

VICTIMS AND CORPORATIONS

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

Individual Assessment of Corporate Violence Victims' Needs

A Practical Guide

April 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 – as it will be better explained in the *Introduction* – 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 the *Introduction* to this Guide).

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 *Practical Guide*** 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.

Due to the extreme sensitivity of victims' personal stories and circumstances, a set of **ethical guidelines** 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** (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** (interviews and focus groups, coding, analysis and report by *Marc Engelhart, Carolin Hillemanns* and *Alexandra Schenk*) and **Belgium** (interviews and focus groups, coding, analysis and report by *Katrien Lauwaert*)¹. The texts of the three national reports are partly transposed and summarized in the present *Practical Guide*. 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 «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**, also (and often mostly) due to a lack of (public as well as personal) awareness about their victimization.

¹ The research group also wishes to thank Elena Agatensi, Davide Amato, Pierpaolo Astorina, Luc Boone, Davide Canzano, Nina Degel, Marina Di Lello, Eliana Greco, Carlo Novik, Alessandro Provera, Eliana Romanelli, Luca Schler, Marco Trinchieri, and Mirijam Zubarev for their help with the transcription of interviews and focus groups.

The present *Practical Guide* is therefore 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** (see in particular §II), as well as to identify and deal with the specific problems they may experience in **accessing justice** (§III.2), in engaging with the involved **corporations** (§III.3), in dealing with **public authorities** often perceived as indifferent or even hostile (§III.4) and in confronting **the media** (§III.5). Finally, an assessment of corporate violence victims' needs would not be complete without giving due consideration to the role potentially played by formal and informal **victims' associations** (§III.6), 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 (§III.7).

Building on this *Practical Guide* and on the further debate with experts and professionals, the Project's staff will soon develop, 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.

I.

INTRODUCTION

1. Objectives of this Practical Guide

Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (from now on: the Directive) includes the novelty that it requires an **individual assessment of every victim's individual situation to identify specific protection needs** due to their particular vulnerability (**art. 22**). This approach recognises that not only specific categories of victims (such as children, elderly, etc.) but every victim can be vulnerable. According to the Directive, the individual assessment should take into account not only the **personal characteristics** of the victim, but also **the type or nature and the circumstances of the crime**. Particular attention should be paid to victims who have suffered considerable harm due to the severity of the crime and to victims whose relationship to, and dependence of, the offender make them particularly **vulnerable**. The individual assessment is therefore an essential preliminary step for competent authorities (police and judicial authorities), victim support services, restorative justice services and other professionals while dealing with victims, to ensure a case-by-case approach and the most individually tailored protection, assistance and support.

This guide is meant to **support professionals** in making the individual assessment of victims of corporate violence. So far, this group has not received adequate attention despite the fact that the victims are numerous, the victimization severe and the vulnerability increased by their specific situation. We will **draw attention to recurrent aspects of vulnerability of victims of corporate violence**.

The Directive providing minimum rights applies to all victims of crime, thus also to victims of corporate violence. In practice, however, **this group stays under the radar**. Not only are they often not recognised as victims of crime, they also encounter many obstacles in exercising their rights as set out in the Directive. Additionally, the rights foreseen in the Directive are not always the best option to meet the needs of this group. The **collective and structural dimensions of their victimization**, for example, may require professionals to think and act 'out of the box' and adapt their approach in order to come to **truly tailored solutions**.

We hope that a better view on the victimization experience of this group, their needs and the obstacles they encounter will lead to increased detection and recognition of victims of corporate violence, and to an overall improvement in the way they are helped by professionals.

2. What is 'corporate violence'?

Corporate violence takes place when corporations in the course of their legitimate activities commit criminal offences which result in harms to natural persons' health, integrity or life.

Important examples of corporate violence can be found in the fields of environmental crime, product safety, occupational safety and offences in the pharmaceutical industry. Some cases have been highly publicised. However, it is important not to forget all the victims of less publicised cases involving a smaller number of victims. They deserve equal attention.

Some specific examples may help understand the possible scenarios:

- **Eternit:** Thousands of people contracted asbestos-related diseases caused by Eternit, a fibre cement. People concerned were professionals working with asbestos, citizens living in the area of the asbestos plants or living with asbestos workers.
- **Component failure disaster:** Over a hundred people died and about the same number was injured by a train accident due to a technical failure of a wheel.
- **Waste dumping:** A firm dumped illegally toxic waste at an existing waste dump which caused pollution of water and ground on a big surface. Medical tests of the local population showed worrisome results.
- **Thalidomide:** A drug provided to pregnant women caused an important number of malformed newborns.
- **Haemoderivatives:** Contaminated haemophilia blood products caused large numbers of people to become infected with HIV and Hepatitis C and B.

- **Breast implants:** A corporation produced defective breast implants and sold them to thousands of women causing harms also to their health.
- **Air pollution:** A plant caused important and long-lasting odour nuisance and distress for the local community while breaching environmental regulations.
- **Petrochemical contaminants:** A petrochemical plant's activities were scrutinized concerning their relation to cancer diseases in the region and damages caused to the environment.
- **Factory fire:** A textile plant in Asia, producing mainly for a European textile discounter, burned down; many people were killed; the responsibility of the European company was investigated.

3. Corporate violence victimization: typical features

Specific characteristics are typical of corporate violence. Underneath we list a number of them. They will be elaborated and illustrated further on in this guide. Not all characteristics apply to every case of corporate violence. These characteristics influence people's victimization experience, their needs and what could be expected from professionals who work with them. Therefore it is important to **keep these topics in mind** and to **actively explore whether they are present** when professionals assess the needs of victims of corporate violence.

3.1. THE CORPORATE OFFENDER: remember that the offender is not an individual or a mere group of individuals, but instead an organization.

Although rarely mentioned as a specific group of vulnerable victims, it is clear that victims of corporate violence are especially vulnerable due to the offender being a corporation. This becomes clear in different ways:

- In general, the relationship between the corporation and the individual suffering harm is characterised by an unequal power balance;
- There is usually an imbalance in correct information about the situation, that is, about the facts, the harm caused and the risks for the future;

- The power for taking legal action is greatly in favour of the corporation, which has far greater resources;
- There could be a relationship of economic (but not only) dependence between the victim and the corporation;
- A specific element of complexity is related to the possible multinational nature of the corporation;
- Victimization itself may have a transborder nature;
- There may be a lack of a real interlocutor, as often there is no identifiable individual 'culprit' the victim can address, so that the victims feel they have to fight against a giant, opaque, impersonal organisation;
- Frequently, there is a structural interdependency of the interests of the corporation with the interests of the (local or national) authorities and politics.

3.2. LACK OF RECOGNITION: it must be kept in mind that the victims might not know – or at least not know for a long time – that they are victims, and that they are usually not recognised by others as victims.

People who suffer from corporate violence are often not identified as victims of crime by themselves, by professionals and by the public at large. Intrinsic qualities of corporate violence hinder understanding it as a crime. Many reasons account for this phenomenon, such as:

- **Unawareness:** people themselves are sometimes not aware that they have been victimized;
- **Long latency periods and unclear causal links:** the victimization appears a long time after the acts causing it, which can contribute, together with scarce or scarcely known scientific information, to make the link with the harmful behaviour not apparent;
- **Opaque responsibility:** the source of the harm may be unclear as well as who is responsible for it;
- **Social beliefs:** today corporations are still not easily seen as offenders by society at large, so that, even if there is a clear harmful behaviour, the offence is not easily seen as a proper crime when committed by a corporation;

- **Indirect harm:** usually the harm done is not interpersonal or direct, but rather indirect and the consequence of decisions - actions or omissions - taken by complex organisations;
- **Involuntary harm:** the harm done is usually the result of decisions taken not to harm wilfully, but to make profit; it is therefore common that victims and/or the public at large are unaware of the fact that the harmful behaviour might be criminal;
- **Victim's participation:** when the exposure to the harm was voluntary, for example due to a lifestyle or occupation, or due to the choice to make use of a certain product, people will not easily self-define as victims of crime;
- **Factual complexity:** convincing others of the harm and the wrongdoing may need expert opinion.

3.3. COLLECTIVE VICTIMIZATION: attention must be paid to the possible existence of several other victims other than the one/few lamenting an offence.

Corporate activities often cause harm to many people. The victimization may concern a local community, or may be spread over many countries, or it may happen at one particular location where victims from very different regions happen to come together at a particular moment. Victims can be harmed by one sudden event or the victimization may be spread over time.

Although victimized by the same activities/activity, the needs of victims may vary widely.



3.4. ACCUMULATED VULNERABILITIES: check for a possible plurality of vulnerability factors.

Victims of corporate violence may accumulate factors of vulnerability mainly because of:

- **The offender being a corporation:** the unequal power relationship and the more complex situation than in conventional crimes may account for an increased vulnerability of the victim, who might be tied to the corporate offender by a relationship of economic dependency or a dependency of other kind, like in the case of victims of unsafe pharmaceutical products which are forced, to combat life-threatening diseases, to keep using the same or like drugs;
- **Scope of the harm:** the harm resulting from the offence can be very pervasive, implying not only significant economic losses, but, even more significantly, a long-lasting effect on the victim's and/or they family members' health (illness, handicap, death), which makes for a powerful factor of vulnerability;
- **The victim's pre-conditions or personal characteristics:** it may happen that the victims – previous to their victimization – were already severely ill (e.g. haemophilia patients), socially disadvantaged (e.g. tenants in social housing buildings), dependent on the company for employment (e.g. asbestos workers) or in a situation of exploitation (e.g. workers in textile plant);
- **The circumstances of the crime:** because this kind of victimization concerns regularly a promise turned into a tragic deception, the victimization is extra hard to bear (e.g. a promising drug or medical treatment which instead caused more harm); when the victim is employed by the corporation the victimization is often experienced as a breach of trust; moreover, when the victim actively participated in the activities which caused the harm, this provokes feelings of guilt (e.g. when purchasing damaging products, or having worked in the plant causing the harm).



3.5. HIGH RISK OF FURTHER VICTIMIZATION: check for occurrences or risks of repeat and/or secondary victimization.

Victims of corporate violence are often exposed to continued victimization: polluted grounds and water are not depolluted overnight, defective implants are not easily removed, people take harmful medication for a period of time before detecting its harmfulness.

These examples show that victimization may be continued before it is discovered, but also after it becomes apparent it may continue due to the impossibility to take away the cause of the harm in the short term.

Secondary victimization by various institutions is typical when the causal link between the corporate activity and the harm is not clear, or when authorities are not willing or able to tackle the situation.

3.6. DIFFICULTY TO COME TO CLOSURE: consider that the victims might have to keep 'living with the crime' for a long time, or even for the rest of their life.

Besides several characteristics mentioned above, additional features of corporate violence victimization may lead to an increased difficulty to come to closure. The continued exposure to risks is an important example. The victims may still live on not well de-polluted grounds, or be contaminated with HIV or asbestos fibres without having developed the related illnesses.

In other words, for certain groups of victims the victimization implies a permanent threat.

4. Harms caused by corporate violence

As for other serious crimes the harms are practical, physical, mental and emotional, economic and social. They are not experienced separately but combined or in a sequential way. Moreover, it is typical that the harms reach a large number of people and involve shorter or longer latency periods before the harm becomes apparent. The victimization suffered is quite often initially not perceived as such and only slowly the people affected start to realise that their suffering might be due to the responsibility of someone.

The **physical harm** usually represents the immediate effect of the corporate violence, although latencies can be long and the causal link difficult to make. Apparent physical damage may range from death and permanent disabilities to injuries and serious (both short- and long-term) damage caused to health. It may even include harms to foetus or newborn babies. In some cases the symptoms are unspecific and difficult to diagnose and then it is common that medical doctors, employers or the informal social network assume that there is mostly a psychological or psychosomatic condition (e.g. physical consequences of the use of a wood protection agent; physical consequences of fracking; physical consequences of explosive detectors used by airport personnel).

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.

Frequently victims are temporarily or permanently disabled, which causes them to experience **financial problems**. Professionals also stress the major challenge for victims who suffer the loss of a family member. Surviving dependents frequently are confronted with major problems if they lose the family's breadwinner. Not only victims whose relatives died in an accident or a disaster (e.g. a train accident or a textile factory fire) face financial and **psychological problems** (e.g. trauma). In the case of an Asian textile plant which burnt down, 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 the society.

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. Many victims experience abruptly changed living conditions, which they

often have difficulties to adapt to. For instance, increasing skepticism, distrust and self-doubt are common effects on the victims. Mental stress is furthermore generated by the fact that victims sometimes contributed to the harmful behavior (e.g. a victim infected with HIV through haemoderivative drugs unknowingly passed on the disease to his partner, who ultimately died).

Also **social consequences** can be invasive. Victimization put strains on the relationships of the affected persons and can result in the dissolution of families and other informal networks: for example, several marriages could not cope with the birth of a child disabled due to a drug taken by the pregnant mother. In some cases people suffer a loss of social status: for example, victims of a defective drug reported social stigmatization due to the physical deformities they were born with. The social life of heavily burnt victims of a gas explosion at a construction site was very much reduced due to their important physical mutilations. In case of pollution, entire communities are sometimes affected, physically and emotionally. In some cases becoming a parent resulted difficult or impossible, because of the physical consequences of the harm and because the victim's health condition was considered too precarious for them to be allowed to adopt.



II.

NEEDS OF CORPORATE VIOLENCE VICTIMS

Victims of corporate violence's needs touch upon different fields, and concern needs for information, practical, medical, psychological and legal support, and financial compensation. These needs are in practice **often intertwined** and are all part of their more fundamental need for recognition of their wrongful suffering and of their human dignity.

RECOGNITION

To be recognised as a victim constitutes **the most fundamental need** for a considerable part of victims of corporate violence. This is adequately reflected in art. 1 al. 1 Directive, which requires victims to be recognised. Victims of corporate violence often stress that they feel not recognised, be it by the offending corporation, by professionals, by the public perception, by public authorities and sometimes even by family members, neighbours and the local community.

II.1. RECOGNITION: consider that self-respect and self-worth of a corporate violence victim may have been seriously damaged by the violation of trust that is implicit on the perpetrator(s) part, and possibly by sentiments of shame and self-blame in the situations where the victim has actively contributed to the harm.

A recurrent situation is the limited knowledge about the harmful behaviour and its consequences. In other words, the causal relationship is not always clear from the start, requires in depth technical knowledge or is disputed. This can for example be seen in cases of harm inflicted in the medical sector through drugs and other forms of treatment, or in cases of harm inflicted by other products used by consumers, and also in cases of environmental exploitation or pollution with negative effects on human health.

This lack of knowledge can heavily add to a lack of recognition of the harmful behaviour and its effects.



PROTECTION

art. 18 Directive installs a right of **protection of victims and their family members** from secondary and repeat victimization, from intimidation and retaliation, including a protection of privacy.

Victims expect protection by the State, which often failed to protect them in the first place, and by the criminal justice system, which often stayed inactive despite the harm done by the corporations. It must be noted that this adds to these victims' vulnerability and distress (see also above, §1.4).

II.2. PROTECTION FROM RETALIATION AND INTIMIDATION: take into account the possibility that a victim of corporate violence may be subject to retaliation and/or intimidation by the corporation, and that these threats might likely take a different, less apparent form than in cases of ordinary crimes.

Victims of corporate violence report, e.g., instances of blaming the victim for the accident, illegitimate disciplinary sanctions, professional deskilling, shutting down a contaminated factory site without providing for clearing of the site, etc.

II.3. PROTECTION AGAINST REPEAT VICTIMIZATION: consider that continuing exposure to harmful factors is almost the rule in cases of corporate violence.

Whenever the victim is in a relation of dependency with the corporation – e.g. in cases of work-related injuries or illnesses, or need to keep using drugs and/or products by that corporation or like ones – or cannot remove themselves from a risky context – e.g. in cases of polluted environment – exposure to repeat victimization is implicit.

Protection against repeat victimization and/or prevention of further harm was usually expressed as a key concern by corporate violence victims. Victims especially perceive this as a duty of the State and of public regulatory agencies. Victims attached great importance to the fact that their tragic experiences should serve as a lesson, and therefore contributed to institutional initiatives aimed at preventing other such experiences and at improving the system. This was e.g. the case for the law banning asbestos, of new control protocols for blood donors, for the changes in the haemoderivatives production, for the birth of a regulatory agency to control pharmaceutical corporations, for a law regulating fast compensation for victims of technical disasters, for a law installing a compensation fund for victims of asbestos.

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

II.4. PRIVACY PROTECTION: consider that cases of corporate violence can imply specific issues of privacy on the victim's part.

Victims of corporate violence especially expect protection of their privacy in cases – and particularly in judiciary proceedings – whose nature can lead to revelation of very private details, especially (but not only) on people's health, which in some cases bring with themselves a huge potential for social stigmatization (e.g. infection by HIV through contaminated haemoderivative drugs).

II.5. PROTECTION AGAINST 'ATYPICAL' THREATS: take into account the possibility that a victim of corporate violence is or feels threatened in further ways, which are specifically related to the circumstances of the corporate violence they suffered.

Some victims of corporate violence need, e.g., protection against threats from their own community when they are not being believed, accused of bad-mouthing the corporation, or when their job or property is attacked because of initiatives taken against the corporation.



INFORMATION

The right to receive information (art. 4 Directive) is confirmed by victims of corporate crime as very important not only for **practical reasons**, related to the ability to take informed decisions about their legal options and to effectively **access justice**, but also in order to **recover control** over their life and to improve their ability to cope with their experience.

II.6. INFORMATION ABOUT THE VICTIM'S SITUATION: assess the victim's need for information concerning their situation as resulting from the crime suffered, and provide, as far as possible, direction on how to get it.

Victims of corporate violence often need first of all correct, complete and understandable information about their situation, which often concerns their health status, their perspectives, the future development of their condition and how it can develop, possible therapies, etc.

II.7. INFORMATION ABOUT THE FACTS: consider that victims of corporate violence usually face huge problems in reconstructing exactly what happened to them, how it happened, the legal significance of the harm suffered, who the responsible ones are, etc.

Victims of corporate violence generally express a need for full information about the facts of the case. They want to know exactly what happened and who is responsible. This allows for closure, but it is also seen as a necessary step to prevent similar crimes in the future. But the aetiology of the harm itself may be hard to understand, and big corporations have the means and the support of legal counsel to prevent people from knowing that they are victimized, to hide information about the facts, to conceal their responsibility and to set up complicated defence strategies once they are under legal scrutiny. The asymmetry of information is huge.

II.8. LEGAL INFORMATION: take into account the usually greater complexity in cases of corporate violence to assess the victim's need for legal information.

Victims need correct and understandable information about legal options and possible outcomes of these options, in order to allow them to take action and make an informed choice, but also in order not to raise unrealistic expectations. The legal aspects of corporate violence cases are often complex, and victims need help in understanding general as well as specific critical issues.

II.9. INFORMATION ABOUT POSSIBLE SUPPORT: consider specific as well as structural vulnerabilities of a victim of corporate violence in assessing their needs for support and in providing, as far as possible, adequate information.

Corporate violence victims need correct and understandable information about available medical, psychological, and social support (see below) as well as about the whole spectrum of possible financial support (social security, insurances, compensation fund, judicial procedure against the offender, etc.). The range of possible remedies might appear particularly complex and opaque in these cases, so that extra attention must be paid to this issue.

SUPPORT

Overall the primary need for support is related to **restoring victims' physical and mental health** and **maintaining their financial stability**. The main struggles of the victims concern basically survival, medical care, social assistance, protection and prevention of future harms, which are crucial topics in the Directive too. Among the victims' priorities, the quest for justice somehow comes after the achievement of the abovementioned needs, which are deemed more essential, vital, and 'practical'.

There is also an important need for **mutual support**, which may be increased by the lack of access to official channels of support. In that case victims feel lonely and abandoned by the attitude of existing public institutions.

Because of their specific situation, victims of corporate violence are often dependent of **'external' support, besides or instead of regular services**. As we will see further on, they rarely end up in the official network of victim support services. Also, professionals who are supposed to protect the victims may have strong ties, with or even be employed by, the corporation (e.g. local authorities and the company's medical doctors). In case of collective victimization of socially vulnerable groups victims may totally depend on the support of pro-active and engaged lawyers, trade unionists or non-governmental organisations.

III.

DEALING WITH CORPORATE VIOLENCE

In this section we provide **additional hooks for the assessment of the needs of victims of corporate violence** by learning from the experience of this group with different societal actors: the businesses concerned, the media, public authorities and the victims' informal social network. We will do so by looking at the reality of their access to justice through criminal and civil proceedings, compensation funds, mediation and legal aid and to their access to victim support services which should in principle serve all victims of crime. This experience, collected from victims themselves and from professionals working with them, leads naturally to do's and don'ts, to ideas for adapting one's usual functioning and to think out of the box in order to better meet the needs of victims of corporate violence. First, however, two overall preliminary remarks need to be made.

1. Preliminary remarks

Not all cases of 'corporate violence' receive the same public consideration: episodes of sudden, collective, visible victimization get far more attention by both public institutions and society at large.

Taking into account all the victims' experiences we collected, it has become clear that **the situation of victims of a disaster like event is quite different from other situations of corporate violence**. Distinctive features are the sudden and very visible character of the event and the collective victimization which happened without anyone acting with the intent to harm.

These situations 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 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.

‘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.

→ **THE IMPORTANCE OF OBJECTIVENESS:** when dealing with a victim of corporate violence keep in mind that the extent of harm and distress they experience is not to be assessed on grounds of the public attention and support paid (or not paid) to their case.

* * *

Any collective victimization requires specifically adapted and coordinated strategies.

Situations of collective victimization require **adapted strategies** and methods on behalf of all professionals concerned.

After a *sudden* collective harmful event it is necessary to reach out to victims fast and in an adequate way, as the group of victims usually consists of **a number of people** in great distress, possibly speaking different languages and all simultaneously needing care and support.

More generally, in *any* case of collective victimization (which is basically the standard with corporate crimes), **action is needed at different levels and in different fields.**

A **central coordination unit** is a key tool in addressing this challenge by acting as a **central contact point** for victims, taking care of **collective actions** for victims, and **coordinating and assisting support** offered in the field of finances, health and justice.

Possible interventions of a central coordination unit are:

- **collective information** sessions for victims;
- offering **individual meetings** with victims;
- co-organise **collective sessions to register as civil party**;
- **follow up collective compensation efforts** by the businesses and insurances, possibly in collaboration with judicial actors;

- co-organise **guided visits of the site of the disaster** for the victims' families;
- participate in the creation of a **remembrance site and/or a memorialisation event**;
- manage **relations with the press**.

Ideally, such a coordination unit is set up at the highest level, e.g. close to the prime minister or the chancellery, so that decisions can be taken swiftly, transcending and coordinating the competencies of different ministries concerned.

Grasping the extent of collective victimization and its seriousness is often only possible if (statistical) **data are gathered** (e.g. disease and decease registers) and **scientific expertise is invested** to understand causes and effects. This is beyond the capacity of individual victims and requires public support.



2. Problems in accessing justice

While the Directive states amongst its guiding principles that victims «should be provided with sufficient access to justice», granting this right in practice appears particularly hard with respect to corporate violence victims, due to the specificities of these offences we summarized in the *Introduction*.

Through our preliminary research, **specific critical issues** emerged with respect to **different kinds and stages of judicial proceedings**, so that practitioners getting in touch with corporate violence victims may benefit from a separate overview of each.

2.1. Problems in accessing justice with respect to **CRIMINAL PROCEEDINGS**

Cases of corporate violence create enormous challenges for victims and for the criminal justice system:

- The usually collective nature of this victimization and of ensuing criminal proceedings implies the need for adapted methods to inform large groups of victims and to **organise their participation in the trial**. Practical issues may include how to accommodate the presence of large groups at hearings, how to organise collective registration as civil party, how to grant quick notices without compromising the victims' privacy, etc.
- Justice professionals stress the difficulty of a **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, etc.
- The latency periods before the harm becomes apparent often lead to **investigations and criminal procedures taking place a long time after the harmful activities**. In the meantime memories may have faded, people may not like to reopen the past again, evidence may have disappeared. Moreover, if too much time has passed between the facts and the criminal proceedings, the final judgement maybe an acquittal or it may state that defendants should not be prosecuted due to the fact that the crime was time-barred by a statute of limitations.
- A particular challenge is the **proof of the facts**, the harm and the causal relationship between both. Often very specialised (and very costly) **scientific expertise** is needed to support this debate.
- In a context of high legal and factual technicality **corporations are in an advantageous position**. They hold key information about what happened and have generally means to appoint the best lawyers and experts. The opportunity to pay experts gives a relevant advantage to the corporations, because the evidence of causation link mostly depends on scientific arguments.
- Generally many victims want to contribute to the investigation and to have their say during the criminal proceedings, be it testifying as a witness or participating as a party in the proceedings. A major reason for doing so is the wish to prevent the wrongdoing from

happening again, the wish to stop the harmful behaviour. The struggle they have to go through can, in this way, at least protect other people of having to suffer a similar plight. In case of corporate violence, what is needed to prevent repeated offending often transcends, however, the situation of the individual offender and involves more **structural or systemic** changes. The criminal justice system is badly equipped to initiate those changes.

- The **exposure of victims and their privacy** during criminal investigation and in public criminal trials is experienced as problematic. 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.

As the Italian national report in particular has highlighted, victims often experience a **gap between expectations from the criminal trial and its outcomes**. Due to the many obstacles mentioned above, criminal proceedings often do not provide for compensation to victims, despite the evidence of the perpetration of offences harming them. In case of such outputs, the **victims' reaction** is alternatively a **great disappointment, misunderstanding, resignation** (when the negative output was easily predictable), **desperation** and **secondary victimization**. The confidence of victims in the entire criminal justice system may become very low.

The uncertainty on the outputs of the final criminal judgement may also lead to an **unequal treatment of victims** harmed by identical corporate behaviours with identical consequences on human health (as, for example, for the asbestos-related diseases). This disparity of results is not easily understandable by victims. They ask for a unique model of compensation for damages using the same criteria and rules.

All the difficulties related to the criminal justice handling of corporate violence cases lead to the **need for adequate information** to victims. Information to victims should be **such as not to create improper expectations** of 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. Moreover, criminal justice intervention should be balanced with **other channels of support**. 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.

Despite the usual negative outcomes, some victims report that **the criminal trial has nevertheless important functions**. The criminal proceeding is an opportunity to raise interest and attention to the case; a

useful instrument to collect evidence when victims have not enough means to proceed alone. It is often the only opportunity to ask for compensation when all the other systems failed; the only system which leads to a public recognition of victims requests. More than obtaining compensation, victims request for a **public establishment of the truth and recognition of responsibilities**.



2.2. Problems in accessing justice with respect to *CIVIL PROCEEDINGS*

The **motivation** for victims to access civil justice is **manifold**. Besides **financial interests** (compensation for material and immaterial damage, reparation or post-employment benefit), victims want to see justice done. They want **responsibility to be assigned**; at times they also want to ensure that **structural changes be made** in the future (for example better working conditions) and so they see their efforts as a political statement.

Civil proceedings deal, however, with **similar problems as criminal proceedings** in terms of statutes of limitation and a heavy burden of proof. Moreover these procedures tend to be **long and costly**.

In cases of collective victimization the **lack of a class action** is another obstacle often reported by victims.

2.3. Problems in accessing justice with respect to **COMPENSATION FUNDS**

Different kinds of compensation funds have been created in EU member states. At the least, every EU member state should dispose of a national compensation fund for victims of intentional violence according to EU legislation (Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims). Although the specifics of the functioning of these national funds may differ, based on the experience in some European countries we can state that possibly a **lack of publicity** and **certain conditions of admissibility** may **compromise the access of victims of corporate violence**.

Problematic conditions of admissibility may be:

- **'an act of violence'** understood in a very 'standard' way, as physical violence administered by one physical person to another physical person;
- **'direct causality'**, meaning that 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 this concept of direct causality;
- **'intentionality concerning the damage done'**; this is probably the biggest obstacle for victims of corporate violence to have access to a national compensation funds for victims of intentional violence; this condition requires that the offender had the intention to harm or kill.

Other factors, which may seem problematic at first sight, are not necessarily an obstacle to be eligible for national compensation funds for victims of corporate violence if the fund judges according to the principles of reasonableness and equity:

- the fact that **the offender is a legal entity**;
- possible expiring of **time limitations**;
- **no clear criminal law qualification** of the facts;
- the **subsidiarity** principle of the fund.

Be it by the national compensation fund or by another fund, different arguments plead in favour of a response to **corporate violence victims' financial needs** through a **collective fund for compensation**. For ordinary citizens it is **difficult, expensive and long to go through proceedings** against a corporation. Possible extra complications are **the international**

set up of the corporation and **difficulties of proof** due to contradictory scientific expert reports. It is a situation of **trial inequality**. The outcome is unsure and sentences may be disappointingly low. Moreover, from a 'political' perspective it is often 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** provides **recognition**, allows to make sure that the victims do get **compensation** and contributes to **social peace**.

Ad hoc compensation funds set up for particular cases of corporate violence may be extremely helpful if they provide immediate help to the victims without regard to questions of responsibility, which need to be settled through legal proceedings.

In practice compensation funds may however make the **financial support dependent on conditions**. Requiring the **conviction** of the company may make **access to the compensation difficult and sometimes almost impossible**. When making use of the compensation fund implies a **waiver of the right to initiating criminal or civil proceedings**, this is experienced as an unnecessary restriction of choice. Finally, it is important for victims that (also) the corporate offender provides for the funding and not for example all businesses together, or the State. In short, a compensation fund can be an important support for victims, *if* it is organised in a way which also implies the corporation taking its responsibility. Otherwise it is **experienced as a buy off** and in that case it puts victims before a **moral dilemma**. Victims report 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.



2.4. Problems in accessing justice with respect to **VICTIM SUPPORT SERVICES**

Victim support is **one of the basic services** which should be offered to victims of crime according to **art. 8 of the Directive**. It is a confidential, free of charge offer of which victims can make use during and for an appropriate time after criminal proceedings (art. 8 al 1 Directive). Access to victim support is **not dependent on a victim making a formal complaint** with regard to a criminal offence (art. 8 al 5 Directive). **Direct victims and their family members** have a **right of access** to victim support (art. 8 al 1 a). Moreover the Directive actively promotes the **referral of victims by the police and other relevant entities to victim support** (art. 8 al 2 Directive).

Not all countries have yet established a well elaborated network of victim services. Nonetheless, even in countries where victim support is well developed, victims of corporate violence do not seem to find their way to victim support. The **few cases of corporate violence** detected in victim support clientele during the interviews and focus groups we conducted concerned disasters and occupational accidents which included criminal offences committed by the employer.

There are, however, no formal obstacles for this group to profit from victim support and **the core tasks of victim support services respond to important needs of victims of corporate violence**. Victim support services are tasked to provide:

- **information, advice and support** relevant to the **rights** of victims;
- **information** about, or **direct referral** to, relevant **specialist support services**;
- emotional and **psychological support**;
- **advice relating to financial and practical issues** arising from the crime;
- **advice** relating to the risk and **prevention of secondary and repeat victimization**, of intimidation and retaliation. (art. 9 al 1 Directive).

→ **AWARENESS OF EXISTING VICTIM SUPPORT SERVICES: when dealing with a victim of corporate violence it is important to consider all available resources in terms of victim support, in order to address the victim to such services and also give them a realistic perspective of what help they could and could not get.**

Moreover the Directive encourages victim support services to **pay particular attention** to the **specific needs of victims** of corporate violence, as they are victims who have suffered **considerable harm** due to the **severity of the crime** (art. 9 al 2 Directive).

Why then are victims of corporate violence almost absent in victim support?

As better detailed in the *Introduction*, victims of corporate violence may not define themselves as victims of crime.

Additionally, **victim support services do not tend to promote themselves toward this group of victims**. In external communication the very classical definition of victims is often used; victimization of a natural person by another natural person still prevails.

In order to enhance accessibility and better serve victims of corporate violence VICTIM SUPPORT SERVICES should take into account the following RECOMMENDATIONS:

- **Put the topic of victims of corporate violence on the agenda:** is this group present in their work? Which kind of cases of corporate violence do they have experience with? Do they know about their specificity? What to do to reach out to this less visible group of vulnerable victims?
- **Make clear in the task description** of the victim support service that **victims of corporate violence belong** to the target group.
- **Include reference to corporate violence victims in victims support's communication** to the public, to partner organisations and to relevant professionals. Explain for example that also victims of cases with a corporate offender, or cases with a very long latency period are welcome, and provide examples of how they can be helped by victim support. Show that they are aware of the specific problems this group is dealing with (see above).
- **Use expertise already gained in working with collective victimization in other fields** such as hold-ups in banks or disasters; or learn how to work with collective victimization from other victim support services (even abroad). Find out for example about the organization of collective information meetings at which victims are informed at the same moment by different professionals (about the state of affairs of the legal case, about possibilities for financial compensation, about offers for psychological support, etc.).
- Not scare away from the greater complexity of cases of corporate violence; **have a staff member who specialises** in specificities such as different actors involved, different types of penalties and specific legal issues such as the criminal responsibility of legal persons.

- **Liaise with the professionals handling disasters** so that referrals to victim support are part of the contingency planning in case of a disaster involving corporate violence.
- **Liaise with victims associations** so that victim support can refer victims who express the need to talk to fellow sufferers, and so that victim support and victims' associations can join forces and be complementary in their offer.
- Prevention of repeat victimization in the sense of making structural changes to prevent future harm is a key issue for victims of corporate violence, especially in case of collective victimization. It is an issue which is often high on the agenda of victims' associations. Prevention in terms of **advocacy for structural changes** seems to be less in the core business of victim support services, although the task description in the Directive rather stimulates this kind of engagement. Explore how victim support can contribute to this task either by taking initiative or by supporting victim associations or other organisations.
- **Make sure the category of victims of corporate violence becomes visible in the registration system**, so that their presence or absence in the victim support clientele can be followed up.
- **In case of large scale collective victimization, it is recommendable to collaborate with an existing (or to set up a) victim coordination unit at a high level.** Such a unit should liaise with all relevant services involved in disaster management, and with professionals in the field of justice, insurances, the medical field and local and/or national public authorities (politics). It should also be a contact point for all victims concerned, so that they receive equal treatment tailored to the specific victimization.



2.5. Problems in accessing justice with respect to **MEDIATION**

The Directive states that **restorative justice services** can be of great benefit to the victim (preamble, 46). **In practice, cases of corporate violence are rare in victim offender mediation.** This is the case for VOM organised as a diversion mechanism within the criminal procedure as well as for VOM organised in parallel to the criminal procedure. Formally, there are no conditions which exclude cases of corporate violence to go to mediation. Nevertheless the standard case would rather be a conflict between two natural persons.

Occasionally conflicts with legal persons as victims end up in mediation. **Corporations are more easily approached** with proposals for **transaction**. In that case the corporation pays a sum of money to the State and in exchange the case will not go to court.

Mediators view cases of corporate violence nevertheless as potential cases for mediation. They do not see major obstacles. The main principles of mediation would be maintained.

Some characteristics of corporate violence cases would, however, require mediators for specific attention or adapted methods:

- **Minimal recognition of the facts:** a minimum of recognition of the facts and of responsibility is needed in order to engage 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.
- **Collective victimization:** if the victimization (as it happens quite often) is collective, the practical organisation of the mediation needs to be adapted and will be different from the usual one-to-one dialogue. Ideas can be drawn from different methods used in cases of collective victimization in other fields than corporate violence.

For instance:

- First a **collective information session** can be organised about the possibility of mediation, what it entails and the possible outcomes and consequences. **Afterwards** those interested can start a **more individualised process** with the mediator. Listening to and acknowledging the individual stories remains an essential part of the mediation, and consequently clarify expectations and looking for pathways towards a situation which is satisfying for both sides.
- Mediators can also work with the method of **peace-making circles**.

- Conversation groups might be employed, in which **victims and offenders of non-related criminal facts** come together to exchange about themes related to crime related themes such as taking responsibility, reparation, punishment.
- In **neighbourhood mediation** methods are used to 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: these methods could be adapted to cases of corporate violence victimization.
- As, due the **long time** that could have passed from the perpetration of the offence, the offenders themselves or the people responsible at the time could not be in place anymore, the involved organization(s) could be encouraged to find a **representative to take responsibility on behalf of the institution**.
- **Unequal power balance:** 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.
- **Who will sit around the table?** 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 usually needed. It is well possible that the mediation process needs both a corporate representative from the medium hierarchy, who can explain the facts and their circumstances, and someone who represents the highest level of the corporation, who can take responsibility on behalf of the corporation for what happened. In a case of electrocution at the work place, the corporation wanted to send the human resources director to the mediation table, but the victim refused and wanted to confront the CEO himself, as he was responsible for the company policies. This is what finally happened.
- **The specific context of corporate violence:** 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 knowledge, which is much more geared towards conventional crimes and their consequences.

Some themes, which are common characteristics of situations of corporate violence, **are also present in some of the conventional crime situations** and do not represent an obstacle for mediation:

- **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);
- **a partially unclear or hard to proof causal relationship** between the activities of the offender and the harm suffered by the victims;
- **victims** experiencing serious harm done to them but **who do not define this harm in terms of criminal behaviour** (equally present in serious traffic offences).

In summary, corporate violence is an unexplored field in which mediation makes perfectly sense and can even be very interesting as these cases are surrounded by commotion, many questions, strong emotions and needs for communication, recognition and restoration.

In order to promote the use of mediation for corporate violence, the following RECOMMENDATIONS can be taken into account by RESTORATIVE JUSTICE SERVICES:

- **Put the topic of victims of corporate violence on the agenda of a team discussion:** Is this group present in their work? Which kind of cases of corporate violence do they have experience with? Do they know about their specificity? What to do to reach out to this less visible group of vulnerable victims?
- **Make clear in the task description** of the mediation service that **victims of corporate violence belong** to the target group.
- **Include reference to this group in the service's communication** to the public, to partner organisations and to relevant professionals. Explain for example that also victims of cases with a corporate offender or cases with a very long latency period are welcome and provide examples of how they can be helped by restorative justice. Show that the mediation service is aware of the specific problems they are dealing with (see above).
- Not scare away from the greater complexity of cases of corporate violence; **have a staff member who specialises** in the specificities of this field.
- **Liaise with victims' associations** so that they get to know the mediation services' offer.

- **Make sure the category of victims of corporate violence becomes visible in the registration system**, so that their presence or absence in the clientele of the RJ service can be followed up.
- **Keep track records** about corporate violence cases handled by the mediation service, do's and don'ts; this will enhance expertise building.



A few specific issues deserve further consideration:

- **Ombudsperson:** In some important cases of collective corporate violence subject to our analysis (e.g. train accidents), an ombudsperson was installed within the company to mediate between the victims and the company. The ombudsperson stayed on for many years and also became the contact person for victims of new accidents. Although the ombudsperson was chosen by the corporation, which in terms of mediation seems rather unfavourable, the concept as such offers the victims a **permanent contact person**, which at least means that there is an identifiable person through whom to address the offending corporation.

- **Arbitration courts:** In another case we analysed in our research (increasing conflicts between oil and gas companies and persons who were affected by earthquakes in the region due to fracking) arbitration courts were installed. These arbitrations provide the **opportunity** for victims and corporations to reach an **extrajudicial decision**, if a direct agreement between the parties failed. Such arbitration courts might be suitable to other contexts as well and facilitate victims' access to justice.

2.6. Problems in accessing justice with respect to **LEGAL AID**

According to the Directive, victims have access to **legal aid** where they have the status of parties to criminal proceedings. How this works in practice (conditions and procedural rules) is determined by national law (**art. 13 Directive**).

We learned from legal professionals that **obtaining appropriate legal assistance is a problematic part of getting access to justice** for 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 statutes of limitations. A high financial risk is taken by the victims who go to court. This problem is not resolved by private insurance, 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 can be 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 ones often are.





3. The corporation's attitude towards victims

Victims have a strong wish for someone to assume responsibility for the harm they suffered. This expectation is not often met. The **attitude of the businesses concerned** seems to be **strongly driven by possible legal (and financial) consequences** for the corporation and by the public relations interests of the corporations to **prevent further loss of image**.

This induces a **nuanced attitude in cases of obvious victimization and a clear link with the company** (often situations of sudden collective victimization). In many **other cases**, the attitude of the corporations is reported by victims as a **negative** experience.

Examples of more nuanced attitudes can be considered:

- set up an **emergency fund on a voluntary basis** to financially support victims (who eventually will bear the cost is sometimes determined later, on the basis of the outcome of legal procedures);
- make a **donation** to financially support victims;
- present **public apologies**: cases were reported of public apologies expressed 15 or even 50 years after the facts and long after criminal trials were concluded, and, from the victims' perspective, an apology after this long period of time may have nearly lost its significance;

- give permission to install a **remembrance garden/site on the property of the company**;
- make genuine efforts to **reintegrate the victim in the workplace** after an occupational accident.

Examples of attitudes which are reported as very painful experiences, and which add significantly to the victims' distress, are, instead:

- an **indifferent attitude** towards victims, with (for instance) no provision of a contact person within the company;
- strict **denial** and continuing denial of harmful effects, and/or of responsibility for these effects;
- **victim blaming**;
- use of **untruthful/wrong information in public relations** strategies or, more generally, a manipulative attitude;
- try and **'buy victims'** through compensation agreements, sometimes including clauses of confidentiality, so that victims cannot talk about their case nor about the agreement, or a waiver of responsibility set as a condition for a monetary settlement. Monetary settlements and monetary compensation have often been 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.
- fight criminal or civil liability in court **making use of specialized law firms disproportionately more powerful** (and often aggressive) than the legal support available to victims;
- **refusal to make apologies**;
- **refusal to create or allow a memorial** for the victims on the site of the harmful behaviour.





4. Dealing with public authorities

A recurring issue with respect to corporate violence is the **close interdependence and intertwined interests of corporations with (local or national) politics**. Economic interests can prevent competent authorities from taking action and, therefore, neglect the protection of consumers and residents. Politics and politicians are often described as too hesitant to stand up to corporations. They stay **inactive** or show **bureaucratic attitudes** with little interest in the people themselves. The State is often perceived as being captured by the corporations and being unable to make the corporation at least economically pay for recovering the compensation and financial support (to a smaller or larger extent) provided by the State to the victims.

Thus, **victims feel that policing and regulating authorities do not live up to their responsibilities** in initiating, funding, conducting and supervising investigations of victims' allegations or in collecting meaningful and reliable data unless high public pressure is built by citizens' initiative groups. Often it takes indeed the pressure of victims associations to make state actors move.

In contrast, **in events of sudden and collective visible victimization**, victims notice **a lot of political interest and goodwill** to meet their needs. This makes things move, but there are **also downsides**. Exceptional measures are sometimes taken, which threaten the equal treatment of different victim groups. It is a bitter pill to swallow for victims who are equally severely victimized in less mediatised cases. As time goes by political interest often fades away and structural changes may lag behind. Some politicians also intervene purely for political gain without any sincere sensitivity for the victims' plight. This can be a painful experience.

A few **examples of negative experiences** reported by victims are:

- politicians taking ostensibly part in memorialisation events, while the victims themselves were seated in the back rows;
- local politicians refusing to invest in a memorial requested by the victims, but organising a remembrance reception to which they 'forgot to invite the victims and their relatives'.

Attention paid by the highest authorities of the country can be an immense **symbolic recognition for victims**. On the other hand, expressions of **appreciation** by the highest authorities **for a corporate offender who denies its victims**, for example by giving a speech at the centenary of the corporation, have been reported as **very disappointing** to victims.



5. Dealing with the media

The **media can be powerful allies** for victims to draw attention to their plight and to provoke action on behalf of (legal and political) authorities or companies concerned.

The following are a few **examples**:

- A **documentary film** led to the substantial **increase of the monthly stipend** received by victims of Thalidomide, after the company had first tried to prevent the transmission of the film.
- **Stalled criminal proceedings** were **pushed forward** as a consequence of actions and **declarations by an informal victims association**, with the support of a lawyer, and related by the press to the public forum (in a case of a public housing fire).
- When citizens contacted a victims' association about a **site where there was an alarming presence of asbestos**, the association organised a field visit and invited the press to join in. The **public exposure of the case via the media** consequently **spurred action** on behalf of the people responsible. This happened in several cases of asbestos present in public social housing blocks.

The opposite, however, is also true. Victims can **suffer** substantially from a **lack of interest** on the media's part and/or from **superficial and sensational reporting**. The local press may not want to engage in criticism of powerful local corporations which pay large sums of tax and provide many employment opportunities, or towards inactive authorities. The media may not provide public opinion a full account of causes and effects and be more interested in pitiful and sensational people's stories.

6. The weight of formal and informal victims' associations

Informal and formal victims' associations do exist in many cases of corporate violence involving collective victimization. **Victims feel the need to come together in coping with the consequences** of the multifaceted harm and economic loss caused by corporate violence and in **facing the complex (and often unsuccessful) path** of claiming compensation, accessing justice, obtaining protection and prevention of future, increased and repeated harms/victimization.

Victims' associations can play a very important role in:

- providing **recognition** to individual victims;
- connecting victims and organising **mutual support**;
- providing **practical and day-to-day advice** concerning, for example, legal aid, financial compensation, medical assistance and psychological/emotional support;
- presenting **a common approach** to corporations, authorities and the public;
- obtaining **public recognition** for that particular group of victims;
- **initiating 'political' actions**, which may lead to structural changes preventing repeat victimization, for example, through the adoption of laws banning harmful products or substances;
- initiating **actions** which lead to laws providing forms of **public compensation** to victims;
- **supporting** and organising victims' **participation in criminal proceedings**.

It must be also observed that, **in countries where institutionalised and general victims' support services do not exist**, victims' associations tend to **fill the gaps**.

→ **AWARENESS OF EXISTING VICTIMS' ASSOCIATIONS:** especially where victim support services do not exist or are not adequate, be aware that victims of like episodes of corporate violence may have already constituted associations for self-help, which might provide some support for 'new' victims.



7. The informal social network

Amongst the other difficulties faced by corporate violence victims, it must be considered that in some cases **victims report a shrinking social informal network**:

- victims may **withdraw from social life** because of physical limitations and/or psychological suffering;
- **family and friends may progressively 'abandon' the victim**, i.e. spend less time with them, as they become tired of treating the victim with adequate compassion.

The experiences of the affected persons can cause **conflicts** between them and their family, friends and neighbours for several recurring reasons:

- the community might **not believe** in the symptoms suffered by the victim;
- there can be **different opinions** in the local community concerning **the attitude that should be adopted towards the corporation** which is still present in a dominant way in the local life (it happens that victims are stigmatised as traitors because the allegations damage for example the image of the main employer in the region; even attacks by local residents towards victims were reported after a victim took action against the corporation).

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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