims of criminal proceedings, i.e., to mete out a just and fair punishment of the perpetrator. The recent development was interpreted as a shift in the aims of criminal proceedings, which now also had to encompass other aspects such as providing more visibility of victims' perspectives and interests, which could lie in conflict resolution and / or revenge. It was also seen as a lack in trust in the judiciary as a whole by victim support groups. Despite the fact that not only the judges but also the prosecution was to see to a fair trial resulting in a just and fair punishment also in the view of the victim, more and more elements of victims' rights and support had been introduced.

*"I think, the whole discussion sounds a bit as if from the point of view of the victims' associations the confidence in the judicial system is missing or damaged. And I mean, there is a prosecutor, who is supposed to work on an appropriate punishment. He is there for that. But apparently, they do not trust them and think that victims should be provided with as far as possible rights, in order to reach a result which is then acceptable to the victim." (Judge)*

This new development would, however, not result in an increased use of restorative justice practices such as victim-offender mediation (VOM) even though that this was politically favored. One reason for the low number of applications could be that VOM was more time-consuming than judgements. Furthermore, not all cases would lend themselves to such procedures. Nevertheless, the interviewees consented that if it was done professionally it would be helpful as an instrument of dispute settlement, which might eventually lead to lower case numbers. The Attorney General offices would collect data on the prevalence of VOM.

The continued expansion of victims' rights might also lead to longer trials, the professionals feared, which would not be in the interests of victims themselves or the judiciary that was interested in speedy and efficient proceedings leading to acceptable outcomes. A further expansion of such victims' rights, which could theoretically be envisioned, was to also allow the joint plaintiff to appeal the sentence ("Strafmaßrevision") or to involve the joint plaintiff in plea bargaining ("Verständigung"). Such a reform would be seen rather critically.

The interviewees conceded, though, that nowadays there was a much stronger focus on the consequences of a crime for the victim (“Tatfolgen”). This might not have been the case in the past. During the oral hearing the court might address the difficult upbringing or past of the accused for three to four hours, while on the contrary only listening to the testimony of the victim for a significantly shorter period of time; partly maybe also to spare the victim further superfluous exposure. It was stressed, though, that in criminal proceedings the person of the accused should outweigh the person of the victim. The consequences of a crime for the victim would primarily only be relevant in terms of sentencing; for this purpose, there was no need to listen extensively to the victim; a healthy balance would need to be struck, though. Other goals might better be taken care of by civil law proceedings before the civil courts. However, it was acknowledged that involving the victim in the trial, which was a communicative process, might assist the victim in better overcoming the consequences of the crime; he or she might feel listened to. These aspects would not be commensurate to meting out the sentence or to providing financial compensation or damages; they would rather further dispute resolution. If this was truly doable in the form of criminal proceedings was questioned. Representatives of joint plaintiffs would ensure a stronger role of the victim in the proceedings. A high number of individual victims participating in the trial might also go beyond the scope of what a criminal trial can possibly achieve.

It seemed especially difficult to reconcile the presumption of innocence with the fact that very early on in the criminal proceeding a determination on who is a victim [a term which is still not defined in the German criminal procedural code] needs to be made. Careful wording was important in order to not raise false expectations or to not violate the presumption of innocence.

*“I find it difficult in general, this term victim. It already presupposes a feature, which we must first ascertain in criminal proceedings, I say.”*

Throughout the interview, the interviewees also frequently referred to other terms (person reporting an offence, witness, injured person) than victim.

The introduction of psychological support in the format of “psycho-soziale Prozessbegleitung” was also critically discussed. However, since this instrument was only recently introduced in Germany the interviewees have only made little to no experience with this new form of victim support. However, they did not expect that it will be of much relevance in the future. Often (and by law for specific crimes) a legal counsel would be appointed for the victim. This counsel could provide all necessary information about what to expect from such trials, under which

circumstances to join the proceedings as a joint plaintiff (“Nebenklage”) or to file civil claims within the criminal proceeding (“Adhäsionsantrag”).

Furthermore, often victims of specific crimes were already now accompanied by a representative of a victims’ support organization. Their main contribution would be to support the victim prior to and during the hearing and to report about the consequences of the crime for the victim, which would be relevant for meting out the sentence. These reports, which could also be drafted by the court assistance (“Gerichtshilfe”), were usually drafted with a certain time-lag after the crime; they proved invaluable since they gave further insights into the situation of the victim, possible long-term damages and also the willingness to testify at the time of the oral hearing.

The support of victims’ organization was viewed positively. They provide professional support to the victim without trying to influence the victim as to the proper case; the witness statements would be less emotional and thus the proceedings would benefit from their participation. Nonetheless, the interviewees consented that the function of the person providing psychological support was important and was also different from what a legal counsel or a representative of a victims’ organization could offer.

Another issue was the question of allowing the victim to inspect the records and files in cases of one person’s word against another’s. This is not clearly dealt with by the law. However, according to the professionals interviewed access to files and records was often granted in case the success of investigations was not clearly jeopardized. During the examination and interrogation of the accused in court, the victim and his or her representative would chose to leave the court room in order to not compromise the testimony of the victim.

According to the interviewees, there is still room for improvement as to providing relevant pieces of information to the victim, although both the police, the office of the prosecutor, and judges would regularly and automatically provide data sheets. Some of the data sheets were commonly drafted and issued by a large group of federal states (Forum Sta). Thus updating and changing them was quite cumbersome and possibly costly. Most victims would not know what to expect and what motions or petitions they could file. Some needs for information could be met by the judges or prosecutors themselves. Organizational questions e.g., as to how to avoid meeting the perpetrator were dealt with on a case by case basis but only if the victim took the initiative and requested such information. Everyone would benefit from an improved flow of information. However, the judiciary’s capacities were already stretched. One prosecutor had at least about 100 cases per month to deal with and all professionals admitted that the focus of their work would clearly not be on



victims' rights or information thereabout. The words used by the interviewees on what sort of information is provided when and by who clearly indicated a lack of knowledge (I believe, I think, it should happen).

*"But I have not looked at it for years, what really comes out of our computer, if I tick the box they should get one [victim information sheet]."*

*"Of course there is no focus on the aspect that they [in the judiciary] are there to advise the victims. I now say quite openly that this box to be ticked in the victim information sheet is the last thing I probably teach the [assessors] if I think about it at all. "*

*"I think we in the judiciary are generally satisfied with such information sheets. The specific advice - for this there is the possibility to order a support accordingly, which then discusses everything else.... I do not see that we should be more concerned about victims' interests from the start."*

*"And then one comes to the burdens for the judiciary at some point that we simply have no time for such basic things."*

Providing relevant information via data sheets was mainly up to the police, which in the view of the interviewees in general met their obligations. Moreover, they stressed that court assistance ("Gerichtshilfe") was also instrumental in providing relevant information on victims' rights.

The issue of the possibility of filing civil claims within the criminal proceeding ("Adhäsionsantrag") was also seen critically. One issue of concern was the fact that a criminal law judge at the local court had jurisdiction to decide about civil claims which would normally fall into the jurisdiction of the district court due to the amount claimed. More critical was the possibility of filing such claims very late in the proceeding, i.e., during the oral hearing. This would amount to a significant reduction of legal protection of the accused, jeopardizing his or her fair trial rights. In case the claim would have been filed in civil proceedings the legal deadlines would allow both the civil law judge as well as the defendant much more time to prepare and respond. The options of dismissing such claims had been increasingly reduced in the past to claims which would obviously not lend themselves for being decided upon in a criminal trial. Even though it was admitted that the option for filing such civil claims was an important and useful one in a variety of cases, e.g., damages for pain and suffering ("Schmerzensgeldanspruch"), it was certainly not in the cases of long-term injuries involving difficult questions of causation, and of the amount of damages to be awarded.

These criticisms had been shared in the past by many colleagues; however, today deciding on civil claims in criminal trials had become more prominent, especially in sexual offense cases. However, many representatives of the joint plaintiff / victim were not intimately familiar

with such civil claims and would thus often be hesitant to file civil claims especially in difficult cases.

The positive and important aspects of such an “Adhäsionsklage” were seen as well. It would spare the victim a second trial, which might even lead to a different outcome. Facts once examined and then decided upon by the criminal court should be relevant for a corresponding civil claim as well. This could also be done through rendering binding effect to the criminal judgement, which was in German law, however, not the case. There was the option to deliver a judgement on the substance of the claim, which would, however, not spare the victim to pursue his or her civil claims in the civil courts. Since an enforceable title was a requirement of some victims’ funds in order to pay compensation to the victim this precondition led to claims also against accused persons who were obviously destitute.

Manpower requirements planning (so called “PEBB&Y” system) does not seem to play a role in the question if judges decide on the civil claim within the criminal law proceedings. They were even unsure if and how these claims would be taken account of.

In some cases there is the possibility of a “reclaiming aid” (“Rückgewinnungshilfe” sec. 111b para. 5 StPO) within the criminal proceeding with which the state can seize removeable goods or money from the accused. The objective is to return the goods to the owner or enforce claims for damages of victims. In practice it is often difficult for the prosecution to actually secure assets of the perpetrator as the proceedings are very intricate and time-consuming.

#### 3.6.4.2. Civil proceedings

The motivation to access justice was manifold. Besides financial interests (compensation for material and immaterial damage, reparation or post-employment benefit) in most cases the victims wanted to see justice done; they wanted that responsibility was assigned; at times they also wanted to ensure that structural changes be made in the future (as in the KiK case, better working conditions) and thus saw their efforts as a political statement. However, civil proceedings proved ...

- to be difficult for the victims because of the burden of proof;
- often to be hopeless when compensation was sought as surviving dependent
- not to reflect current risks of global economic structures
- difficult to be conducted when settlements reached contained confidential agreements so that other persons concerned (e.g., victims associations) are not able to receive information.

#### 3.6.4.3. Administrative proceedings

The participants did not mention particular administrative proceedings. However, as in the Fracking case they might be relevant e.g., in the process to obtain empirical data on environmental conditions regarding the pollution of water and soil near corporations executing oil and gas exploitation.

#### 3.6.4.4. Compensation funds

In some cases compensation funds:

- voluntarily paid compensation and provided immediate help for the victims without regard to questions of responsibility or guilt
- compensation by victims' support agencies (Weißer Ring) requires an conviction of accused party
- with non-transparent foundation structures and extensive involvement of the respective company does create further distrust among the victims

If compensation is linked to conditions, like in the Thalidomide case, the victims are restricted in their choice which is experienced as another interference with their autonomy.

In the KiK case KiK voluntarily paid into the fund initiated and organised by the International Labour Organisation irrespective of any determination of guilt and responsibility. KiK wanted to save face vis-à-vis the German government and the industrial sector; compensation was provided only for material damages, but it was relatively quick, in any case quicker than court proceedings and, by and large, payments were fairly reasonable.

In cases where no compensation has been awarded because the proceedings were terminated without judgement (e.g., in the Wood protection agent case) the participants emphasised that the establishment of a respective foundation would have improved their (financial) situation. Since the corporations and the accused paid high sums as part of the settlement, victims still can not understand why they would not benefit directly from these payments.

#### 3.6.4.5. Victims' support

No specialised victim support service for this group of victims is existent in Germany. By the interviewees from the judiciary it was mentioned that extensive victims' support in proceedings can weaken the position of the victim and even affect their credibility.

#### 3.6.4.6. Mediation

The Eschede train accident represented the trigger event for the Deutsche Bahn to install an ombudsperson to mediate between the victims and the company. After ten years a successor was appointed who still is responsible for the communication with the surviving Eschede victims and dependents but also deals with more recent train accidents. The company is planning to keep this position (there will be another replacement next year) and provide staff if necessary. Although the ombudsperson is chosen by the corporation which in terms of mediation seems rather unfavourable, the concept as such offers the victims a permanent contact person. Since many participants mentioned the unequal power distribution between the involved parties as major obstacle the appointment of a qualified contact could promote meeting on an equal footing with the victims.

Whereas in the KiK case no mediation process was initiated, the ministry of economics of Lower Saxony established arbitration courts in response to increasing conflicts between the oil and gas companies and persons who were affected by earth quakes in the region. These arbitrations provide another opportunity especially for the victims but also for the corporations to reach an extrajudicial decision if a direct agreement between the parties failed.

The professionals report that mediation is not very common, however, they consider it an useful alternative.

*“This [mediation] is already taken care of, in our case also by the senior prosecutors office [Generalstaatsanwalt] is already a concern that it should be used more, but in the practice there is simply a different handling of the colleagues. I am personally rather a friend of it so there are really many cases where this is adequate and where we really get more in the sum if they come together under professional guidance and clarify what is behind it” (Prosecutor)*

#### 3.6.4.7. Legal aid

The only reference made to legal aid concerned the KiK civil proceeding at the district court in Dortmund. The court awarded legal aid in this particular case, however, it seems to play a minor role in general. As one judge from the focus group recognised, victims often do not know about the possibility to get legal aid for an attorney even beyond the joint plaintiff. Therefore they frequently pay for their legal representation themselves although their financial situation is obviously difficult.

#### 3.6.5. Medical sector

Victims mentioned that medical advice is often not obtained easily and sometimes doctors are unwilling to help or examine the causes any further.

Problematic was also that there are very few specialists in environmental medicine in Germany who in addition have problems in being taken seriously themselves. If no physical cause can be determined or can be proven academic medicine does not recognise the physiological harm due to lack of knowledge but determines it often as a psychological phenomenon (as e.g., in the Fracking case) or sometimes even as menopausal symptoms (as e.g., in the Wood protection agent case).

But if doctors can be involved in the case their commitment has the potential to initiate a serious discussion and political reactions (e.g., when 212 medical doctors signed a letter to the Health Minister of Lower Saxony in the Fracking case which received a lot of public attention).

#### 3.6.6. Private sector: the businesses concerned

The strategies of the private businesses concerned to deal with accusations differ widely. In the cases of the wood protection agent, fracking and the airport the companies strictly denied or still deny harmful effects and do not treat victims respectfully.

*“But of course the reaction of Exxon and the publicity work of Exxon are in the highest degree critical because first of all they assume that these are all dumb people that are reading it who you can tell everything? Because they have also said at first Benzol makes no cancer then we confronted them that it indeed does cause cancer and then they said yes it causes cancer but not this cancer and then we said yes exactly this cancer and not the other so that you really had to slice out the truth bit by bit.” (Fracking)*

On the contrary, if the victimisation is obvious, as in the train disaster in Eschede or the fire in Karachi, the companies set up emergency funds on a voluntary basis so they would not compromise the outcome of future proceedings. These funds also seem to be strongly driven by the public relations interests of the corporations to prevent further loss of image.

#### 3.6.7. Private sector: insurance

Comparable to the access to justice victims frequently have trouble with their insurance providers due to unclear evidence and lack of scientific knowledge.

#### 3.6.8. Other relevant issues

[ - ]

### **3.7. Victims' resilience: individual and collective initiatives**

#### **3.7.1. Individual strategies**

Personal strategies:

- get an attorney, file a complaint
- (try to) move on
- stand up for oneself e.g., in meetings / phone call with relevant persons of the involved company
- document events in personal memory logs
- get active (e.g., professional development etc.) vs. withdrawal into private sphere, relying on family to manage everyday life

In addition:

- 'take what you can get' – if there is a voluntary compensation (or emergency aid) of the company, which covers the most important expenses, the victims are likely not to pursue further proceedings
- get trade unions involved
- mutual support of the affected persons
- cooperation between medical doctors (not only of the same medical specialty)

#### **3.7.2. Collective strategies**

##### **3.7.2.1. Victims' movements and associations**

Informal victims' associations do exist in every evaluated case and play an important role in connecting victims and presenting a common approach vis-a-vis corporations, authorities and the public. Frequently the formation of an association or getting in contact with respective organisations seems to be crucial for receiving recognition as victims in the first place.

*"Well, recognition and so – of associations [we get it] now. They really tell you, you are right, there are even more affected. In the past it just was not like that. We were laughed at, really laughed at. And that is different now. Thank God."  
(Fracking)*

Several participants emphasise particularly that the mutual support and the support from informal victims' associations helped the victims the most.

### **3.8. Critical issues and victims' struggles**

Consulting the *victims' perspective* which is crucial for the research project various critical issues can be identified:

As mentioned before the affected persons frequently are struggling **to be** recognised as victims of corporate crime by family members, neighbours, local community, doctors, politicians, let alone the corporation; and not to be stigmatized as a “psychopath”.

*“They're laughing. They sit up there. We're sitting down there. They just laugh down. Because your foot people. There is no word of mourning. Nothing... We were really laughed at.” (Fracking)*

*“We were presented to the public as idiots. They are dumb. How can one believe such a thing?” (Fracking)*

In addition corporations often deny the truth e.g., in their public relations strategies they provide clearly wrong pieces of information (“lies”).

A recurring problem consists in the lack of balance of arms or unequal power distribution, e.g., due to a strong lobby of corporation in communities concerned (“David versus Goliath”). In some cases the corporation is even supported by a foreign government exerting influence on the German government.

For instance in the Fracking case victims face the issue that cases are geographically restricted or only a few cases are known, thus they are having difficulties to raise political support nationally.

On the other hand the inspecting / regulating authorities do not live up to their responsibilities in initiating, funding, conducting and supervising investigations of the allegations or in collecting meaningful and reliable data (Fracking: e.g., lack of environmental data, of monitoring) unless high public pressure is built by citizens' initiative groups. Furthermore the authorities need better funding to fulfil responsibilities and become more independent from the industry.

*“This is an absolute data desert. We have no environmental monitoring, data by authorities with supervisory duties since the 1970s is missing, data where one could find out what kind of substances have affected the environment.” (Fracking)*

*“And the supervisory authority, the “Landratsamt”, I think it is ridiculous, tasked Exxon to organize the expert opinion.” (Fracking)*

Victims usually experience the problem to make it to trial because it is hard to prove evidence of harm, to prove the causal link and the symptoms can have a long latency.

As a result of local proximity and / or dependency to the responsible corporation victims tend to be stigmatized as traitor and attacked accordingly after taking action (e.g., in the Fracking case “Troublemaker”).

*“[After filing a civil claim due to massive olfactory emissions] and then our neighbours began mobbing him. Mobbing the family, mobbing the children in*

*kindergarten, letting explode the mail box. [...] the people moved away.” (Fracking)*

Eventually victims do not gain “real” access to justice, e.g., criminal complaint by a victim against Exxon for damage to health (leakages and exposure of highly cancer-causing products tested in victims’ blood due to exposure) did not result in any criminal investigations by the police but the preliminary proceeding was terminated by the office of the prosecutor for lack of public interest.

However, the involvement of the European Union might push for changes for the better.

*“I would like to briefly remind you that the European Commission, to my astonishment, put attention also to Lower Saxony. They have also written in the report, how can it be that 150 years without environmental data collection and the like can have taken place, if somewhat goes into the environment.” (Fracking)*

Also *professionals* in the field have to face major problems:

On the one hand there clearly can be stated a lack of scientific knowledge about the (combined) effects of chemicals also below legal limits and on the other hand the lack of statistic data (e.g., disease registries) to conduct further research.

In line with the insufficient knowledge about the relations a considerable lack of problem awareness in public can be observed since even professionals do not associate violence with corporate crime.

Consequently justice is not used to such cases neither (see 3.6.4.1.-3.6.4.7), and partly demonstrating an ignorant attitude.

*“Well, the next obstacle: There was an extreme ignorance on the side of the German judiciary towards facing such kind of cases.” (KiK)*

Professionals also criticised the strong lobby of corporations and their close interdependence with politics. The opposite economic interest would prevent competent authorities from taking action and therefore neglecting the protection of consumers and residents.

There was a clear need of training and also towards additional resources for the judiciary. There was also resistance by the judiciary to deal with complicated cases involving e.g., difficult problems of causality. Most importantly, there was a significant structural disjuncture of both criminal and civil German law, which would not reflect the risks immanent in a globalized economy. Pre-legal considerations and assumptions would still go against a sensible adjustment, which needed to be made while taking standards of the rule of law into account.



In the KiK case, the German attorney and the NGO did not bring the case to the German criminal courts because of the challenge to assign responsibility to a specific person within the corporation. Another problem was the range of responsibility; German companies would not be held responsible for what was going on in production plants abroad even though they overwhelmingly produced only for them. Moreover, in similar previous cases the office of the prosecutor had shown very little interest in conducting (timely) investigations even though that the NGO had provided thick files with pieces of evidence and testimony. There was a lack of knowledge on how to properly evaluate factual circumstance in globalized economies; on how to legally classify the facts; evaluation of facts would be heavily determined by pre-legal assumptions. Prosecutors and judges tend to believe German managers claiming to not know what was going on abroad thus declining the mens rea.

Compensation schemes should quickly be set up parallel to proceedings which lead to a decision on responsibility and guilt. In addition, alternatives to the proceedings like the arbitration courts could be suitable to other contexts and facilitate victims' access to justice.



**“VICTIMS AND CORPORATIONS”**

**Implementation of Directive 2012/29/EU  
for victims of corporate crimes and corporate violence**

**Needs of Victims  
of Corporate Violence:  
Empirical Findings**

**National Report:  
Belgium**

by Katrien Lauwaert

April 2017



## 1.

### METHODOLOGY

Before the start of the empirical research, and as required by national law, the project's proposed empirical research activities have been submitted to the Belgian Privacy Commission. Moreover, approval has been sought and obtained from the KU Leuven Ethics Committee for Humanities and Social Sciences (SMEC).

The goal of the empirical work was to carry out interviews and focus groups in order to map and better grasp the situation of victims of criminal offences committed by corporations in the course of their activity, which have resulted in harm to health, physical integrity or life of natural persons. Typical for the Belgian situation in the research consortium of the Victims and Corporations Project is its well elaborated structure of services for victims of crime, corresponding to the requirements of the EU Victims Directive 2012/29/EU. Therefore, the empirical work focused in the first place on interviewing key professionals overseeing their field of work, having access to their field's registration system and having been involved long enough as to be acquainted with developments over time. The assumption was that they would be able to shed light on whether victims of corporate violence appear as clients in their field of work, which kinds of cases emerge, which are typical features and challenges of these cases and of the victims' experiences. Such key professionals were interviewed in the fields of victim reception at the courts (participant 4), victim support services (participant 7), penal mediation (participants 5 and 6), the national compensation fund for victims of intentional violent crime (participant 3), restorative mediation (one of the participants of focus group 2) and a special coordination unit set up for the assistance of victims of the disaster of the gas explosion of Ghislenghien (participant 1). Victims associations were a second focus of the empirical work. We managed to interview a representative of the most active victims association in the project's field of research, namely ABEVA, the Belgian association of victims of asbestos (participant 2). Finally, we interviewed a lawyer with a long time experience in defending vulnerable groups and with specific experience with victims of corporate violence (participant 8). Complementary to the interviews we organised two focus groups. The focus group on victim support (focus group 1) gathered four professionals working in the field, of which three coordinators with extensive experience in victim counselling, and one lawyer working for victim support services. The focus group on restorative mediation (focus group 2) gathered 4 mediators with 10 and 16 years of mediation experience, a staff member of the central

coordination of restorative mediation and one apprentice mediator. The focus groups were intended to gather more detailed information about how victims experience their situation via professionals who deal directly with victims on a day-to-day basis.

All the participants in the interviews and focus groups were either professionals or victims with a public role in defending the cause of an association and as such they were contacted directly by the researcher. After a first contact was established through phone or e-mail, all of them received the electronic version of the information sheet about the Victims and Corporations Project and the informed consent form. Some of the professionals obtained permission from their hierarchy to participate in the interview or focus group. The researcher consulted with the participants about a setting which felt safe and comfortable. Two interviews and one focus group took place at the Leuven Institute of Criminology, the home base of the researcher. The other six interviews and one focus group were held in a separate room at the work place of the interviewee. Before the interview or focus group started, the information sheet and the consent form were explained in detail and time was given to the participants to ask additional questions and for the researcher to provide answers to these questions. All of the participants decided to cooperate and none of them withdrew during or after the interview or focus group. They, as well as the researcher who conducted the interview, signed the informed consent form in two copies; one copy for the participant and one copy to store in the project files. In the consent form the participants indicated whether they wanted to be informed about the outcomes of the project. All participants received 25 euro in gratification of their participation and to cover possible costs of transportation.

All the interviews and focus groups were conducted face-to-face between 19 January and 13 March 2017. In total 18 people, half men and half women, took part in the eight interviews and two focus groups. The interviews were semi-structured and lasted on average 79.5 minutes, ranging from 51 minutes to 132 minutes. The focus groups lasted respectively 123 and 111 minutes, with an average duration of 117 minutes. This is close to the on beforehand estimated duration of one hour for the interviews and two hours for the focus groups. All interviews and focus groups were audio-recorded and transcribed verbatim. From transcription on the data were anonymised. Only the principal researcher, the supervisor and the research-assistants who were responsible for the transcription had access to the recorded data and the transcripts. For the analysis a pre-structured coding tree was used, which was adapted during the analysis in order to integrate all the relevant emerging data. The principal researcher also kept a research diary containing brief notes of the interviews and focus groups, methodological information and analytical reflections. The whole process, from the first contact with the potential participants to the

writing up of the analysis was carried out by the lead researcher, except for the transcription of the interviews and focus groups.

## 2.

### THE CASES

#### **2.1. Categories of cases**

The cases included in the analysis belong to the following categories:

- Disaster: gas explosion in Ghislenghien and train accident in Wetteren
- Environmental: Eternit
- Occupational safety: electrocution at work
- Product safety: fire at social housing building in Mons

#### **2.2. Specific cases**

##### **Eternit – victims of asbestos**

Company Eternit, owned by one of the richest families of Belgium, produced for decades building materials based on asbestos in Kapelle, a village in Flanders. Many families in the region were and still are economically dependent of the plant, which still functions now, but stopped producing asbestos in 1998, only one year before its use was legally forbidden. Eternit developed early on a strong international lobby for the use of asbestos. The lobbying and the production continued for a long time after studies showed the harmful effects of asbestos for the workers of the plant and for their families who lived in the neighbourhood. The company established a private fund to compensate workers and their families who developed mesothelioma, an asbestos related fatal cancer. In exchange of the financial compensation the workers had to sign a confidentiality clause and were not allowed to start a legal procedure against the company. The harmful effects of asbestos have a very long latency period of up to 40 years. In 2007 a national asbestos fund was created to compensate victims of mesothelioma and asbestose. Very few legal (criminal and civil) cases have been launched against the company, notwithstanding the growing number of deaths related to exposure to asbestos. In the one and only (civil) trial that has taken place against the company, the company was convicted to pay a compensation of 250.000 euro to the victim. In Spring 2017 the court of appeals confirmed the conviction but decreased the compensation to be paid to 2.500 euro.

##### **Fire at social housing building in Mons**

On 20 February 2003 a social housing building was set on fire in the town of Mons. The fire extended very quickly, killed seven people and injured 26. A criminal investigation was launched and the trial took place in 2013. The social



housing corporation managing the building was convicted for involuntary manslaughter due to a lack of precaution. The social housing corporation worked in a climate characterised by a general lack of organisation and in which safety issues were not taken seriously. The CEO and the chair of the board were not convicted. The victims received financial compensation more than ten years after the drama happened.

### **Gas explosion in Ghislenghien**

On 30 July 2004 an accidental gas leakage in a high pressure gas pipe caused an enormous explosion at a construction site in Ghislenghien. It instantly killed 24 people and wounded 132 others. It was the biggest technological disaster ever in Belgium. A criminal trial took place. 600 civil parties were involved. In first instance only 3 of the 14 people accused were found guilty. All three were convicted for involuntary manslaughter. In appeal 8 of the 14 accused were found guilty. They were convicted for a lack of carefulness. Besides the criminal proceedings victims also filed separate civil lawsuits. The question of the financial compensation of the civil parties was very complicated. Ten years after the disaster not all compensation cases had had a final decision. The gas explosion of Ghislenghien was highly covered by the media and it received intense political attention. A victims association has been created and every year a commemoration was held at the site of the disaster. As a consequence of the disaster of Ghislenghien, a law was adopted according to which victims of a technological disaster are compensated for physical damage without having to wait until responsibilities have been determined in legal procedures. It was a response to the complaints of many victims who had to wait for years before receiving compensation. A fund was created to make this early compensation possible. Insurance companies contribute to the fund and after the legal procedures they mutually arrange the division of the compensation as decided by the court.

### **Train accident in Wetteren**

On 4 May 2013 a freight train got off the rails during the night close to the town of Wetteren. Several wagons filled with acrylonitril caught fire. One victim died, around 100 people were admitted to the hospital with symptoms of intoxication and around 2000 people had to be evacuated from their homes. The toxic content of the train wagons, mixed with the contaminated water used to put out the fire, ran into the drains which polluted the site around the train accident. The evaporated acrylonitril penetrated houses in the neighbourhood. A criminal investigation was launched.

## 3.

# FINDINGS

### 3.1. Overall observations

The findings presented here are the result of a limited number of interviews and focus groups conducted in Belgium, mainly with professionals working in the criminal justice context. From this exploratory work only it is not possible to draw general conclusions. However, the findings confirm typical features of corporate violence victimisation such as its often collective nature and the pervasive impact of the harm.

The findings also illustrate the many obstacles victims encounter in exercising their rights attributed by the Victims Directive. Long latency periods, factual complexity and unclear causal links between corporate activity and harm contribute to difficulties encountered in civil and criminal proceedings. Moreover local and national authorities' reactions to corporate violence are often weak because their interests are intertwined with those of the corporations concerned. This makes victims even more vulnerable. The probably most important observation in this report is the alarming absence of victims of corporate violence in the clientele of general services offered to victims of crime, such as victim support, the compensation fund for victims of intentional violence and victim-offender mediation. We further learned that the attitude of the corporation can make a huge difference for victims, but the information gathered is not very encouraging in this respect. Victims associations can play an important role for victims of corporate violence and they could do much more if they would be adequately supported. Finally, many victims of corporate violence have to struggle for recognition; the media can be a strong and important ally in this regard. The situation is different for victims of sudden, visible, collective victimisation. They tend to receive more easily public recognition and support.

### 3.2. Typologies of harm

As in other cases of victimisation by serious crimes, the harm done by corporate violence is *diverse and impacts upon different life domains*. Consequences are physical, emotional, practical, financial and social. In each of these fields the problems encountered are numerous and intense.

Moreover, in many cases it is typical of the harm done that it reaches a large number of people, and thus involves *collective* victimisation. Either it hits many people at a particular moment in time, which is often the case with disasters,

either the harm slowly poisons the life of a large group of people who are not always aware of the harm. Quite differently from conventional crimes, corporate violence crime commonly involves *long latency periods* before the harm appears.

The asbestos case is an impressive example of the devastating effects of harmful corporate activity. The production and selling of asbestos exposed not only people working in the production plant, also the families of the workers were exposed, as well as the families living near the plant and its asbestos dumps. Even more broadly, many people have been exposed to asbestos fibres in other work environments either because they worked with products containing asbestos or because asbestos was present in the work environment, e.g. in the building. For a very long time people were not aware of the risks related to that exposure because of the extremely long latency periods. Diseases related to exposure to asbestos develop often only 35 or even 40 years after the (start of the) exposure.

### **3.3. Perception of harm**

In the asbestos case people were for a long time not aware of the harm done.

Also in the asbestos case, due to people's loyalty to their employer, two types of reactions developed. Some people felt immensely betrayed and lied to by the employer when they were confronted with illness and death and realised the corporations must have known for many years about the risks of asbestos. Others more or less protected the corporation stating that it still provides work in the region, that they had a good career thanks to the corporation and that the corporation provided compensation to the victims. In other words, you cannot profit from the job and the compensation and at the same time attack the corporation, in the sense of the proverb 'you should not spit on the hand that feeds you'.

Moreover, people still living in the village near the plant do not like to talk about the asbestos problem. They seem to have accepted the situation.

### **3.4. Consequences of harm**

The consequences of the harm done are often devastating, and at least they have a serious impact on people's life.

The gas explosion in Ghislenghien left people dead or mutilated, with medical problems which demanded long term and extensive treatment. People felt guilty to have survived, experienced loss of self-esteem and changes in personality traits. Emotional imbalance caused relational tension in families. Moreover, victims were no longer able to support their family financially as they were unable to work. The combination of high costs and inability to work turned into a financial disaster for some of the victims.

The asbestos problem has been rightly compared to an octopus. Its consequences are tentacular, invading people's lives slowly and deeply. The respondent we interviewed lost both of his parents and two brothers due to mesothelioma, a deadly disease caused by exposure to asbestos. The other members of the family also have asbestos fibres in their lungs. They live continually under the threat of the same disease. The interviewee explained how the loss of fathers due to mesothelioma, leads to loss of revenue for entire families and rips families apart.

### **3.5. Victims' needs**

Victims' of corporate violence needs are manifold and touch upon different life domains. This is a logical implication of the intensity and the broad spectrum of consequences of the harm generated by corporate violence. Victims need financial compensation, medical and psychological and practical support. There is also an important need for information: about what exactly happened (the facts), about the legal procedures, insurances, options for medical, practical and psychological support. Criminal justice is thus just one avenue to deal with corporate violence and it is absolutely insufficient to tackle victims' problems mainly from a legal perspective.

#### *3.5.1. Recognition needs*

Public recognition of the wrongful behaviour is a key need of victims in the cases we examined. Recognition can be offered and obtained in many ways. One important factor, stated participant 8, is simply recognition by the corporate offender that mistakes have been made and harm has been caused and that the corporation is responsible for that. In the asbestos case, as well as in the case of the public housing fire, recognition was never given by the corporation, and this caused extra suffering for the victims.

#### *3.5.2. Protection needs*

The asbestos case illustrates the need for protection against intimidation. In the region of the main asbestos factory rumour was that if conditions would become difficult, the company might relocate. The trade unions did not adequately protect the workers. They never exerted real pressure on the corporation and seem reluctant even today to publicly support the victims association. Moreover, still today construction workers report being licenced when they question having to work with asbestos without adequate protection. Whistle blowers should be protected.

The asbestos case also illustrates well the need for protection against repeat victimisation. Many sites are still not adequately depolluted.

### *3.5.3. Information needs*

Victims of corporate violence, as all victims of serious offences in which people are wounded or killed, want to know exactly what happened and who is responsible (participant 4, victim reception units). In case of corporate violence and disasters, these expectations can cause a lot of frustration. Indeed, in case of a company causing the harm, it is often not so clear who is guilty (the company, individual persons...). Moreover, especially in case of a disaster, the many parties involved try to pass on responsibility as much as possible. In a similar vein it is a challenge that the offender is less visible and clear as in conventional crime. Who to address? Who is responsible? Victims feel it is them against a mastodon and they feel powerless. The well-known fact that many victims are not asking for help proactively becomes even truer in these situations (focus group 1).

Cases of corporate violence are often legally more complex. They involve inspection services and technical questions regarding the intervention of insurances. This implies important needs for information on behalf of the victims and it represents a challenge for many victim support services as it is unfamiliar territory.

### *3.5.4. Support needs*

The lawyer we interviewed (participant 8) pointed out three important kinds of support necessary for victims of corporate violence in order to get access to justice.

First, they need to be enabled to get organised. In the social housing fire case, the lawyer invited the victims to regular meetings to exchange stories and information and to keep up the support for and interest in the legal case. In Ghislenghien, the coordination unit for victims facilitated encounters amongst victims, who then started their own groups.

Second, victims need access to justice as a collective, as a group. In Belgium real class action does not exist. There is only a very limited possibility for associations representing a group of victims to file a case, and it does not apply to victims of corporate violence. In civil cases each individual has to pay a separate fee to get the case registered at the court. The amount of this fee is not fixed and it is a serious financial threshold for economically vulnerable victims.

Third, they need professional support to dig out the case, because the collection of proof is complex and difficult in many of those cases. 'The machine', the corporation, organises itself against the victims, who feel like David fighting against Goliath. At best a magistrate takes the case on board and makes use of his investigating powers (mobilising for example the police). In practice victims often launch civil procedures only because a lack of action

on behalf of the public prosecutor. Other support may be needed, for example from engaged lawyers, scientists or journalists.

Victims of corporate violence also need support to explore more structural issues which are permanent obstacles. Amongst others the following aspects should be explored. First, do we need changes in substantial criminal law, so that prosecutors do not need to fall back on the qualification of involuntary manslaughter, which allows for only limited punishment (often a fine and a conditional sentence of imprisonment)? Intent and murder is extremely hard to proof and thus involuntary manslaughter is often used as legal qualification for cases of corporate violence. Second, the limitation period (or prescription) is too short for cases of corporate violence for which there is a long latency period. Victims launching a legal procedure, which often takes years, take a serious risk of getting nowhere in the end because of prescription problems.

Staff of victim support services point to support needed by employees who are victimised at work. They are in an isolated and delicate position. These victims are worried about how the colleagues will react if they defend themselves against the employer. Will they be willing to testify? Also the reintegration of the victims at the workplace can be difficult. How to return to the company who caused the harm?

### **3.6. Access to justice, victim support and compensation**

This section reports on what we learned in the interviews and focus groups on the societal reaction to corporate violence: the reaction of the media, politics, the businesses concerned. Moreover, this section examines corporate violence victims' access to public sector justice: criminal and civil proceedings, compensation funds, mediation and legal aid. First, introductory remarks need to be made about the different treatment given to situations of sudden collective victimisation and about the urgent need for adapted strategies for situations of collective victimisation.

#### *Different treatment for sudden collective victimisation*

From the experience of the coordination unit for assistance to victims of the gas explosion of Ghislenghien, it has become clear that the situation of victims of a disaster is quite different from other situations of corporate violence. Distinctive features are the sudden and very visible character of the event and the lack of intent to harm. As a consequence disasters attract a lot of (supportive) media attention and political goodwill. Society as a whole feels concerned. Victims are immediately recognised in their victim status and the situation is treated with a broad lens. It is perceived as natural that a holistic approach is needed. Actions in reaction of a disaster tackle medical, psychological and practical needs, large scale information sessions are organised, legal action is taken and supported, memorialisation events are set

up. Efforts are made to tailor the offer to the victims' needs and to coordinate from a central unit. Political actors intervene in the management of the situation and it is key for them – also in view of their 'political reputation or survival' – to show the public that the situation is taken care of adequately.

The distinctive situation of victims of disaster was echoed in other interviews. Participant 4 (professional in the field of victim reception at the courts) also pointed out the effect of the important media attention in case of a disaster. This generates a lot of political goodwill to cater to these victims' needs. 'More is possible' for these victims and the intentions are put to practice in a short time span. This differential treatment can cause immense frustration for other victims, who have been harmed just as much.

Participant 2 (national compensation fund for victims of intentional violence) equally questioned the different treatment given to victims of highly mediatised collective victimisations. After the terrorist attack in Brussels in March 2016, for example, the conditions for victims of terrorism to get access to the Fund have been relaxed; not all conditions needed to be fulfilled for these victims to receive financial help. Moreover extra chambers were organised to treat the terrorism files in a swift manner. This positive discrimination of one particular group threatens the principle of equality. It is to be expected that victims of more conventional crimes will challenge this situation and request similar conditions.

#### *Collective victimisation requires adapted strategies of victim related services*

Whether a disaster or not, situations of collective victimisation require adapted strategies and methods on behalf of the professionals dealing with victims. Participant 1 insisted on the need to reach out to victims fast and in an adequate way shortly after a sudden collective harmful event. 'Fast' because of the urgency of the situation, and 'adequately' because you deal with a large group of people in great distress, speaking different languages... Action is needed at different levels and in different fields. After the Ghislenghien explosion a coordination unit was created as a central contact point for victims, taking care of collective actions for victims, and coordinating support offered in the field of finances, health and justice in order to make this support effective to the large group of victims. The unit organised for example collective information sessions for victims, offered individual meetings with victims, co-organised collective sessions to register as civil party, co-organised guided visits of the site of the disaster for the families, participated in the creation of a remembrance site and a yearly memorialisation event, managed relations with the press... Ideally such a coordination unit should be set up at the highest level, suggested participant 1, for example close to the prime minister or the chancellery, so that decisions can be taken swiftly, transcending and coordinating the competencies of different ministries concerned.

The lawyer we interviewed (participant 8) confirmed the lack of adapted accommodation and (civil and criminal) procedures to handle situations of collective victimisation. This is an issue criminal policy makers should pick up and work with.

### *3.6.1. Social informal network*

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### *3.6.2. Media*

Various participants mentioned the supportive role journalists had played and demonstrated how the media can be a powerful ally for victims of corporate violence.

In the case of the Ghislenghien explosion for example the interviewee could not think of any negative experiences with journalists and recalled how the journalists worked with the coordination unit for victims and with victims themselves in a constructive and positive spirit. The press helped to relate victims' experiences and concerns to the wider public and the authorities (participant 1).

In the asbestos case the victim association has developed a good relationship with the press, who has been very helpful in publicly exposing the asbestos problem over the years (participant 2) (see also 3.7.2.).

In the case of the social housing fire the press helped a group of victims and their lawyers to draw attention to the intention of the public prosecutor not to prosecute, despite all the evidence. Finally the case was sent to court and the public housing company was convicted (participant 8).

### *3.6.3. Politics*

Especially in events of sudden, collective victimisation there is a lot of political interest and goodwill to meet victims' needs. In Belgium this was very clear in the case of the gas explosion of Ghislenghien, where the prime minister intervened personally to make sure that arrangements were made to compensate the victims financially. As pointed out above, this can make things move, but there are also definite downsides. Exceptional measures are taken which threaten the equal treatment of different groups of victims. It is a bitter pill to swallow for victims who are equally severely victimised in less mediatised cases (see above). Additionally, political interest fades away as time goes by. Participant 1 expressed deep disappointment about the lack of structural changes after all the lessons learned, reported and the proposals made by the victims unit after the Ghislenghien case. No permanent central structure was created for situations of sudden collective victimisation. Not surprisingly, the complaints expressed by victims in the parliamentary



commission investigating the Brussels terrorist attacks of 22 March 2016 echoed many of the recommendations contained in the evaluation report issued more than ten years before when the Ghislenghien coordination unit for victims concluded its work.

The interviews revealed how politicians do not only take responsibility and act to improve the victims' situation. Some also act purely for personal political gain without any sincere sensitivity for the victims' plight. Participant 1 explained, for example, how politicians took ostentatiously place in the front row of memorialisation events of the gas explosion of Ghislenghien while the victims themselves were seated in the back rows. Talking about a social housing fire in which seven people were killed participant 8 gave a detailed account on how the local politicians refused to invest in a memorial requested by the victims, but organised a remembrance reception to which they 'forgot to invite the victims and their relatives'. On the same day, the victims and their supporters gathered outside, in the rain, in front of the devastated social housing building around a memorial they created themselves.

In the cases of corporate violence discussed during the interviews, it was not uncommon to see intertwined interests of local or national authorities and the corporate offenders, and at the same time questionable 'reservation' by the judiciary. Several times during the interviews participants referred to examples of such situations, which evoke serious concern.

In the case of the social housing fire the local mayor (who is also the local chief of police) was on the board of the social housing company owning the building. Although there is no formal proof, it was clear to participant 8 that the investigation of the case was delayed by the local police and obstruction was organised by certain members of the judiciary. Only after press attention generated by an organised group of victims and their lawyers the case was sent to court.

The Belgian association for victims of asbestos has often tried to wake up politicians for the asbestos problem. At the national level some politicians have been receptive, but generally the asbestos case seemed to disturb; the topic was eschewed; politicians seemed uneasy with it. Belgium was one of the last countries to prohibit the production of asbestos. The strong lobby of the corporation and the collusion between the principal shareholders of the corporation and high level politicians was indicated as one of the reasons for this late prohibition. The political compromise over the asbestos fund which was installed in 2007 includes an automatic waiver of court proceedings if a victim receives compensation from the asbestos fund. The asbestos fund is financed by contributions from all Belgian companies, not only by the company which caused the harm. This is experienced as unfair. Victims would prefer to see the responsible corporation pay for the harm caused. At the local level, the mayor of the village where the most important asbestos plant is situated,

wanted to allow a memorial for victims of asbestos only if the corporation would agree with the initiative.

Attention of the highest authorities of the country acts as an immense symbolic recognition for victims. In the Ghislenghien case the visit of the royal family and their extensive encounter with victims was highly appreciated. On the other hand, the opposite effect was produced by formal expressions of appreciation by the royal family for company Eternit.

#### *3.6.4. Public sector justice*

##### *3.6.4.1. Criminal proceedings*

The information provided by the interviewees suggests that criminal investigations are quite naturally started up by the prosecution authorities in case of disasters, where the public eye follows up the case with a lot of attention. In other cases of corporate violence this seems much less evident. This is in contradiction with the need of victims to see the judicial authorities take action as a sign of recognition and support. At least in some of the cases discussed during the interviews and focus groups the passive attitude of the prosecuting authorities seemed linked to the fear to tackle the establishment, or, put differently, one part of the establishment being reluctant to challenge other parts of the establishment. According to the interviewees, hard proof of this analysis is difficult to deliver. The many detailed indications supportive of this hypothesis make it however difficult not to include it in this report.

In the Asbestos case, the company concerned, with activities all over Europe and elsewhere in the world, is owned by a Belgian family belonging to the highest circles of the economic establishment. The company has developed extensive economic activities in Belgium since 1906 and that is still the situation today. Astonishingly, and in contrast with what has happened in other countries, almost no criminal cases have been launched against the company in Belgium, despite extensive proof of the harmful effects of their activities and the knowledge the company had about the risks of their activities long before they took any preventive or reparative action.

In the case of the social housing fire, a criminal investigation was started up by the local prosecutor, but only for arson. Only after legal action of a group of victims the investigation was extended to involuntary manslaughter by the social housing corporation. Further on in the procedure, the prosecutor, differently from the investigating judge who worked thoroughly, announced that he would not send the case to court. This intention was reversed after the victims group informed the press.

For the victims of the Ghislenghien disaster the criminal trial was extremely important. Symbolically it was seen as a recognition of the victimisation. They also wanted to find out what had happened, who could have done more to prevent the disaster, who was responsible, what was the role played by the

police the firemen... Additionally, determining who was criminally responsible was closely linked to the question who would pay for all the damage and costs the victims incurred.

Different professionals (focus group 1 and participant 4) expressed that the outcome of the criminal procedure is sometimes hard to digest for victims. Common sentences in case of corporate violence, such as financial transaction or fines, are experienced as a disproportionately low punishment for the harm suffered, especially when the offenders convicted are wealthy corporations or businessmen.

#### 3.6.4.2. Civil proceedings

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#### 3.6.4.3. Administrative proceedings

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#### 3.6.4.4. Compensation funds

We interviewed a professional who has been a key player in the National Compensation Fund for Victims of Intentional Violence for over 25 years (participant 3). He related how the National Compensation Fund for Victims of Intentional Violence was created in Belgium in 1985 under the influence of a European Convention of the Council of Europe (1983) and because politicians in the Belgian parliament wanted to cater to the needs of victims of crime who were not able to get compensation via other channels. The compensation was organised as a collective solidarity of all offenders. That is a definite plus of the Belgian system, which is admired abroad. The founders made sure not to organise the Fund as a form of liability of the State for not having been able to protect citizens from crime.

The respondent feels the Fund has been treated shabbily from the start. The start-up was slow. After its official creation in 1985 it took two years for the Fund to actually start functioning. The secretariat of the fund does not work as a separate and independent service. The minister of Justice makes available staff to run the secretariat. A considerable part of the staff sent to the Fund is poorly qualified to do the job. The contributions paid by all offenders do not flow directly to the Fund. It becomes part of the budget of the minister of Justice and the Fund is not informed about the total amount which is actually gathered per year. The yearly budget is fixed on the basis of what the Fund has spent the previous year, lately minus a 10% cut because of budgetary constraints.

In the data registration system of the Fund no cases could be detected which relate to victims of corporate violence. This is the outcome of the verification the respondent carried out in the registration system of the Fund and a check with colleagues. They replied immediately: 'no, never heard of that kind of cases around here.'

Different obstacles can be identified which compromise the access of victims of corporate violence to the national compensation fund for victims of intentional violence.

First, the Fund suffers from a lack of publicity. It is hardly known by victims of classical offences and their lawyers, let alone by victims of corporate violence. There is a problem with the provision of information about the Fund. The Commission managing the Fund does not have its own website (only one page on the site of the ministry of Justice). A new version of the information leaflets for the public is expected, but it is dragging on. The commission of the Fund acts as a court and considers it inappropriate to make publicity for its work, nor has it a communication strategy. Since six years no annual reports have been produced by lack of time. The overview of jurisprudence, which could inform legal professionals, is updated each year internally, but the step to publication is delayed over and over again.

Second, certain conditions of admissibility are very probably problematic for cases of corporate violence.

- *An act of violence.* In the jurisprudence of the Fund, violence is understood in a very classical way, as physical violence administered by one physical person to another physical person.

- *Direct causality.* The harm must be a direct consequence of the act. The hypothesis of a company carrying out certain activities, with or without intent, and someone else suffering harm from these activities, is already quite problematic to fit in the field of application of the Fund.

- *Intentionality concerning the damage done.* This is probably the biggest obstacle for victims of corporate violence to have access to the Fund. It is required that the offender had the intention to harm or kill. Take for example the case of a company working with toxic products and the company knows that a side effect of the products is that they are toxic and harmful but the company just ignores this. The company does not have the intention to harm or kill and that would be a requirement to fit under the field of application of the Fund.

Dropping the condition of an intentional act on the part of the offender would significantly enhance accessibility, and would probably allow access for victims of corporate violence as defined in the Victims and Corporations Project. That this will happen in the near future is nevertheless quite unlikely. At the European level it has been very difficult to adopt the obligation to establish a national compensation fund for victims of intentional violence. There was a lot of resistance from certain Member States. Enlarging its scope of application significantly by dropping the condition of intentionality is almost a 'mission impossible'. Moreover, this enlargement of the scope of application would imply at the national level a need to increase the financial means and enforcement of the staff of the Fund, which seems an equally unrealistic objective in the current context of budgetary constraints. Even in the current

setting the Fund struggles to fulfil its tasks within the allocated organisational and financial framework. The respondent's conclusion is that the time is not ripe to extent the field of application of the Fund to non-intentional harm.

Other factors, which may seem to be problematic at first sight, are not necessarily an obstacle to be eligible for the compensation fund:

- the fact that the offender is a legal entity
- possible prescription
- no clear criminal law qualification for the facts
- the subsidiarity principle

The reason is that the Fund judges according to the principle of reasonableness and equity.

Third, the Fund is still very much anchored in the 19<sup>th</sup> and 20<sup>th</sup> century classical conception of crime and criminal justice. Recent notions, such as the criminal liability of corporations have not yet trickled down in the daily functioning and organisation of the different parts of the criminal justice system. The compensation fund is an example of that more general state of affairs. The legal person as offender and a collectivity as victim have not yet entered the minds. As the respondent stated: 'conceptually our law system is still in the twentieth century'.

Be it by the National Compensation Fund for Victims of Intentional Violence or by another fund, it seems very much defensible for the interviewee to respond to corporate violence victims' financial needs through a collective fund for compensation. Two main reasons are mentioned. For ordinary citizens it is difficult, expensive and long to take legal action against a corporation. Possible extra complications are the international set up of the corporation and contradictory scientific reports by the experts about the issue at hand. It is also a situation of processual inequality. The outcome is unsure and sentences may be disappointingly low. Moreover, from a 'political' perspective it is not to be expected that the authorities will engage in robust or firm action against companies who employ large groups of people and are thus important economic players. In such a context a collective fund allows to make sure that the victims do get compensation and thus to bring about social peace. The compensation functions as a recognition of the suffering and acts as a kind of conviction without a real criminal conviction in court. The level of recognition victims perceive in the way they are treated by the Fund and its Commission also depends a lot on the personal attitude of the Commission members who manage the file. They are qualified judges, but their aptitude to provide recognition differs.

Notwithstanding the compensation received, an issue of frustration which preoccupies victims is the lack of action to recuperate the compensation paid to the victim from the offender. The law allows the Fund to go after the offender for reimbursement of the compensation paid to the victim and states that the Fund, if it pays the victim, is substituted in the victims' rights towards

the offender. Victims expect that the Fund goes after the offender to make him pay. In practice however, at the time of the interview, this work had been abandoned for three years already by lack of man power and because the result was disproportionately low in relation to the time which had been invested in the previous years. For victims, however, this is hard to understand.

The Fund for Victims of Intentional Violence is not the only compensation fund existing in Belgium. There are the fund for victims of road traffic accidents (in case the offender has no insurance), the fund for victims of asbestos, the fund for professional diseases. These are all largely separate worlds; there is (almost) no communication between them. This is also the case amongst the funds which are related to criminal justice. The respondent remembers only a few occasional contacts with the fund for road traffic accidents, and that contact was rather difficult, each fund holding on to its own rules and delivering little effort to understand the context of the other fund.

The Asbestos Fund was set up in 2007 after extensive lobby work of the Asbestos Victims Association (ABEVA). The fund provides monthly stipends to people who can show to suffer from mesothelioma or asbestose. When the patient dies, a lump sum is attributed to the surviving family members. ABEVA perceives two main problems in the conditions set for making use of the fund. First, other diseases caused by asbestos, such as lung cancer, do not provide access to the fund, even if exposure to asbestos has been proven. The reason given for this exclusionary rule is that these diseases can also be caused by other factors (e.g. smoking). Second, there is an immunity clause in the system of the asbestos fund. Whoever accepts financial support of the fund, automatically waives his/her right to bring the case to court. Moreover, the Fund is not well known by the public and by professionals, even not by specialised medical professionals (such as pneumologists). More publicity is necessary (participant 2).

#### 3.6.4.5. Services for victim assistance

##### *Victim reception units at the courts*

We interviewed a civil servant who has been a key player in the follow-up and development of the Flemish victim reception units for many years (participant 4). Drawing a short overview of the context, the respondent explained that the victim reception units offer assistance to victims of crime upon request of a magistrate or upon request of victims themselves, who are often referred to the police. The offer is made proactively and systematically in case of a deceased victim. In other situations the magistrate decides whether an offer is appropriate and guidelines formulate a number of criteria to assist the magistrate in making this decision. Once a file has been opened at the

prosecutor's office, the (offer for) assistance is unlimited in time. Each court of first instance has a victim reception unit.

The assistance consists first of all in providing information, about the criminal procedure in general and about the victim's case specifically. The staff of victim reception units has access to the court files. They also prepare victims for and accompany them at different kinds of events in the criminal procedure, such as consultation of the judicial file, court sessions, restitution of the belongings of a deceased victim to the family... They refer to other services or professionals when more specialised support is needed and they have the task to raise awareness amongst magistrates on victim issues.

The respondent was surprised by the researcher's request concerning the experience of victim reception units with victims of corporate violence. The initial perception was that they do not intervene in such cases. After some reflection the respondent realised that the victim reception units did intervene a few times in cases of corporate violence. All of these cases were disasters: the gas explosion of Ghislenghien and two train accidents (Wetteren and Buizingen).

In the registration system of the victim reception units it is almost impossible to extract cases of corporate violence. The only 'way in' would be the list of names of the offenders, which are registered for each case in which assistance is provided. However, this registration is done by name and surname, and it is not clear whether names of companies are mentioned at all.

Victims of disasters are referred to the victim reception unit in the usual way, this is via the investigating judge or the public prosecutor responsible for the case.

There is no real collaboration between the victim reception units and victims associations. However, when a victim expresses the need to talk to fellow sufferers, the victim reception service will refer to victims associations if they exist.

In the case of the disaster of the gas explosion of Ghislenghien, the victim reception units took over the follow-up of victims done by the special victims coordination unit which ceased its activities two years after the disaster. An evaluation report of these activities contains suggestions for improvement of the intervention of victim reception services in case of a disaster. A major issue was how to deal with collective victimisation. Proposed improvements concerned for example:

- organisation of registration as a civil party adapted to large groups of victims (e.g. in the Ghislenghien case this happened in a sports hall),
- simultaneous provision of information to victims of the same case, but living in different linguistic regions and resorting under the competence of different victim reception units.

### *Victim support services*

A focus group was organised in which four people, representing staff and coordinators of victim support services, were present (focus group 1). Additionally, a member of an expertise centre for social work, who is specialised in victim issues and has long term experience in victim support practice was interviewed (participant 7).

The participants of the focus group first sketched the context in which victim support works. Victim support offers support to victims and their environment in the broad sense of the word: next of kin, close relatives, other significant others and witnesses. Victims can be individuals or groups, children or adults, professionals or even organisations. The support is however restricted to victims of criminal offences or shocking events such as suicide, traffic accidents and disasters. Some, but not all victims support services assist victims of occupational accidents. Filing a complaint with the police is not necessary in order to get access to victim support. Victim support services are non-governmental organisations. A victim support service is available in each judicial district of the country.

The assistance consists of four pillars: emotional or psychological support, legal support, practical support and referral to more specialised services. An integral approach is used: all domains of life can be covered. Victims will be supported if their needs and requests fit in a normal coping process. How much time has passed since the harm causing event took place is irrelevant and certainly not a criterion for exclusion. It is well possible that support is provided on and off over a period of several years. This could for example be the case if initial support is provided and later support is provided again when the trial starts. Victims have direct access to victim support services, but are also often referred by the police (in some regions 50 to 70 percent of the cases), by Centers for Social work (CAW), medical doctors or even employers.

The initial impression of the professionals which participated in the focus group and in the interview was that they do not deal with victims of corporations; they do not see them in their clientele. After some brainstorming a limited number of examples were nevertheless discovered, but overall victims of corporations represent a very marginal part of their caseload. The cases detected concerned mainly disasters (Switel hotel fire, the gas explosion of Ghislengien, the train accident in Wetteren) and occupational accidents which possibly include criminal offences committed by the employer. Other cases mentioned concerned companies causing odour or noise nuisance to the local residents, medical malpractice in hospitals or in the pharma-industry and a suspicious death in a nursery.

It is almost impossible to obtain a reliable view of the cases of corporate violence or corporate victimisation via the victim support registration system. It is nevertheless possible to detect some cases via the legal qualification which has to be entered into the system. Disasters, occupational accidents and



medical malpractice could be detected in this manner. Also the name of the offender needs to be entered in the database and thus names of companies could appear in this part of the registration.

Cases of corporate violence are referred to victim support by the professionals of the contingency planning in case of a disaster or by the police in other cases of corporate violence. To a lesser extent victims knock on victim support's door themselves. This is almost never as a first resort, but rather after a long journey looking for help. It is not evident that victims of corporate violence think spontaneously of victim support as they do not always consider themselves victims. Additionally victim support services do not promote themselves towards this group of victims. In external communication the very classical criminal law definition of victims is used. That victims of corporate violence sometimes do finally end up at victim support has also to do with the lack of accessibility of other welfare services. Professionals know that victim support is easily accessible and adopts an integral approach.

The work with victims of corporate violence contains the same pillars as in cases of conventional crime, but the content is somewhat adapted. This is due to a greater complexity of the cases, the unusual situation of the offender being a legal person (an identity difficult to grasp), and the penalties being different for legal persons (mostly fines and transactions).

Collective victimisation is a feature of many corporate violence cases. This is an aspect victim support is well acquainted with, although not necessarily in case of corporate violence. They recall working with groups in case of disasters or in case of for example hold-ups in banks. How does victim support deal with collective victimisation? In the past debriefings were organised for groups of victims. This means that people speak together about what happened, they work through it. Lately however research has questioned the positive effects of debriefings and has pointed out that this can also have negative consequences. Therefore victim support organises instead collective information meetings. Victims are invited to these meetings where professionals of different organisations provide information.

Victim support has no tradition of collaborating with victims associations. There have been only occasional contacts with groups of victims of road traffic accidents. There is resistance at both sides. Victim support staff believe that victims think fellow sufferers will understand them better than professionals would. Also, victims often make use of victims support shortly after the harmful event and this may be too early to be interested in taking part in a group of fellow sufferers.

In contacts with victims associations the researcher noticed that bringing about change for the future is key for victims. They want to contribute to the prevention of further harm. This is a dimension which is not directly visible in the four pillars of victim support's mission. Is this part of the mission and if so, which instruments are used for this structural work? Victim support does have

the task to signal structural problems. These are presented at the team of the social work organisation in which they are imbedded. Moreover structural problems are reported to the quality coordinator of the organisation. The impression of the interviewees is that this information is not adequately transferred to the policy level. There is little coordination between victim support services which weakens the power of their advocacy work. In the past the national forum for victim policy was a thriving force in victim policy development and a centre for expertise in social work supported the victim support services and ensured mutual consultation and uniform developments. The national forum has stopped functioning and the centre for expertise now provides much less direct support than before. These developments are felt to be detrimental.

#### 3.6.4.6. Mediation

##### *Penal mediation*

We interviewed a civil servant who has been following up penal mediation practice in Flanders for many years (participant 5) and a penal mediation practitioner (participant 6).

It is the public prosecutor who makes an offer for penal mediation to victims and offenders. This diversion mechanism applies for offences for which the prosecutor estimates that they do not require a punishment of more than two years of imprisonment and for which prescription has not been reached. There is no exclusion of specific types of offences. The mediation process is guided by justice assistants. If an agreement is reached, it is officially confirmed by the prosecutor. In case of correct implementation of the agreement, the case will be dismissed and will not go to court.

Formally there are no conditions which exclude cases of corporate violence to go to penal mediation. The respondents could however not think of any cases of corporate violence which had been treated in penal mediation. The standard case would rather be a conflict between two natural persons. Occasionally conflicts with legal persons as victims end up in penal mediation. Shoplifting would be a typical example. Conflicts in which the legal person is involved as offender do not seem to end up in penal mediation. The respondents suspect that corporations are rather approached with proposals for transaction, which is another mechanism to divert cases and prevent them from going to court. Even if there would be some cases of corporate violence in penal mediation, they would be hard to trace in the penal mediation database. It is not clear whether the database distinguishes between offenders who are legal or natural persons.

The justice assistants do have experience with collective victimisation. Examples are cases of vandalism during which a series of cars are damaged or a series of houses or buildings are covered with graffiti, and scams through

door to door selling. These cases are sent to penal mediation in order to elaborate alternative solutions if the prosecutor understands from the police file that the victim is looking for recognition and reparation.

#### *Restorative mediation*

As the other victim assistance and mediation professional we interviewed the restorative mediation professionals initially reacted with surprise and hesitation when we contacted them: 'Does this concern our work? Do we have to say something about this? Is this a field for us to engage in?' During the focus group only one mediation case came to the fore that fitted the corporate violence definition. It was an occupational accident. An employee was electrocuted while at work. The accident was caused by a lack of safety measures put in place by the company. A criminal procedure was started against the company and the prosecution service specialised in labour cases referred the parties to restorative mediation. The victim suffered severe physical injury and emotional harm and had to go through a long period of revalidation. He became unable to take care of his children and was not physically fit to return to the same position in the company. At the time of the focus group the mediation was ongoing.

The restorative mediation registration system revealed that since 2012 25 legal persons had been involved in a mediation process, but a more in-depth research of the database would be needed to identify the cases of corporate violence specifically, if any.

The mediators viewed cases of corporate violence nevertheless as potential cases for restorative mediation. This means that these cases in principle do fit the conditions to have access to restorative mediation. Also content wise the mediators did not see major obstacles. The main principles of mediation would be maintained. Some of the characteristics of these cases would however require specific attention.

*First*, a minimum of recognition of the facts and of taking responsibility is needed in order to engage the communication between the parties. That could be problematic if the corporation pretends it has nothing to do with the harm or if it tries to divert responsibility to other actors.

*Second*, if the victimisation is collective, the practical organisation of the mediation needs to be adapted and will be different from the usual one-to-one dialogue. The mediators do have experience in working with groups. In a case of vandalism with around 50 victims, first a collective information session was organised about the possibility of mediation, what it entailed and the possible outcomes and consequences. Afterwards those interested started a more individualised process with the mediator. Listening to and acknowledging the individual stories remains an essential part of the mediation as well as consequently clarifying expectations and looking for pathways towards a situation which is satisfying for both parties. Mediators also work with the

method of peace-making circles and conversation groups in which victims and offenders of non-related criminal facts come together to exchange about crime related themes such as taking responsibility, reparation, punishment... Additional inspiration could be found in practices of neighbourhood mediation which deal with conflicts between groups of citizens or between groups of citizens and the local authorities, or between one neighbour and a group of other neighbours. Moreover inspiration can be taken from the mediation which was organised in Belgium for victims of sexual abuse in the church. The mediation commission dealt with victims who outed their victimisation many years after the harm was inflicted. The victims were numerous and they were a not easily identifiable group in the sense of geographically concentrated or employed by a same employer. The suffering was immense and the effects on people's lives long lasting. A central contact point was organised and the victims were individually received by the commission to tell their story. A representative of the church was present to take responsibility on behalf of the institution, as the offenders themselves or the people responsible at the time were not in place anymore.

*Third*, the balance of power between the parties in the mediation would require particular attention. On the one hand an imbalance can exist between the representative of the powerful corporation and the victim sitting around the table in a one-to-one dialogue. On the other hand it would also be disproportionate to organise a dialogue between one representative of the corporation and a large group of victims.

*Fourth*, clarifying who comes to the mediation table would be an integral part of the mediation process. In conventional crimes it is mostly quite evident who are 'the parties'; for corporate violence a clarification process is needed. It is well possible that the mediation process needs both a corporate representative from the medium hierarchy who can explain the facts and circumstances, and someone who represents the highest level of the corporation who can take responsibility on behalf of the corporation. In the electrocution case the corporation wanted to send the human resources director, but the victim refused and wanted to confront the CEO himself, as he was responsible for the company policies. This is what finally happened.

*Fifth*, the mediators should be introduced to the fields relevant to the cases. Corporate crime, criminal liability of corporations, environmental crime are not part of their current professional background, which is much more geared towards conventional crimes and their consequences.

Some themes, which are common characteristics of situations of corporate violence, were very recognisable for the mediators as they are also present in conventional crime. One example is the loyalty of the victim towards the offender and feelings of co-responsibility and guilt on the part of the victim (strongly present in situations of intra-family sexual offences). Another example is the partially unclear or hard to proof causal relationship between

the activities of the offender and the harm suffered by the victims. A last example concerns victims experiencing that serious harm is done to them without defining this harm in terms of criminal behaviour (equally present in serious traffic offences). Over time the mediators developed strategies to work with these characteristics and to create space and a safe atmosphere for the parties so that these themes can be part of the discussion.

The mediators have no contact with victims associations in the field of corporate violence.

The mediators concluded that corporate violence is an unexploited field in which mediation would make perfectly sense and could even be very interesting as these cases are surrounded by commotion, many questions, strong emotions and needs for communication, recognition and restoration.

#### 3.6.4.7. Legal aid

The lawyer we interviewed (participant 8) insisted that obtaining appropriate legal assistance is a problematic part of getting access to justice for many victims of corporate violence. Many of them are economically vulnerable so that hiring a lawyer is difficult in the first place. Moreover the legal cases are often complex, last many years and the outcomes are very uncertain because of complexity and technical issues such as prescription. A high financial risk is taken by the victims who go to court. This problem is not resolved by private insurance, explains the lawyer, as many victims do not subscribe to private insurance for legal assistance. Finally, the mechanism of pro bono lawyers does not work well in this context: the income threshold to obtain a pro bono lawyer is extremely low and the tariff paid to the pro bono lawyer does not allow for quality support in complex and tenacious legal cases as corporate violence cases often are.

#### 3.6.5. *Medical sector*

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#### 3.6.6. *Private sector: the businesses concerned*

In the section on victims' needs the importance of recognition of responsibility by the corporation was noted.

The case of the social housing fire illustrated a completely opposite attitude towards the group of victims. The corporation pointed the finger to the tenants accusing them of vandalism; a perfect example of victim blaming. Expert reports revealed to the contrary a whole list of safety problems which were never remedied and the corporation was in the end convicted for involuntary manslaughter. At no time the corporation formulated any excuses or left an opening for rapprochement. The lack of remedy to the safety

problems was legitimised by financial constraints. A request from the victims to create a memorial for the deceased victims was denied. In an attempt to understand this situation participant 8 talked about an attitude of contempt by the corporation towards the inhabitants of the social housing units, who were dealing with lots of social problems and did not behave as perfect tenants. They were however never represented in the management of the building and so no real collaboration was ever built up. Finally, the local mayor was on the board of the corporation and as such the interests of the corporation and local politics were firmly intertwined. The local political interests seemed to have been an obstacle for the corporation to take responsibility as this could have harmed political reputations. Rather, the 'jar was kept tightly closed'.

In the case of the Ghislenghien explosion, which was an unexpected and involuntary event, the gas company made an important donation to support victims financially. Another company involved granted permission to install a remembrance garden on its property. Groups of victims were allowed to visit the site. During the criminal trial however, batteries of lawyers tried to divert criminal responsibility away from their clients, the corporations involved in the case. On the other hand the same corporations negotiated with the responsible magistrates on possible compensation for victims. So the attitude of the businesses concerned was mixed, showing goodwill, but trying at the same time to escape liability in court.

Asbestos company Eternit developed - according to participants 2 and 8 - a real culture of denial. At some point in time it offered compensation to the victims who developed mesothelioma. This turned however out to be an organised form of omerta. In exchange of the money, the victims had to sign an agreement of confidentiality. Once signed, the company kept the agreement and did not provide a copy for the victim. The company never took responsibility by admitting fault, but pretended to have acted as a bonus pater familias. The production of asbestos has stopped, but until today the company is an influential player in the region of which many families are economically dependent. Attempts by the chair of the association of asbestos victims to set up communication with the main shareholders of the company have failed. A spy paid by the corporation infiltrated the victims association who was gathering proof. After a rare conviction in civil proceedings, the asbestos company donated money for cancer research. This was seen by the victims as just a way to polish their public image.

### 3.6.7. *Private sector: insurances*

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### 3.6.8. *Other relevant issues: memorialisation*

Memorialisation was highlighted in the interviews as an integral and important facet of dealing with the aftermath of collective corporate violence

victimisation. It is also a delicate topic which can either ease pains or exacerbate frustrations depending on the way it is handled.

In the Ghislenghien case the unit for victims coordinated the creation of a 'remembrance garden' at the site of the disaster. A competition was organised for choosing the design. Details were verified in order to make it a victim sensitive initiative (no mistakes in the names, the date of death...). The first years the annual ceremony in the remembrance garden was shown on television and was well attended by the press and politicians. Over the years the attention has faded and the garden is less well kept now.

In the social housing fire case, victims formulated requests for the creation of a memorial to the city and the housing company, but these were refuted, which was disappointing. Finally they created a memorial themselves with the limited means and materials they managed to gather.

### **3.7. Victims' resilience: individual and collective initiatives**

#### *3.7.1. Individual initiatives*

Victims of corporate violence demonstrate resilience at many levels and sometimes in impressive ways.

In the Ghislenghien case people took initiative as from their stay in the hospital to find follow up support such as physiotherapy and psychological assistance. Some of them initiated civil procedures and many others joined the criminal trial as a civil party.

In the asbestos case, the respondent we interviewed (participant 2) wrote a book about his family's story. Interestingly the book is entitled 'my war against asbestos'. This illustrates well how he focuses on the broader problem of asbestos still being present and threatening thousands of other people with illness and death due to exposure to asbestos. He provides meaning to his personal situation through the more structural battle against the cause of his family's suffering. His family also launched the first civil case against the asbestos corporation in Belgium, an exhausting journey which took 17 years before there was a decision by the court of appeals. The legal battle being concluded, he decided to continue the struggle by lobbying for the depollution of soils and buildings all over Belgium.

The loyalty of employees towards the employer is a key aspect of diminished resilience. It prevents victims from taking action against the corporation (participant 3).

#### *3.7.2. Collective initiatives*

##### *3.7.2.1. Victims associations*

Victims of the gas explosion of Ghislenghien suffered massive physical, material and emotional damage and it was not clear at all how to handle this.

So they gathered to find out together about the financial and practical aspects, but also to share their stories and pains (participant 1).

An association for victims of asbestos was created in 1999. The association has its own website and facebook page, provides information and dispatches people to different kinds of proper support. A strong emphasis is put on the goal of prevention, awareness raising about the dangers of asbestos and spreading the message that the polluter should pay for the damage done and not the tax payer (as is the case in Belgium now). The association has not been able to obtain funding and the members feel they are therefore overly limited in what they can realise despite many needs. One type of activity they have developed has shown to have impact. When citizens contact the association about a site with an alarming presence of asbestos, the association organises a field visit and invites the press to join in. The public exposure of the case via the media has spurred several times action on behalf of the people responsible. This happened in several cases of asbestos in public housing. The association has also lobbied for the installation of a memorial for the victims of asbestos in the village where the corporation is implanted. This request has encountered resistance by the local mayor who insisted that agreement of the company should be obtained before going ahead with this initiative. The subservience of the local politicians towards the plant has been very much disappointing. A group of victims organises a cycle tour every year in the area around the plant in remembrance of the victims.

### ***3.8. Critical issues and victims' struggles***

The cases discussed during the interviews and focus groups conducted in the Belgian context reveal the far reaching consequences of corporate victimisation on people's lives and the large group of people concerned by problems of corporate violence. It confirms the urgent need to address this field of victimisation more thoroughly in academic work, in legal and social work practice, and in criminal policy development. A few major, critical issues came to the fore.

First, we were appalled by the quite different treatment received by victims of disasters (and other situations of visible, sudden and massive victimisation) on the one hand and victims of other, less visible, less sudden and less massive situations of corporate violence on the other hand. Although the handling of disasters is in general certainly still far from perfect in Belgium, victims of disasters can count on fast recognition, a lot of goodwill and flexibility and rather firm action. Other victims of corporate violence struggle for recognition. Moreover they stay largely under the radar of regular services offered to all victims of crime, such as victim support, mediation and compensation. There is an urgent need to work with these different sectors to raise awareness about



the existence of corporate violence victims and their needs, to discuss how this group fits in their field of work and to collaborate with them to work towards a tailored offer for victims of corporate violence.

Most professionals we interviewed were not well aware of corporate violence victimisation; and they wondered whether it fits in their field of work. They saw the importance of the topic and showed to be ready to explore what they can mean for this group. This brings us to a second critical issue being the challenges professionals encounter in dealing with corporate violence. From the limited experience that does exist, emerges that the following problems ought to be treated in depth:

- How to deal with the collective character of the victimisation? This requires specific methods for social workers and mediators, but also for the legal professionals. Examples of best practice exist and inspiration can be drawn from neighbouring fields; as for now there is however no established, well elaborated practice in this regard.

- The lack of knowledge and expertise related to the offender being a corporation. The consequences of the adoption of criminal responsibility of corporations has clearly not trickled down yet in all parts of the criminal justice system. This needs to be addressed by working with all the professionals concerned.

These problems are technical in terms of developing methods and adapted legal mechanisms, but concern also more broad questions of criminal policy which merit a larger societal debate.

A third critical issue concerns the often more structural problems related to situations of corporate violence and the difficulty to tackle these problems due to the intertwined interests of local and national politicians and corporations. Different examples were cited during the interviews. They show that this conflict of interests is not always a matter of personal political gain, but sometimes also a true difficulty in finding a balance between economic well-being of a region and providing sufficient protection of citizens.

A fourth critical issue concerns the attitude of the businesses concerned. How to work around the fact that businesses seem rarely ready to take responsibility? Is it possible to find a win-win? Public image and fear for trials seem important incentives for the company to do something for victims. Is it possible to engage in discussions that go beyond this level and also tackle issues of social responsibility and social justice?

Financial compensation through collective compensation funds is a fifth item which merits specific attention. In Belgium several funds co-exist. The developments in this field is mainly pushed by ad hoc events; there is no comprehensive policy development. This poses questions of equality and there is an urgent need for a vision, especially as it has become clear that individual attempts to obtain compensation through civil and criminal proceedings are hazardous and often unsuccessful.

Last but not least, socially vulnerable people who become victims of corporate violence end up in absolutely dreadful situations, as the case of the social housing fire has for example demonstrated. Only with external help of lawyers, victims associations and the media are they able to ring at least the alarm bell. This is totally unacceptable in our modern, western societies. To finish we want to point to these broader issues of social justice which are inevitably linked to corporate violence victimisation. They appeal upon the social responsibility of all actors concerned.

**“VICTIMS AND CORPORATIONS”**  
Implementation of Directive 2012/29/EU  
for victims of corporate crimes and corporate violence

**Annex:**  
**Ethical Guidelines**  
**for Project’s Staff**

by Claudia Mazzucato

April 2016



## ANNEX

### ETHICAL GUIDELINES FOR PROJECT'S STAFF

#### **1. Standards of conduct when contacting and/or dealing with victims or other vulnerable subjects throughout the Project**

- Project's staff and its collaborators (from now on: the Staff) shall have a victim-sensitive approach. They shall constantly work in the spirit of the **principles and provisions set by Directive 2012/29/UE**, where applicable and pertinent to the project's activities.
- The Staff shall **inform victims about their rights according to the Directive 2012/29/EU**, as a way to disseminate and implement the Directive, following the project's main purpose. The Staff shall provide victims and other interested subjects with **free copies** of up-to-date **EU Commission's factsheets** and other like materials regarding victims' rights.
- The Staff shall **recognize** victims and **treat** them in a **respectful, sensitive, tailored, professional and non-discriminatory manner** (art. 1 Directive 2012/29/UE). The Staff shall have a constant and active concern for **victims' rights and needs**.
- During the project's activities and thereafter, the Staff shall take every appropriate measure, under the given circumstances, to assure the **well-being, personal and emotional safety** and **comfort** of victims and other vulnerable persons.
- The Staff shall pay **attention** to each victim's story: each victim matters. **Respectful, attentive and active listening** shall be the characteristics of the Staff's style of conduct.
- The Staff shall be prepared to **recognize** and **respond to victims' distress** and shall be prepared to give the correct and necessary information and the adequate support to victims in danger or in need for help either by providing the proper information or, when necessary, by referring to the competent services.
- The Staff shall **protect** victims from **secondary victimisation**, taking all the necessary measures to ensure that victims are not affected by the project's activities and do not suffer any negative consequence thereafter. The risk of **repeat victimisation, intimidation** and **retaliation** as a consequence of victims' participation in the project shall be a **constant primary concern** of the Staff, who shall put in place all the necessary measures to prevent and

avoid this risk, under the given circumstances. Should the project's activities affect the victims (or other persons) in any way, the necessary **support** will be provided by the project's organisations.

- Contacts between victims and corporate offenders and/or with direct corporate representatives shall be avoided, except on explicit demand or agreement on the victim's part and on condition that the victim's personal and emotional safety can be adequately taken into account.
- Victims shall get directly in touch with project's personnel who has experience and professional qualification in dealing with victims according to high professional ethics standards as well as to the Directive's principles.
- Victims shall be contacted through self-help groups and via the professionals who have worked with them (mainly victim assistance and victim support workers and lawyers). The Staff shall provide the self-help groups and the professionals with a written information sheet about the project, its purposes, activities and follow up.
- Should the Staff contact or come across **offenders** or **persons accused** or **suspected** of a crime, they will also be treated in a **respectful, confidential, professional and non-discriminatory manner**.
- Victims, professionals and all other subjects directly involved in the project shall receive by the Staff, orally and in writing, in a simple and accessible language, a full and unbiased information about:
  - the project's purpose to advance in the development of good policies and practices in the protection and access to justice of victims of corporate crime and corporate violence, without prejudice to the rights of offenders, suspected or accused persons.
  - the project's activities and its potential outcomes;
  - guarantees of voluntariness, informed consent, right to withdrawal from and to terminate each activity;
  - guarantees of confidentiality and anonymity;
  - the possibility that participation in the project's activities may cause stress due to recalling painful memories and story-telling. The Staff shall take every precaution to minimize this stress and shall do their best to turn the participation in the project's activities into a potentially beneficial and healing occasion for victims;
  - occasional activities having a public dimension (such as brief video testimonies for "digital stories"). These activities shall be carried out only if full information, orally and in writing, in an accessible and simple language, is given beforehand to the interested person(s), who should sign a specific, separate, informed consent when willing to participate;
  - the contact information of the project's organization(s) and of the person(s) responsible for each activity;
  - the possibility of feedback when the research and/or the project will be completed;

- the possibility to receive the necessary support in the unlikely event of negative consequences directly deriving from project's activities as mentioned above;
- the possibility for the researcher(s) to autonomously interrupt any activity, even against the victim's will, if carrying it on may expose the victim(s) to unnecessary stress, fatigue, etc.
- Interviews, focus groups, proceedings and discussions shall be completely **voluntary** for all participants, and conducted in like manners. They shall be kept under strict **confidentiality**, except on express contrary agreement of all parties involved in compliance with international, European and national standards and laws, and for scientific and educational/professional training purposes only, as further described below. Clear informed consent forms in national languages will have to be signed by each participant, before taking part in activities that require informed consent according to the law.
- During interviews and focus groups, in particular, it is important for the Staff to approach interviewees in a sensitive and non-judgmental way, also in order to establish trust, get their cooperation, acquire truthful responses, and to better understand their reactions.
- Activities involving victims or other vulnerable persons shall take place in a safe and comfortable environment for them and be conducted in a safe setting in privacy. Victims' homes should be an exceptional location for project's activities, and should therefore be chosen only upon victims' request and only in relation to their best interest, safety, wellbeing and comfort.
- As a rule, victims involved in the project shall be adults. Participations by juveniles shall be exceptional, and shall occur, if not contrary to the best interest of the child, only under parental control and parental/legal representative's authorisation.
- The Staff shall ensure further protection measures in relation to personal characteristics of the victims or other vulnerable persons.

## ***2. Personal data protection and data processing***

- The Staff must **comply with international, European and national legislation** and with **official codes of conducts** concerning **personal data protection and data processing for scientific purposes and for educational/professional training purposes**. Further data processing and data protection guidelines or recommendations adopted by each partner's institution or suggested by each partner's institution's ethical committees, if present, shall also be followed by the Staff.
- At the start of the project, the National Data Protection Authority of each of the involved countries will be notified about the upcoming research, when required by national law.

- Data processing during the project is aimed at **scientific purposes** and at **educational/ professional training purposes** only. All processing operations within the project are therefore performed for the purpose of
  - study and systematic research with a view to developing scientific knowledge and good policies in the field of victims' rights and support, victims' protection needs, victims' access to justice and participation in criminal proceedings;
  - implementing the EU Directive 2012/29/EU, especially in the sector of corporate crime, through the drafting of guidelines, training sessions, public conferences;
- Data processing and collection shall abide by the principle whereby **data** should be **adequate, relevant and limited to what is necessary** in relation to the purposes for which they are processed (**data minimization**), meaning that the planned processing should be limited to the extent possible and **not** be **redundant** compared with the purposes sought by having regard both to the available data and to the processing operations that have already been carried out.
- As a rule, **sensitive and/or judicial data** processed for the scientific purposes of the project shall be **anonymous** to the extent possible, despite criminal proceedings being generally public according to national laws, and despite certain information related to case law, judicial cases and "cold cases" may have been publicly available through the press and the media or may have been manifestly made public by the data subject(s).
- Non-publicly available personal data and news that become known in the course of performing project activities and/or activities that are instrumental thereto may not be disseminated or used in whatever manner other than the project's purposes.
- Data may only be used for the purposes set forth in the project, and must be kept in such a manner as to **ensure appropriate security** of personal data and as to **prevent** their **loss, removal** and/or **any other use** that is not compliant with the laws.
- For the scope of the project personal data shall be processed if the data subject has given his/her explicit **informed consent**.
- Project's **information notices** and **informed consent forms** will be drafted by the Staff in each Country's national languages for each activity needing such requirements (ie, interviews, focus groups, interviews for digital stories and multimedia tools, training sessions recording). An informed consent form will be presented and orally explained to the interested person before the start of each activity. Voluntariness, right to terminate the activity and/or right to withdraw one's consent at any time shall be emphasised. The consent form shall mention the contact information of the responsible investigator(s) and the contact information of further entities to which participants can address complaints. If they agree, participants shall be asked to sign the informed consent form.



### 3. Communication tools: particular safeguards and precautions

- Victims' and professionals' interviews and focus groups for scientific purposes will be audio- and/or video-recorded and then transcribed for **internal analysis**. They will be kept **confidential**, except from **anonymous** transposition into the project's **reports, guidelines, power point presentations** and **final scientific publication**. Data subjects shall have the right to withdraw their consent and the right to erasure of their personal data, until the data have been anonymously reported in scientific reports, guidelines, presentations and publications.
- Concise **video testimonies** will be collected from some of the victims and professionals who participated in the interviews, focus groups, workshops, training sessions, in order to create some "digital stories" to be made available on the project's website and/or used in workshops and training sessions in order to better disseminate the project's findings on victims' of corporate crimes rights, needs and access to justice.
- Proceedings of workshops, of training sessions and of other relevant dissemination activities may also be audio- and/or video-recorded and may be partly transposed into **reports, guidelines** and **multimedia tools** (eg, ppt presentations, short video clips) for scientific purposes and educational/professional training purposes in order to enhance replicability and transferability of scientific results by both the organizations' partnership and the trained professionals.
- In relation to these dissemination and communication tools ("digital stories" and other multimedia tools), the Staff shall abide to the abovementioned ethical standards and personal data processing and protection provisions, especially with respect to:
  - clear and full **information** and **informed consent** from each interested person;
  - **data minimization**;
  - as a rule, **persons** and **persons' stories** represented in video clips shall preferably be made **unidentifiable**, unless people represented in video clips already have a public role or manifestly made their personal data public, or explicitly agree in the informed consent to appear in a recognizable way and/or have their personal data mentioned for the project's purposes.
- Participants in "digital stories" and other multimedia tools shall be informed that:
  - their participation is voluntary;
  - it will be possible, in some cases, to identify them in the videos;
  - for the purposes of the project "digital stories" and multimedia tools will be made accessible on the project's website and/or used during conferences, workshops and training sessions which will be organised as part of the project;

- they will have the occasion to view the edited video testimony / multimedia tools and that - if they consent with the edited version - the testimony / multimedia tools will only be used as indicated above;
- separate informed consent forms will be used for the digital stories / multimedia tools: one before the filming starts (containing a.o. the information above) and one before the dissemination of the video testimony (to confirm agreement with the edited version of the video and its publicity);
- they have the right to withdraw their consent before the filming starts;
- they have the right to withdraw their consent before the dissemination of the “digital stories” / multimedia tools and the right to erasure of their personal data;
- they have the right to withdraw their consent after the dissemination of the “digital stories” / multimedia tools and the right to erasure of their personal data. In this case, the Staff shall immediately remove the video(s) from the website, erase the personal data and there shall be no further use of those materials by the Staff and in relation to the project. It should be made clear to the data subjects, though, that complete removal of the video(s) from the web may not be possible, although the project’s partnership organisations will take every precaution to protect subjects’ privacy and will.

These guidelines have been discussed and adopted by the project’s Staff who has legal, victimological and restorative justice backgrounds.

## PARTNERS



UNIVERSITÀ CATTOLICA del Sacro Cuore  
**CSGP**  
Centro Studi "Federico Stella"  
sulla Giustizia penale e la Politica criminale

### **"Federico Stella" Centre for Research on Criminal Justice and Policy (CSGP) – Università Cattolica del Sacro Cuore, Milan, Italy.**

CSGP is the coordinator of the project. CSGP is a research centre on criminal law and criminal policy, committed to promote theoretical and applied interdisciplinary research, aiming at improving the criminal justice system. Its activities, projects and expertise cover a wide range of themes, including business criminal law, corporate liability, criminal law reform, restorative justice and victim support, environmental law, law and the humanities, law and the sciences. An Advisory Committee of prominent scholars, judges and leading experts in juridical, economic, philosophical and psychological disciplines coordinates its scientific activities.



### **Leuven Institute of Criminology – University of Leuven, Leuven, Belgium.**

The University of Leuven (KU Leuven) is charter member of the League of European Research Universities; European surveys rank it among the top ten European universities in terms of its scholarly output. The Leuven Institute of Criminology (LINC) is composed of about seventy professors and researchers involved in criminological research and teaching. LINC continues the Leuven tradition of combining solid research with a deep commitment to society, a goal achieved through fundamental as well as policy-oriented research. LINC consists of eight 'research lines', one of which is on 'Restorative justice and victimology'.



Max-Planck-Institut  
für ausländisches und  
internationales Strafrecht

### **Max Planck Institute for Foreign and International Criminal Law (MPICC), Freiburg i.B., Germany.**

Research projects undertaken at MPICC are comparative, international, and interdisciplinary in nature, and focus on empirical studies of criminal law, crime, crime control, and crime victims. Research also involves: harmonization and assimilation of criminal law and criminal procedure in EU Member States; development of criminal law thanks to insights into existing legal solutions to social problems, and into functional criminal and extra-criminal law alternatives.

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